



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

**Citation:** 2775120 ONTARIO INC v TREMBLAY, 2023 ONLTB 14174

**Date:** 2023-01-11

**File Number:** LTB-L-063087-22-SA

**In the matter of:** MAIN FLOOR, 57 QUEENSTON ST  
ST CATHARINES ON L2R2Z1

**Between:** 2775120 ONTARIO INC and Caveat LLP

Landlord

**And**

ALAIN TREMBLAY

Tenant

2775120 ONTARIO INC and Caveat LLP (the 'Landlord') applied for an order to terminate the tenancy and evict ALAIN TREMBLAY (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy.

The Landlord's application was resolved by order LTB-L-063087-22, issued on November 14, 2022. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-063087-22.

The motion was heard by videoconference on December 22, 2022.

The Landlord's representative Glenn Gosling and Melissa Dupuis for the Landlord, the Tenant and the Tenant's witness Laura Harris attended the hearing.

### **Determinations:**

#### The Agreement to Terminate

1. The first issue to be determined on a motion like this one is whether the parties entered into an agreement to terminate.
2. The Landlord submitted the Board Form N11 which indicates the parties entered into an agreement to terminate the tenancy as of October 31, 2022. The N11 was signed by the Tenant and the Landlord and dated September 1, 2022. However, the Tenant says he did not sign the agreement.
3. If what the Tenant says is true, and there was no agreement between the parties, then the Landlord should not have filed the L3 application with the Board.
4. Based on the evidence before the Board and on a balance of probabilities, I find the Tenant and the Landlord entered into an agreement to terminate the tenancy. I say this for the following reasons.

5. The Tenant took the position that he never received the N11 from the Landlord and never signed anything about terminating his tenancy and he has no plans to move. He said he did not go to the office to sign the paperwork and if he had, the Landlord would have had video footage of the event. Despite this claim by the Tenant, no evidence was submitted to explain or confirm that the Tenant did not sign the N11 notice.
6. The Landlord said that she spoke directly with the Tenant about moving in August 2022 due to issues with respect to behaviour of the Tenant and his guests. She said that the Tenant came to the office on September 1, 2022, they spoke of the issues and the rent arrears and the Tenant willfully signed the N11 to terminate the tenancy.
7. The Landlord said they discussed the termination date and the Tenant did not ask further questions. Then the Landlord said she spoke with the Tenant in October 2022 to inquire about the Tenant's efforts with finding alternative housing and packing. On November 1, 2022, the Landlord said she went to the rental unit and the Tenant told her he was not moving.
8. The Landlord testified that she had no reason to believe that the Tenant did not comprehend that the Tenant agreed to terminate the tenancy. In fact, she followed up with the Tenant on progress with moving out.
9. At the hearing, I shared my screen with the parties to show the N11 document and the Tenant's S2 motion, both containing the Tenant's signature. The Tenant confirmed his signature on the S2 and when I compared his signature to the N11, the Tenant held to his position that it was not his signature.
10. The Landlord's representative said the signatures appeared to be identical.
11. The Tenant must take responsibility for the fact that it is his signature that appears on the N11. I do not find credible the Tenant's assertion that he did not sign the agreement. A direct comparison of the signatures suggests to me, that the Tenant did in fact sign the agreement but then changed his mind. The Landlord is entitled to rely on the Tenant's signature on the N11, which I find he provided of his own free will, as the basis for seeking termination of the tenancy.
12. Based on the evidence before me, I find that the Tenant signed the N11 agreement to terminate the tenancy. I therefore find that the N11 agreement is valid and must be enforced.

#### The Tenant's Motion

13. The next issue for the Board to decide is whether it would be unfair in all of the circumstances to set aside the eviction order.
14. Pursuant to subsection 77(8) of the Residential Tenancies Act, 2006 ('the Act'), after a hearing the Board may make an order setting aside the order if the landlord and tenant did not enter into an agreement to terminate the tenancy; or if "the Board is satisfied, having regard to all the circumstances, that it would not be unfair to set aside the order".
15. The Tenant's circumstances are that he has lived in the rental unit for approximately 14 years. The Tenant is 65 years old, is unemployed and receives social assistance in the amount of \$506.00 per month. He said he has not family or friends who could provide

housing if he is evicted. The Tenant further testified that he would need about 12 months to find alternative accommodation.

16. In contrast, the Landlord said that the Tenant willfully entered into the agreement to terminate the tenancy and then changed his mind. The Landlord said that due to past behaviour by the Tenant, she is concerned for the safety of herself and other tenants. The Landlord also said the Tenant stopped paying rent in September 2022 which has caused financial strain.
17. Given all of the above, and after considering all of the circumstances, I am satisfied that it would be unfair to set aside the eviction order. The Landlord has been more than accommodating of the Tenant's situation, checked in on moving progress and offered community housing supports.
18. Based on the above, the Tenant's motion shall be denied. It is clear that the Tenant agreed to terminate the tenancy and then changed his mind and did not move out of the rental unit by the termination date set out in the agreement. For these reasons, the Tenant's motion must be denied.

#### Lifting of the Stay

19. The final issue for me to consider is when to lift the stay of the eviction order.
20. The Tenant initially signed an agreement to terminate the tenancy back on September 1, 2022 and the parties agreed that the tenancy would terminate on October 31, 2022. This means that the Tenant has already had over 2 months for find alternate housing. I also note, the Tenant has not paid rent since September 2022. In short, I see no reason to grant the Tenant any delay as he has known for 4 months that he would need to move out of the rental unit.
21. The Landlord requested an immediate lifting of the stay to commence next steps with the court enforcement office (the Sheriff).
22. As I can find no reason to further delay the termination of this tenancy, an order will issue to lift the stay immediately.
23. This order contains all of the reasons within it. No further reasons shall be issued.

#### **It is ordered that:**

1. The Tenant's motion to set aside Order LTB-L-063087-22, issued on November 14 2022, is denied.
2. The stay of Order LTB-L-063087-22 is lifted immediately and Order LTB-L-063087-22 is unchanged.

**January 11, 2023**

**Date Issued**

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Dana Wren

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.

2023 ONLTB 14174 (CanLII)