



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

Citation: TIWARI v GAYLE, 2022 ONLTB 13654

Date: 2022-12-07

File Number: LTB-L-048986-22-SA

In the matter of: 912, 100 LOTHERTON PATHWAY
TORONTO ON M6B2G8

Between: ANDREW TIWARI Landlord

And

WINSTON GAYLE Tenant

ANDREW TIWARI (the 'Landlord') applied for an order to terminate the tenancy and evict WINSTON GAYLE (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy.

The Landlord's application was resolved by order LTB-L-048986-22, issued on October 28, 2022. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-048986-22.

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

The Landlord and the Tenant attended the hearing. The Tenant spoke to Tenant Duty Counsel before the hearing commenced.

Determinations:

1. The Landlord and Tenant entered into an agreement to terminate the tenancy as of September 1, 2022.
2. After considering all of the circumstances, I find that it would not be unfair to set aside order LTB-L-048986-22.
3. Although the Landlord stated he's living with his sister because he's in the middle of divorce and needs the unit for personal occupation, I find it reasonable to preserve this tenancy and grant the motion because of the following:
4. The N11 agreement was signed on the same day the Landlord gave the Tenant an N12 Notice of Termination for personal occupation. I'm satisfied the Tenant was not given material information to make an informed decision before signing the N11 agreement and this creates an imbalance of power. The Tenant had no intention of vacating and only signed the agreement because he was prompted by the Landlord and led to believe he had no other option. The Landlord also secured an immoderate gain having elected to

obtain an order based on the N11 agreement rather than seek eviction by Notice utilizing N12 Notice. Not only was it the quicker means to achieve his preferred outcome but he also chose to ignore his obligation to pay the Tenant one-month compensation as required by law. The Landlord stated he didn't know about compensation which I find doubtful when it's clearly written on the N12 Notice of termination that the Landlord must pay the tenant one month compensation. The Tenant is also elderly, lives on limited pension income and has lived in the unit since 2016. Had the Landlord given the Tenant material information to make an informed decision and time to consider, ponder or seek legal advice before signing the N11 Form, the outcome would have been different.

It is ordered that:

1. The motion to set aside Order LTB-L-048986-22, issued on October 28, 2022, is granted.
2. Order LTB-L-048986-22, issued on October 28, 2022, is set aside and cannot be enforced.

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.