



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Smutek v Coulter, 2022 ONLTB 10937

Date: 2022-11-09

File Number: LTB-L-012306-22

In the matter of: 199 STANLEY ST
BARRIE ON L4M6X9

Between: Andrzej Smutek Landlord

And

Christopher Coulter Tenant

Andrzej Smutek (the 'Landlord') applied for an order to terminate the tenancy and evict Christopher Coulter (the 'Tenant') because:

- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on September 21, 2022.

The Landlord Agent, Melania Smutek, Landlord Representative, Teri Landriault, the Tenant, and Tenant Representative Erly Bregu attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before December 14, 2022.

Preliminary Issues

Landlord Agent

2. The Landlord sought the consent of the Board to allow his daughter to testify on his behalf since English is not his first language and submitted into evidence a letter authorizing the Landlord Agent. The Tenant objected stating that if the Landlord did not testify, it would be prejudicial to the Tenant.
3. According to the Board's Practice Direction on Representation before the Landlord and Tenant Board:

Unless the LTB is provided with evidence of any express limitation placed upon an Agent's authority, the Agent is permitted to act in lieu of the party for all purposes, including conducting examinations and making submissions, giving evidence, and entering into consent orders and mediated agreements that are legally binding upon the party.

4. I am satisfied that the Landlord Agent is permitted to act in lieu of the party for all purposes.

Is the N12 notice of termination defective?

5. It is the Tenant's position that the N12 notice is defective because the termination date set out on that notice is not the last day of the rental period. Accordingly, the Landlord's application should be dismissed.
6. The Tenant submitted that he had a conversation with the Landlord that the rental payments would be made on the 15th of the month. This implies that the rent is due on the 15th of the month. The termination date set out on the N12 notice is April 30, 2022. As a result, the N12 notice of termination must be found to be defective since the termination date on the notice is not the last day of the rental period as required under s. 48 (2) of the *Residential Tenancies Act, 2006*, S.O., 2006, c.17 ('the Act').
7. The Tenant submitted into evidence, in support of his claim, copies of rent cheques dated on the 15th of the month.
8. The Landlord submitted into evidence a tenancy agreement dated March 2018 which reflects that rent payments are due on the 1st day of the month. This agreement shows that the tenancy began sometime in March 2015 but does not give the start date of the tenancy.
9. The Landlord also submitted into evidence another tenancy agreement for the same rental unit signed on November 28, 2014. This tenancy agreement shows that the tenancy agreement commenced on the 1st of January 2015 and that the rent payments are due on the 1st day of each month.
10. There is no dispute that the two tenancy agreements relate to the same rental unit and that the Tenant is a party to both the tenancy agreements.
11. The Tenant testified that he had a conversation with the Landlord around March 2018 that there was a mistake on the tenancy agreement dated March 2018, and that the rent payments should be on the 15th of the month rather than the 1st of the month as shown in the agreement. The Tenant also said that when he brought this to the Landlord's attention, the Landlord did not want to rectify the tenancy agreement.
12. Subsection 202 (1) of the Act states:

In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so,

- (a) may disregard the outward form of a transaction or the separate corporate existence of participants; and
 - (b) may have regard to the pattern of activities relating to the residential complex or the rental unit.
13. The copies of the cheques seem to imply that the rent is paid on the 15th of each month. On the other hand, the two tenancy agreements say that the rent is due on the 1st of each month.
 14. The due date for rent payment is a significant issue. In my view, although the Landlord might have accepted rent payments on the 15th, there was no meeting of the minds regarding the due date for rent payments to be on the 15th of each month since the Landlord did not change the terms of the tenancy agreement. Both the signed tenancy agreements show that the rent is due on the 1st of each month. This was the intention and expectation in spite of the Landlord accepting late payments. In fact, as evidenced below, the Landlord served an N8 notice of termination for late payment of rent. If a party can come before the Board and claim that oral evidence overrides signed contracts, that very reasoning would defeat the purpose of contractual agreements. Accordingly, I placed a greater emphasis on the tenancy agreements.
 15. Based on the evidence before me, I determined that the rent is due on or before the 1st of each month and that the Landlord had served a valid N12 notice of termination.

N12 Notice of Termination

16. On March 1, 2022, the Landlord gave the Tenant an N12 notice of termination [deemed served on March 2, 2022], with the termination date of April 30, 2022. The Landlord claims that he requires vacant possession of the rental unit for the purpose of residential occupation.
17. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy between the Landlord and the Tenant is terminated as of December 14, 2022.
18. The Tenant was in possession of the rental unit on the date the application was filed.
19. The Landlord in good faith requires possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.
20. The Landlord has two rental properties, including the rental unit in this application. He sold the other property prior to the hearing. He currently lives in a rented basement with a shared kitchen. He has to pay the mortgage for the rental unit as well as the rent for his accommodation. The Landlord pays rent to his wife with whom he does not get along. He wants to move into the rental unit so that he does not have to pay rent. The Landlord Agent testified that the Landlord does not intend on re-renting or selling the rental unit.
21. The Landlord has compensated the Tenant an amount equal to one month's rent by April 30, 2022, in accordance with subsection 55.1 of the Act by returning to the Tenant the cheque for March 2022 and conveying to the Tenant through written communication that rent for March 2022 is waived as compensation for the N12.

