



Order under Section 77 Residential Tenancies Act, 2006

Citation: DAVE v MAGADIA, 2022 ONLTB 13668

Date: 2022-12-07

File Number: LTB-L-064825-22

In the matter of: 111, 200 LAGERFELD DRIVE
BRAMPTON ONTARIO L7A0H8

Between: JIGNESH DAVE Landlords
NILAYBHAI SHAH

And

MONTEZA MAGADIA Tenant

JIGNESH DAVE, and NILAYBHAI SHAH (the 'Landlords') applied for an order to terminate the tenancy and evict MARILOU MAGADIA, (the 'Tenant') and MONTEZA MAGADIA because the Tenant entered into an agreement to terminate the tenancy.

The application was heard by videoconference on November 29, 2022.

The Landlords, the Landlords' Representative, Chintan Patel and the Tenant, Monteza Magadia attended the hearing.

Determinations:

1. There's no dispute the Landlords and Tenant entered into an agreement to terminate the tenancy as of September 18, 2022 and the Tenant did not move out of the rental unit by the termination date set out in the agreement.
2. The N11 agreement was signed by one of two Tenants listed on the tenancy agreement which doesn't render the agreement invalid.
3. Section 202 of the Act requires the Board to look at the real substance of the transaction and under section section 83 (2) of the Act to "have[...] regard to all the circumstances".
4. There's no dispute and Monteza Magadia and Marilou Magadia are listed as Tenants on the tenancy agreement. However, the real substance of the transaction is that Marilou is Mondeza's guarantor on the tenancy agreement. My finding is supported by the Tenant's testimony having stated that her mom, Marilou, would stay over from time to time, is a visitor and is her co-signor on the tenancy agreement. The true landlord and tenant relationship therefore is between the Landlords and Monteza Magadia, only. Since the Tenant signed the agreement, there was no requirement for Marilou to also sign the N11 Form.

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5. I find, the N11 agreement is a valid and binding agreement to terminate the tenancy. There was no evidence led that the Tenant didn't understand what she was signing or that she was pressured, or under duress when she agreed to terminate the tenancy on July 17, 2022.
6. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenant has had enough time since signing the N11 Form on July 17, 2022 to find alternate accommodations. The Tenant was evasive about details of efforts taken to find alternate accommodation to date.

It is ordered that:

1. The tenancy between the Landlords and Tenant is terminated. The Tenant must move out of the rental unit on or before December 18, 2022.
2. If the unit is not vacated on or before December 18, 2022, then starting December 19, 2022, 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 December 19, 2022.

December 7, 2022
Date Issued

Sandra Macchione
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 June 19, 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.

