



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

Citation: CASSELS v MARTINEZ, 2022 ONLTB 11168

Date: 2022-11-07

File Number: LTB-L-045722-22-SA

In the matter of: , 276 VICTORIA ST W
NORTH BAY ON P1B6B5

Between: MACKENZIE CASSELS Landlord

And

BRANDON RICHARD, BRENDA RICHARD, Tenant
MICHAEL MARTINEZ

MACKENZIE CASSELS (the 'Landlord') applied for an order to terminate the tenancy and evict BRANDON RICHARD, BRENDA RICHARD, MICHAEL MARTINEZ (the 'Tenant') agreed to terminate the tenancy.

The Landlord's application was resolved by order LTB-L-045722-22, issued on October 7, 2022. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-045722-22.

The motion was heard on November 2, 2022. The Landlord and the Tenant Brenda Richard, who met with Duty Counsel, attended the hearing.

Determinations:

1. The Tenant claims the Landlord threatened and intimidated the Tenants into signing an N11 agreement to terminate the tenancy. The Tenant claims the Landlord threatened to throw their belongings onto the yard if they didn't leave, including when the N11 was signed.
2. The Landlord testified that the Tenants had a long telephone conversation with her about terminating the tenancy. The Landlord sent the N11 to the Tenants and drove two hours to pick it up from their mailbox where they left it for her. The Landlord did not have any interactions with the Tenants on the day the agreement was picked and this was confirmed by the Tenant.
3. The Landlord also testified, and the Tenant agreed, that the Landlord agreed to return the \$2,000.00 last month rent deposit and not have the Tenants pay for the 25 days they lived in the unit before the termination date. The Landlord also testified that there are unpaid water bills from the past six months. The Tenant agreed with these statements but testified the water bills have now been paid. The Landlord disagreed that they have been paid.

4. The Landlord also testified that the Tenants have caused damage and a contractor who inspected the unit estimates the cost to repair the damage will be \$9,737.00. The Landlord was prepared to waive this cost if the tenancy terminated. The Landlord also agreed to drop the pending L1/L2 for persistent late payment of rent.
5. The tenancy agreement includes a no smoking clause and the Landlord testified the Tenants have been smoking and there are cigarette butts throughout the home. The Tenant did not disagree with this testimony.
6. The Tenant also agreed that the Landlord dropped the rent from \$2,400.00 to \$2,000.00 monthly for the Tenants.
7. Based on all the evidence and testimony, I find on a balance of probabilities, that the Tenants were not intimidated into signing the N11 agreement. The Landlord made offers the Tenants acknowledge, and the Tenants signed the agreement after discussions with the Landlord and left the signed agreement in their mailbox for the Landlord to pick up.
8. After considering all of the circumstances, I find that it would be unfair to set aside order LTB-L-045722-22.
9. The Tenant requested a delay until the end of November to lift the stay. The Landlord requested that the stay be lifted immediately. Under the circumstances, I find the lifting of the stay should be delayed until November 20, 2022.

It is ordered that:

1. The motion to set aside Order LTB-L-045722-22, issued on October 7, 2022, is denied.
2. The stay of Order LTB-L-045722-22, is lifted on November 20, 2022.
3. Order LTB-L-045722-22 is unchanged.

November 7, 2022

Date Issued

Greg Joy
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.

