



Order under Section 77(8) Residential Tenancies Act, 2006

Citation: Shergill v Komolafe, 2023 ONLTB 13930

Date: 2023-01-12

File Number: LTB-L-049989-22-SA

In the matter of: BASEMENT, 114 SAIL CRESCENT
MAPLE ON L6A2Z1

Between: Dilprit Shergill

And

Oyelola Bisoye Komolafe



Landlord

Tenant

2023 ONLTB 13930 (CanLII)

Dilprit Shergill (the 'Landlord') applied for an order to terminate the tenancy and evict Oyelola Bisoye Komolafe (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy.

The application was heard by videoconference on December 19, 2022.

The Landlord and the Tenant attended the hearing.

Determinations:

1. The Landlord and the Tenant signed an N11 Agreement to Terminate a Tenancy ('N11') with a termination date of August 31, 2022 and the Tenant did not move out of the rental unit by the termination date set out in the agreement.
2. The Tenant testified that she signed the N11 under duress
3. The Tenant testified the tenancy commenced on August 1, 2022 however she moved into the rental unit on July 31, 2022. She testified that on July 31, 2022, the Landlord sent her a text message requested that no one ring the doorbell and that on August 1, 2022, the Landlord sent her a text message requesting that she not use perfumes in the rental unit. She testified that on August 2, 2022, the Landlord sent her another text message in which he stated:

I'm sorry this can't work out. This was new for us and we didn't anticipate the fragrance when we were writing the offer. That said, we agree on Saturday August 6 as a deadline to exit.

4. The Tenant testified that she contacted the Landlord's real estate agent who prepared the N11 and a Mutual Release Form. She testified the N11 was signed on August 3, 2022 with a termination date of August 31, 2022.
5. The Tenant testified that she engaged the Landlord's real estate agent to find her alternative housing however this proved to be difficult and she was unable to find anything. She testified she reached out to the Landlord suggesting a new term of "no fragrances" be added to her existing lease in an effort to remain in the rental unit. She testified that on August 12, 2022, the Landlord provided her with a new tenancy agreement and additional terms document which showed a tenancy commencement date of September 1, 2022.
6. The Tenant testified the new tenancy agreement was not signed as the Landlord changed his mind and insisted that she vacate the rental unit on August 31, 2022 in accordance with the N11.
7. The Landlord testified that at no time did he coerce or threaten the Tenant to sign the N11. He testified he was contacted by the real estate agent who suggested that he and the Tenant mutually agree to terminate the tenancy however the date of August 6, 2022 was unreasonable and suggested the termination date of August 31, 2022 of which he agreed to.
8. The Landlord testified the Tenant agreed to terminate the tenancy on her own volition and it was only after she was finding it difficult to find alternative housing that she claimed the document was signed under duress. He conceded that he was willing to enter into a new lease agreement with additional terms but when the Tenant stated that "life is too short for rules" he determined it was best to end the relationship and proceeded with the N11. He further testified there was a meeting of the minds between himself and the Tenant and reiterated that he did not coerce or threaten the Tenant.

Legal Analysis

9. The issue before me is whether the agreement signed on August 3, 2022 between the parties is valid or whether it should be dismissed as unenforceable on the basis of duress.
10. I am not satisfied that the Tenant was coerced into signing the agreement to terminate the tenancy. The Tenant knew she was agreeing to terminate the tenancy on August 31, 2022.
11. Even if I accepted that the Landlord's expectations were stressful to the Tenant, the stress the Tenant felt in the face of the Landlord's rules and finding alternative housing does not constitute duress.
12. I note that duress, by its legal definition, generally involves inducement by way of unlawful threats or improperly persuasive conduct that must be applied to such a degree to amount to "a coercion of the will". I do not find the Landlord's actions were unlawful or met the high threshold of coercion of the will.
13. In the present case, there was no evidence of threats and, as the Court of Appeal for Ontario recognized in *Dos Santos v. Waite*, 1996 Carswell Ont 3554 (C.A.) where it states, there is

a difference between stress and duress, and stress is not enough to void an agreement. The Tenant sought the assistance of a real estate agent instead of seeking legal advice prior to signing the agreement and will have to accept her decision agreeing to terminate the tenancy. As stated in *Dos Santos*, settlements are not always weighted equally for both parties. One party may have legal advice, and the other none. A party may later change their mind however, an agreement will not be set aside on these grounds.

14. Also in the present case, the Tenant no longer wants to agree to terminate her tenancy. However, the N11 was signed and the Tenant cannot simply change her mind after the agreement was reached.

Section 202

15. Section 202 of the *Residential Tenancies Act, 2006* (the 'Act') requires the Board to ascertain the real substance of the transactions and activities regarding the rental units at issue, and the good faith of the parties to the N11. In consideration of all of the circumstances, I find that the offer to terminate the tenancy was in good faith. The Landlord and the Tenant understood the tenancy could not continue and although the Landlord showed an initial willingness to continue the tenancy after the N11 was signed, the Tenant stated that "life is too short for rules" indicating to the Landlord that she may not abide by the new agreement.

Section 83(2) Considerations

16. Having found that the parties entered an agreement to terminate the tenancy, I turn now to whether it would be unfair to grant relief from eviction.
17. The Tenant offered evidence showing the difficulties she had been having with finding alternative housing however this evidence only shows her attempts during the months of August and September and nothing for the months leading up to the hearing date. She testified her current living arrangement with the Landlord has had no issues and requested that she remain in the rental unit until the term of the lease expires on July 31, 2023.
18. The Landlord did not dispute that there have been no issues with the tenancy but insisted the Tenant wilfully agreed to terminate the tenancy and she must abide by that agreement. The Landlord is seeking the tenancy be terminated on January 31, 2023.
19. In consideration of all the circumstances, I find it would be unfair to deny the Landlord's application. The Landlord has established the agreement was signed in good faith and with the intention to end the tenancy. However, in consideration of the difficulties the Tenant has suffered in finding alternative housing, it would not be unfair to postpone termination of the tenancy. While I find it would be unfair to grant the Tenant's request to end the tenancy on July 31, 2023, I find it appropriate to provide the Tenant with additional time to organize her move and secure alternative housing.
20. This order contains all the reasons within it and no further reasons will be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of February 28, 2023. The Tenant must move out of the rental on or before February 28, 2023.
2. If the unit is not vacated on or before February 28, 2023, then starting March 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after March 1, 2023.

January 5, 2023
Date Issued



Susan Priest
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.