



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

Citation: MIRA v KOURSA, 2022 ONLTB 12897

Date: 2022-11-25

File Number: LTB-L-044530-22-SA

In the matter of: Floor #2, Unit – Room 3, 627 LANSDOWNE
TORONTO ONTARIO M6H3Y2

Between: MARLENE MIRA Landlord

And

MOUSSA KOURSA Tenant

MARLENE MIRA (the 'Landlord') applied for an order to terminate the tenancy and evict MOUSSA KOURSA (the 'Tenant') because the Tenant gave notice to terminate the tenancy.

The Landlord's application was resolved by order LTB-L-044530-22, issued on September 26, 2022. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-044530-22.

The motion was heard by videoconference on November 17, 2022. The Landlord's son and instructing client, Austin Rees, the Landlord's legal representative, Rachel Gibbons, the Tenant, and the Tenant's legal representative, Samuel Mason, attended the hearing.

Determinations:

1. On April 30, 2022 the Landlord and the Tenant entered into an agreement to terminate the tenancy by way of signing an N11 agreement to terminate. The Termination date in the agreement is July 31, 2022.
2. The Tenant did not vacate the rental unit on or before July 31, 2022, so the Landlord filed their L3 application with the Board on August 2, 2022. The Board issued an ex parte order on September 26, 2022 which terminated the tenancy. On October 24, 2022 the Tenant filed a motion to set aside the eviction order.
3. At the hearing, the Tenant raised a preliminary issue regarding the rental unit address. The rental unit address does not include the Tenant's specific unit number. It should be listed as Floor 2 – Room 3. It was the Tenant's position in part that the Landlords application should be dismissed pursuant to section 43(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') for failing to identify the unit for which the notice is given.
4. I am unable to determine that the agreement to terminate the tenancy is invalid due to the notice not correctly identifying the rental unit. Section 43 of the Act refers specifically to

notices of termination and not to agreements to terminate the tenancy. The legislation specifically requires the rental unit in a notice to terminate, but the Act is silent as it pertains to correctly identifying the rental unit on an agreement to terminate the tenancy. Had the legislature intended to include agreements to terminate the tenancy, then it surely would have. In my view, the intent behind an N11 agreement would be a voluntary and a generally undisputed consent agreement between the parties that is mutually agreed upon and signed. It is not a notice to terminate a tenancy. Therefore, I find it appropriate under the circumstances to amend the application to include the correct rental unit address and this order will reflect the amendment accordingly.

5. As it pertains to an agreement to terminate the tenancy, firstly, I am to consider whether or not both parties agreed to terminate the tenancy and whether the agreement is in writing. Based on the evidence before me, I am satisfied that both parties agreed to terminate the tenancy and that the agreement is in writing. The Tenant did not deny signing the agreement. In fact, the Tenant had almost a week to consider whether or not they should sign the agreement and they did ultimately sign it. In addition, the Tenant understood that his last month's rent deposit was going to be applied to July, until they received a call from the Landlord making a demand for the July rent payment.
6. Secondly, I am to consider whether or not the agreement represents a true voluntary agreement between the parties. The alternative would mean that there was some form of misrepresentation, fraud or duress on the part of one party over the other in order to invalidate the contractual agreement. In the case at hand, I find that although the Tenant did sign the agreement, the circumstances surrounding the agreement were not wholly honest on the part of the Landlord.
7. The Tenant provided a letter dated April 24, 2022 that was sent to them from the Landlord which indicated that the Landlord requires that the property be vacant by August 1, 2022 and that the final date of the tenancy will be July 31, 2022. The letter goes on to indicate that the Tenant will receive compensation of \$300.00 for the inconvenience and that they can move out of the rental unit sooner, but that they will not receive the compensation until they return the keys. No other options are listed for the Tenant aside from agreeing to the Landlord's demand for termination of the tenancy and the demand was that they return the signed N11 by no later than April 30th. The Tenant testified that otherwise they had not considered terminating their tenancy because their rent is currently affordable at \$506.00 per month. The Landlord's agent followed up on several occasions with the Tenant to inquire as to when they were going to sign the agreement.
8. During the hearing it also became evident that the real reason the Landlord gave the Tenant the letter and demanded that they sign the N11 agreement is because there is a City work order on the property due to the Landlord not complying with the zoning bylaw. The property is only supposed to be a single-family dwelling and the property actually has 9 separate room rentals in it, although the Landlord indicated that only 6 of them are currently occupied by Tenants. The Landlord has been aware of this issue since the Work order dated March 9, 2020 and they have not acted on the order because of Covid and health issues within the family.
9. Subsection 77(8)(b) of the Act requires that I consider all of the disclosed circumstances on whether it would not be unfair to set aside the eviction order. This means taking into

consideration the factual matrix of the tenancy and the conduct of the parties leading up to the agreement to terminate the tenancy.

10. When asked why the Landlord only offered the Tenant \$300.00 for compensation, the Landlord responded that he believed it was fair because it was over half a month's rent. It was an arbitrary amount that he felt was fair under the circumstances.
11. I find that the real reason the Landlord provided the Tenant with the letter, offer of \$300.00 for compensation in exchange for an agreement to terminate the tenancy was an effort on the Landlord to have the tenant vacate the unit without having to provide the 120 days notice required by an N13 notice of termination. In essence, the Landlord gave the Tenant an option of 90 days notice without informing the Tenant of any alternative rights that would be afforded to the Tenant on an N13 notice. Although the Landlord has subsequently served the Tenant the N13 notice, this option was not made readily available to the Tenant until after the Tenant filed their motion to set aside the eviction order for the N11.
12. After considering all of the circumstances, I find that it would not be unfair to set aside order LTB-L-044530-22 and to grant the Tenant's motion. This analysis is also consistent with the findings of the Divisional Court case of *Pinto v. Regan and White v. Regan*, 2021 ONSC 5502.

It is ordered that:

1. The motion to set aside Order LTB-L-044530-22, issued on September 26, 2022, is granted.
2. Order LTB-L-044530-22, issued on September 26, 2022, is set aside and cannot be enforced.

November 25, 2022
Date Issued

Terri van Huisstede
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.