



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

Citation: HAYAT v HENHAWK, 2022 ONLTB 10690

Date: 2022-11-02

File Number: LTB-L-044465-22-SA

In the matter of: 135 Brock Street
Brantford On N3S 5V8

Between: JAFFAR HAYAT Landlord

And

TAMMY LYNN HENHAWK Tenant

JAFFAR HAYAT (the 'Landlord') applied for an order to terminate the tenancy and evict TAMMY LYNN HENHAWK (the 'Tenant') because the Tenant agreed to terminate the tenancy.

The Landlord's application was resolved by order LTB-L-044465-22, 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-044465-22.

The motion was heard on October 26, 2022. The Landlord's representatives Glenn Gosling and Anthony Choubeta, and the Tenant, represented by Joel Yinger, attended the hearing.

Determinations:

1. The Tenant has lived in the rental unit for 18 years. The property was sold to the current landlord and the current landlord claims the Tenant's rent is \$1,000.00 monthly. The Landlord also claims the Tenant has not paid rent since he took possession. As such, the Landlord believes the Tenant owes \$12,000.00 in arrears of rent.
2. The Tenant testified that her monthly rent is \$600.00, and the rent was never increased throughout her tenancy. The Tenant also testified that she has been paying her rent to the former landlord when he comes to pick it up because she did not know the building was sold to the current landlord. There was no evidence provided to show that an amount of money equal to the amount the Tenant claims she paid toward rent was transferred or removed from the Tenant's funds.
3. The evidence shows that the Landlord served an N12 with his name as landlord and the N11 also has the Landlord's name. The Landlord also filed an L2 application based on the N12 with his name a landlord, which was mailed to the Tenant by the Board. The Tenant also attended a hearing for that application at which time the Landlord withdrew the application.

4. The Landlord's legal representative submits that there was a verbal agreement between the lawyers that the rent was \$1,000.00 when the property was purchased and that he contacted the former owner/landlord, who is now living in Newfoundland, and confirmed with him that the rent is \$1,000.00. The representative also submits that the former landlord could not have picked up the rent as claimed by the Tenant as he is living in Newfoundland.
5. The Tenant claims she never signed an N11 agreement to terminate the tenancy and that she has never met the Landlord's legal representative Anthony Choubeta. Mr. Choubeta introduced a google mapping system that demonstrated that his vehicle drove from his office to the Tenant's rental address on the day the N11 was signed. This evidence shows that the vehicle was at the location for 24 minutes.
6. The Tenant testified also testified that she has never provided her phone number to anyone except the former landlord. Mr. Choubeta introduced a copy of the N11 with the Tenant's phone written on the top which he submits was provided to him at the time the N11 was signed.
7. Based on the evidence presented at the hearing, I find the evidence and submissions from the Landlord's legal representative more reliable. I find on a balance of probabilities that the Tenant did sign the N11 agreement to terminate the tenancy.
8. I considering relief from eviction under section 78.11(b) of the *Residential Tenancies Act*, I have taken into consideration the following facts. The Tenant has resided in the rental unit for 18 years. The Tenant is supported by ODSP, has five children, all of which have learning disabilities, while two of the children are 21 years of age, and who also receive ODSP support. These facts were not disputed.
9. It is clear that the Tenant is challenging the agreement to terminate the tenancy. It is also clear to me that it was the Landlord's legal representative who initiated this agreement. The Landlord's position was that he was prepared to forgo any arrears of rent to ensure the Tenant agreed to vacate the rental unit. Considering the Tenant's limited financial means, this may have influenced the Tenant's agreement to sign the N11 when Mr. Choubeta arrived at her location with the prepared N11 for the Tenant to sign.
10. Based on the testimony about the Tenant's efforts to locate alternative housing, I find It is likely that the Tenant and her children would be left homeless at this time if the motion is not granted.
11. After considering all of the circumstances, I find that it would not be unfair to set aside order LTB-L-044465-22.

It is ordered that:

1. The motion to set aside Order LTB-L-044465-22, issued on September 26, 2022 is granted.
2. Order LTB-L-044465-22, issued on September 26, 2022, is set aside and cannot be enforced.

November 2, 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.