



Order under Section 77 Residential Tenancies Act, 2006

Citation: MOLLAH v RAFFIZADA, 2022 ONLTB 12660

Date: 2022-11-23

File Number: LTB-L-052907-22

In the matter of: BASEMENT, 29 ARDEN CRESCENT
TORONTO ON M1L3R6

Between: ZAHIDUL MOLLAH Landlord

and
MOHAMMAD RAFFIZADA Tenant

ZAHIDUL MOLLAH (the 'Landlord') applied for an order to terminate the tenancy and evict MOHAMMAD RAFFIZADA (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy.

By endorsement dated October 24, 2022, the application was directed to hearing. The hearing was conducted by videoconference on November 10, 2022.

The Landlord attended the hearing.

As of 2:11 p.m. the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the Board. The Landlord also testified he personally gave the Tenant a copy of the notice of hearing.

Determinations:

1. The Landlord testified the Tenant and the Landlord signed an agreement to terminate the tenancy as of July 31, 2022 (the "N11 Agreement").
2. The Landlord testified there had been issues previously and the Tenant had given verbal notice to vacate; however, the parties subsequently agreed to continue the tenancy.
3. The Landlord testified there was then an incident that started as a result of the Tenant being asked why he was not smoking away from the residential complex. The Landlord testified the Tenant returned intoxicated later that night yelling verbal abuse and the Landlord at one point became concerned for his safety and called the police.
4. When the parties met the next month to address rent, the Landlord raised his concern the tenancy relationship was not working and asked if the Tenant wished to vacate. The Landlord testified after discussion of how long the Tenant required, it was agreed the Tenant would move out in two months, and the N11 Agreement was printed and signed.

5. The Landlord testified the Tenant is still living in the rental unit.
6. This application was directed to hearing as the N11 Agreement did not include a unit identifier while the application identified the rental unit as "Basement".
7. The Landlord testified he was the one who filled in the N11 Agreement and did not realise there was a requirement to identify the rental unit as 'Basement' until he was filing out this application online and was prompted for this information.
8. No notice of termination is required if a landlord and tenant enter into an agreement to terminate the tenancy. As a result, strict compliance with notice provisions under the *Residential Tenancies Act, 2006* ('the Act'), including the identification of the rental unit under section 43(1)(a), is not required on an N11 Agreement; however, the parties must each have understood what rental unit was the subject of the tenancy they were agreeing to terminate.
9. The Landlord testified the residential complex is his family home. It is a one-storey bungalow where he lives on the main floor and rents out the basement to multiple individuals who share a kitchen and washroom amongst themselves. The Landlord testified he has separate oral tenancy agreements with each individual and they each pay rent separately.
10. Based on the uncontested evidence of the Landlord that only the basement is rented out at the residential complex and that the Tenant had only one tenancy agreement with the Landlord, I find the parties understood what tenancy they were agreeing to terminate.
11. I find the Tenant and the Landlord entered into an agreement to terminate the tenancy as of July 31, 2022 and the Tenant did not move out of the rental unit by the termination date set out in the N11 Agreement.

Relief from Eviction

12. The Landlord testified the Tenant has told the other tenants he is not leaving and that he is going to make the Landlord's life miserable. The Landlord testified the basement contains shared laundry and his storage room and that his wife and children are afraid of going downstairs. It appears that relations and the current living situation are, at best, strained.
13. The Landlord also testified the Tenant ceased paying his rent in August and it has become difficult for him to manage his financial obligations. While I am required to consider all the circumstances under section 83 of the Act, as the Landlord advised there is an L1 Application pending before the Board I find it is not appropriate to make a determination regarding any arrears and I make no determination in this regard.
14. As the Tenant did not attend and no other circumstances were presented to me, I find it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
15. Since the Tenant did not move out of the rental unit by the termination date, the Landlord was required to file the application to obtain vacant possession. The Landlord's application

has been granted; therefore, the Tenant is responsible for paying the Landlord for the \$201.00 application filing fee incurred.

It is ordered that:

1. The tenancy between the Landlord and Tenant is terminated. The Tenant must move out of the rental unit on or before December 4, 2022.
2. If the unit is not vacated on or before December 4, 2022, then starting December 5, 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 5, 2022.
4. The Tenant has not been ordered to pay the Landlord's filing fee because this application was filed before the termination date. Therefore, the Tenant has not breached the Act.
5. If the Tenant does not pay the Landlord the full amount owing on or before December 4, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 5, 2022 at 4.00% annually on the balance outstanding.

November 23, 2022
Date Issued

Rebecca Case
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 5, 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.

