



Order under Section 77 Residential Tenancies Act, 2006

Citation: SULLER v ROBINSON, 2022 ONLTB 13692

Date: 2022-12-07

File Number: LTB-L-045676-22

In the matter of: BASEMENT, 5 ELKHURST ROAD
BRAMPTON ON L7A4A6

Between: HOMER SULLER Landlord

And

DOUGLAS ROBINSON, KYLE ROBINSON Tenant

HOMER SULLER (the 'Landlord') applied for an order to terminate the tenancy and evict DOUGLAS ROBINSON, KYLE ROBINSON (the 'Tenant') because the Tenant gave notice to terminate the tenancy.

This application was heard by videoconference on October 31, 2022.

The Landlord, the Landlord's representative A. Choudhry, and the Tenants Douglas Robinson (DR) and Kyle Robinson (KR) attended the hearing. The Tenants consulted with tenant duty counsel prior to the hearing.

Determinations:

1. Subsection 77(1)(a) of the Residential Tenancies Act, 2006 (the "Act") provides that a tenancy may be terminated where "the landlord and tenant have entered into an agreement to terminate the tenancy."
2. The Landlord testified the Tenants signed a Form N9, Tenant's Notice to End the Tenancy, containing a notice of termination of June 30, 2022 (the "Notice").
3. The completed Notice was sent by the Tenants to the Landlord on May 4, 2022. The rental unit is a "basement unit" and although the Notice does not identify the rental unit as required by section 43(1)(a) of the Act, I find the Landlord accepted the Tenant's offer to terminate on May 5, 2022.
4. The Landlord produced email correspondence from May 5, 2022, whereby the Landlord notes "*I acknowledge the receipt of the early termination of your contract. As indicated in the N9 form, your last day of occupancy is June 30, 2022.*" As a result of the Landlord's email dated May 5, 2022, I find the Tenants' notice constituted a valid offer to terminate the tenancy which was accepted by the Landlord, thus constituting a valid agreement to terminate the tenancy.

Section 83

5. Section 83 of the *Residential Tenancies Act, 2006* (the 'Act') requires that I consider all the circumstances, including the Tenants' and the Landlord's situations to determine if it would be appropriate to grant section 83 relief from eviction.
6. The tenancy commenced in March 2022. The Landlord seeks immediate eviction, noting there are currently rental arrears, the amount of which, however, are disputed by the Tenants.
7. The Tenants seek to relocate from the rental unit and request until January 31, 2023 to find alternative accommodations. DR noted it has been challenging finding accommodations and indicated he is not working right now and in the process of apply for social assistance. KR indicated he has health issues and while at the time of the hearing he was not working, he testified he has secured employment in Guelph for mid-November 2022. It is KR's intention to move to Guelph and reside with a friend once his employment begins.
8. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Act* and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the *Act*. Given DR's identified challenges in securing comparable accommodations, however, I find it would not be unfair to postpone the eviction to January 15, 2023.

It is ordered that:

1. The tenancy between the Landlord and Tenants is terminated. The Tenants must move out of the rental unit on or before January 15, 2023.
2. If the unit is not vacated on or before January 15, 2023, then starting January 16, 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 January 16, 2023.

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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on July 16, 2023 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.