



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

Citation: FITZGIBBON v NIELSEN, 2022 ONLTB 13710

Date: 2022-12-06

File Number: LTB-L-047253-22-SA

In the matter of: APT. 503, 45 CRESWELL DRIVE
TRENTON ON K8V6A6

Between: HASTINGS LOCAL HOUSING CORPORATION Landlord

And

DENISE NIELSEN Tenant

HASTINGS LOCAL HOUSING CORPORATION (the 'Landlord') applied for an order to terminate the tenancy and evict DENISE NIELSEN (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy.

The Landlord's application was resolved by order LTB-L-047253-22, issued on October 21, 2022 . This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-047253-22.

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

The Landlord's Agent, Patricia Fitzgibbon, the Tenant and the Tenant's Representative, Samantha Hayward (TDC) attended the hearing. The Tenant had trouble with her voice and there was considerable difficulty understanding the Tenant's testimony. The Tenant's daughter, Amanda Nielson was present and she assisted by repeating the Tenant's whispered testimony as a means of accommodation.

Determinations:

1. The Landlord and Tenant entered into an agreement to terminate the tenancy as of August 15, 2022.
2. After considering all of the circumstances, I find that it would not be unfair to set aside order LTB-L-047253-22.
3. The Tenant is a person with a disability and lives in subsidized housing. The Landlord prompted the agreement by attending the unit with the N11 Form in hand for the Tenant to sign on May 12, 2022. There's no dispute that the Landlord's Agent told the Tenant they would issues notices of terminations based on incident of assault that led to charges against the Tenant. The Tenant was told she had to leave the unit but was also told she was entitled to an LTB hearing if a Notice was issued, and an application is filed.

4. I accept the Tenant felt pressure to sign the agreement having been led to believe it was the best option available to her having 3 months to find alternate accommodation. The Tenant is a vulnerable person and was alone when she signed the agreement. The Landlord's Agent returned to the unit the same day to collect the N11 not giving the Tenant enough time to consider all options available or time to obtain legal advice. The Tenant did not voluntarily choose to end the tenancy but did so having been prompted to believe eviction was inevitable. Since the Tenant signed the agreement under duress, I find her consent to end the tenancy obtained through improper pressure, invalidates the agreement and is reasonable cause to grant the Tenant's motion.

It is ordered that:

1. The motion to set aside Order LTB-L-047253-22, issued on October 21, 2022, is granted.
2. Order LTB-L-047253-22, issued on October 21, 2022, is set aside and cannot be enforced.

December 6, 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.