



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

Citation: WATER PETERBOROUGH PROPERTIES INC v MADDEN, 2022 ONLTB 13823

Date: 2022-12-07

File Number: LTB-L-044456-22-SA

In the matter of: 304, 840 WATER STREET
PETERBOROUGH ON K9H3N9

Between: WATER PETERBOROUGH PROPERTIES INC Landlord

And

DAVID MADDEN, GLORIA MADDEN Tenant

WATER PETERBOROUGH PROPERTIES INC (the 'Landlord') applied for an order to terminate the tenancy and evict DAVID MADDEN, GLORIA MADDEN (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy.

The Landlord's application was resolved by order LTB-L-044456-22, issued on . This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-044456-22.

The motion was heard by videoconference on October 24, 2022.

The Landlord's agent Linda Langlois, the Landlord's representative A. Trent and the Tenants David Madden (DM) and Gloria Madden (GM) attended the hearing.

Determinations:

1. The Tenant's motion to set aside the eviction order was brought pursuant to subsection 77(8) of the Residential Tenancies Act, 2006 (the "Act")
2. The Board must first determine whether or not there was an agreement to terminate the tenancy. If the Board finds that there was an agreement to terminate the tenancy, then the Board must decide whether or not "in all the circumstances" it would be "unfair to set aside" the eviction order. If the Board determines that it would not be unfair to set aside the eviction order then the Board is supposed to grant the motion and set aside the order. If the Board determines that it would be unfair to set aside the eviction order then the motion must be denied.

3. DM admits to signing the Form N11 Agreement to End the Tenancy, but states it was signed under “threats and mis information”.
4. The rental unit was originally inhabited by DM’s family and his parents. DM testified his father was currently living in long term care due to his medical condition and since that time, DM has been residing at the rental unit with his spouse, child, and elderly mother, GM.
5. DM recently had a heart attack and to assist his recovery, GM went to live with his brother down the street on a temporary basis. This arrangement continued for approximately 2.5 months and DM testified that as a result of his mother temporarily staying with his brother, he received an eviction order from the Landlord advising the tenancy would be terminated in 10 days. The next day, according to DM, the Landlord’s agent LL knocked on his door and presented him with the Form N11. During this conversation with LL, DM testified he was crying and nearly had a nervous breakdown and requested approximately 5-6 times more time to properly assess his rights. DM states he was advised he had an hour to decide whether or not to sign the Form N11, failing which, the Landlord would “tow his truck” and “try to get him out within 10 days”.
6. Based upon this conversation, DM states he mistakenly felt that unless he signed the Form N11, he “would have to leave in 10 days”. At that point, GM came to the rental unit and out of anger for how they were being treated, signed the Form N11. DM denies any abandonment by GM, noting all her possession and clothing were at the rental unit and GM still contributes \$400 per month towards rent.
7. It was the Landlord’s evidence that although DM signed the Form N11, only GM and her spouse were Tenants. LL denies issuing any threats or undue pressure upon DM and GM, stating she merely advised the Landlord could apply to court for their eviction due to an unauthorized assignment, and that she only had an hour because she had another appointment to attend to.
8. I do not find that there has been a valid agreement to terminate the tenancy, as I do not find there has been clear agreement/consent on the part of GM and DM. I do not find that GM and DM were given a reasonable opportunity to obtain independent legal representation and/or a reasonable opportunity to inform themselves of their rights at the time of signing the Form N11. Moreover, I find they were mistakenly induced into signing the Form N11 on the basis they *had* to sign the Form N11 failing which they would be imminently evicted.
9. In the alternative, in the event there was a valid agreement, “in all the circumstances” I find it would not be unfair to set aside the eviction order given the circumstances in which the Form N11 was signed; the fact that the tenancy is in good standing; and, given the parties family situation and challenges identified in finding alternative accommodations.

It is ordered that:

1. The motion to set aside Order LTB-L-044456-22, issued on September 26, 2022 , is granted.
2. Order LTB-L-044456-22, issued on September 26, 2022, is set aside and cannot be enforced.

December 7, 2022

Date Issued

Peter Nicholson

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.