Tenant claims Landlord served N12 notice in bad faith

22. The Tenant testified that the Landlord stopped collecting rent and served him with a N4 notice of termination in January 2022 for non-payment of rent and an N8 notice to end tenancy for persistently late payment of rent. He believes the Landlord gave these notices so that he could be evicted, and the Landlord could sell the rental unit and/or re-rent the rental unit for a higher rent.
23. The Tenant believes that similarly the N12 was served in bad faith so that the Landlord could either sell or re-rent the rental unit for a higher rent.
24. The Tenant submitted copy of a cheque dated December 1, 2021, and in the memo section of the cheque is mentioned November rent. Another cheque dated February 1, 2021, states December and January rent in the memo section.
25. The Tenant claims that the Landlord would not collect the cheques and that is why it appears that the rent is late. During cross examination, the Tenant admitted that on January 8, 2022, when the N4 and N8 was served, he had not paid the rent for December 2021 and January 2022.
26. Based on the Tenant's admission, I determined that the Landlord exercised his right to serve the Tenant with an N4 and an N8 and that this exercise of a legal right does not invalidate the subsequent serving of an N12.
27. The Tenant did not provide any evidence such as emails or texts that support a claim that the Landlord intended to sell and/or re-rent the rental unit. In the absence of any evidence, I determined that the claim is speculative.
28. The Landlord Agent testified that the Landlord requires the rental unit for residential occupation. The Landlord lives in a rented basement accommodation and pays mortgage for the rental unit. The Landlord would like to move into the rental unit so that he does not have to pay rent. The Landlord Agent also testified that the Landlord does not intend on selling or re-renting the rental unit.
29. Based on the evidence before me, I dismissed the claim that the N12 notice was served in bad faith.

Daily compensation

30. The Landlord is seeking an order for daily compensation for each day the Tenant remains in the unit after the termination date set out in the notice.
31. There is no last month rent deposit.
32. It was the evidence before me that the Tenant has paid all the rent up to and including August 31, 2022. Accordingly, the Tenant owes compensation for use and occupation of the rental unit for the period beginning September 1, 2022, to September 21, 2022 (hearing date) in the amount of \$966.63.
33. Based on the monthly rent, the daily compensation is \$46.03. This amount is calculated as follows: \$1,400.00 x 12, divided by 365 days.

Relief from eviction

34. The Tenant Representative submitted that N4s and N8s were served on the Tenant because the Tenant attempted to enforce his rights and therefore, the Board must refuse eviction pursuant to s. 83 (3) of the Act. I have determined before that the Landlord exercised his right to serve the Tenant with an N4 and N8 because the Tenant did not pay rent on time.
35. The Tenant Representative said that they have not submitted any applications before the Board in respect of tenant rights. Further, the Tenant did not submit any evidence that would allow me to determine that he has was served with an N12 notice after he attempted to secure or enforce his legal rights. Accordingly, I dismissed the claim for mandatory denial of eviction under s. 83 (3) of Act.
36. The Tenant testified that he has lived in the rental unit for 8 years and would like about 6 months to a year to move from the rental unit. The Tenant said that his children visit him during weekends and that his children have a social group in the neighborhood.
37. The Tenant also said that his disabled brother has been living with him for two years. His brother has a job and helps out with the rent and utilities. The Tenant submitted into evidence a medical note relating to his brother with a discharge dated October 9, 2020. During cross-examination, the Tenant mentioned a portion of the medical note stating that the patient was medically stable on the day of discharge.
38. The Landlord testified that he lives with his wife, and they do not get along. There is constant quarrelling among the Landlord and his wife. This situation had a psychological impact on the Landlord's children. One of the daughters stays out of the house due to the family situation. Further, the Landlord pays rent for his current accommodation and mortgage for the rental unit. To reduce his financial obligations, he wants to move into the rental unit.
39. Considering that the Tenant's children do not live with him full-time and do not go to school close to the rental unit; that his brother is medically stable along with the fact that it has been over four months since the termination date on the notice, I find that it would be unfair to the Landlord to delay the eviction for a period of 6 months.
40. 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 not be unfair to postpone the eviction until December 14, 2022, pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before December 14, 2022.
2. If the unit is not vacated on or before December 14, 2022, then starting December 15, 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 15, 2022.

4. The Tenant shall pay to the Landlord \$966.63, which represents compensation for the use of the unit from September 1, 2022, to September 21, 2022.
5. The Tenant shall also pay the Landlord compensation of \$46.03 per day for the use of the unit starting September 22, 2022, until the date the Tenant moves out of the unit.
6. The total amount the Tenant owes the Landlord is \$966.63.
7. If the Tenant does not pay the Landlord the full amount owing on or before December 14, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 15, 2022, at 4.00% annually on the balance outstanding.

November 23, 2022
Date Issued

Supratip Mallick
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 of the Tenant expires on June 15, 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.