



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

Citation: VAN TRAN v KHARAL, 2023 ONLTB 13832

Date: 2023-01-03

File Number: LTB-L-064933-22-SA

In the matter of: 2039 ROY IVOR CRES
MISSISSAUGA ON L5L3N7

Between: Dien Van Tran Landlord

And

Musharraf Kharal Tenants
Mushood Kharal
Saba Kharal
Sajida Kharal

Dien Van Tran (the 'Landlord') applied for an order to terminate the tenancy and evict Musharraf Kharal, Mushood Kharal, Saba Kharal and Sajida Kharal (the 'Tenants') because the Tenants entered into an agreement to terminate the tenancy.

The Landlord's application was resolved by order LTB-L-064933-22, issued on November 18, 2022. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-064933-22.

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

The Landlord, the Landlord's Legal Representative, Amanda Richards, the Tenant, Saba Kharal, and the Tenants' Legal Representative, Sarah Teal, attended the hearing. Sehar Kharal appeared as a witness for the Tenants.

Determinations:

1. The Landlord and Tenants entered into an agreement to terminate the tenancy as of January 31, 2023.
2. The Tenants are a family of five. The tenancy with the Landlord is a joint tenancy. The Tenants filed a motion to set aside the order because the Tenant, Sajida Kharal, had surgery in October 2022 and her recovery has been slower than expected. The motion requested more time to vacate the rental unit.

3. At the hearing, the Tenants' Legal Representative raised a preliminary issue with respect to the N11 agreement to end the tenancy ('N11'). She submitted that the Tenant, Sehar Kharal, was not named on the N11 nor did she sign it although she is named as a tenant on the tenancy agreement.
4. The Landlord's Legal Representative submitted she and the Landlord received an email from the Tenant, Saba Kharal, on September 20, 2022, in which she wrote:

Also going forward, please remove Sehar Kharal from any house paperwork as she will no longer be a tenant on this lease agreement.

5. The Landlord's Legal Representative submitted that this email indicated that Sehar Kharal was no longer a tenant thus she was not included on the N11. She submitted that Saba Kharal spoke on behalf of the family therefore the Landlord accepted this statement and drafted the N11 to include only four of the Tenants. She further submitted that neither herself nor the Landlord responded to the Tenant's request to remove Sehar Kharal from the tenancy agreement.
6. Sehar Kharal testified that she was not aware that her sister had written this email nor was she aware of the N11. She testified that she did not vacate the rental unit and had no intention of doing so. She testified she was only aware of the agreement with the Landlord to vacate the rental unit when she was provided a copy of the order issued on November 18, 2022.

Legislation and Analysis

7. As this is a joint tenancy, the question before the Board is whether Sehar Kharal, authorized Saba Kharal to act as her agent with respect to terminating the tenancy. This is because subsection 2(1) of the *Residential Tenancies Act, 2006* (the 'Act') says that a "tenant"..."includes the tenant's heirs, assigns and personal representatives...". This section establishes that the Legislature considered the possibility that a tenant might "assign" authority to another individual to act on their behalf and when they do, that person also is considered to be a "tenant" at law.
8. Sehar Kharal testified that at no time did she authorize Saba Kharal to act on her behalf to terminate the tenancy. She testified that she was not made aware of any communications with the Landlord or the Landlord's Legal Representative with respect to ending the tenancy.
9. As this is a joint tenancy with five Tenants named in the tenancy agreement, the N11 must be signed by all parties to that agreement unless written authorization is provided by the affected party to assign her interests to another person. No such authorization was provided to the Landlord by Sehar Kharal.
10. Based on the evidence before me, I am satisfied the N11 is invalid as not all the Tenants named in the tenancy agreement signed the N11.

11. Subsections 77(8)(a) and (b) of the Act set out if the respondent makes a motion under subsection (6), the Board shall, after a hearing,
 - (a) make an order setting aside the order under subsection (4), if,
 - (i) the landlord and tenant did not enter into an agreement to terminate the tenancy
 - (ii) the tenant did not give the landlord notice of termination of the tenancy
 - (b) make an order setting aside the order under subsection (4), if the Board is satisfied, having regard to all the circumstances, that it would not be unfair to do so
12. With regard to all the circumstances that occurred with respect to the signing of the N11 and thereafter, I am satisfied on a balance of probabilities that all of the Tenants did not enter into a valid agreement with the Landlord to terminate the tenancy.
13. Pursuant to subsection 77(8) of the Act, the Board must set aside the order.
14. This order contains all of the reasons for my decision within it. No further reasons shall be issued.

It is ordered that:

1. The motion to set aside is granted. Order LTB-L-064933-22, issued on November 18, 2022 is set aside and cannot be enforced by the Landlord.
2. The Landlord's application is dismissed.
3. The N11 Agreement to End the Tenancy, dated September 27, 2022, is of no force and effect.

January 3, 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.