



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

Citation: DeSouza v Mohamed Nassar, 2026 ONLTB 24908

Date: 2026-03-25

File Number: LTB-L-108995-25-SA

In the matter of: Basement Room 1, 32 PINTAIL CRES
NORTH YORK ON M3A2Y7

Between: Mohan DeSouza Landlord

And

Mohamed Irshard Mohamed Nassar Tenant

Mohan DeSouza (the 'Landlord') applied for an order to terminate the tenancy and evict Mohamed Irshard Mohamed Nassar (the 'Tenant') because the Tenant gave notice to terminate the tenancy.

The Landlord's application was resolved by order LTB-L-108995-25, issued on January 26, 2026. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-108995-25.

The motion was heard by videoconference on March 16, 2026.

The Landlord, Tenant's legal representative Luis Mayorga, and the Tenant attended the hearing.

Preliminary Issue:

1. The Landlord raised a preliminary issue regarding Mr. Mayorga's representation of the Tenant. The Landlord argued that a conflict of interest existed because the Tenant receives assistance from the Office of the Public Guardian and Trustee (which is allegedly funded by the Ministry of the Attorney General) while Mr. Mayorga works for a legal clinic that is also funded by the Ministry of the Attorney General.
2. The Landlord was asked to provide any statutory authority or case law supporting this alleged conflict. He was unable to do so. After considering the submissions of both parties, I found that no conflict of interest existed with respect to Mr. Mayorga's representation of the Tenant. The hearing therefore proceeded on its merits.

Determinations:

3. The Tenant filed a motion to set aside the ex parte order which found that he had executed an N9 Notice on September 30, 2025 with a termination date of November 30, 2025.

Testimony of Mohamed Irshard Mohamed Nassar

4. The Tenant has lived in the rental unit for approximately a year and a half. His monthly rent is \$650.00, which is paid on his behalf by the Office of the Public Guardian and Trustee. The Tenant has previously experienced being unhoused and testified that he becomes anxious at the idea of losing stable housing.
5. The Tenant acknowledged signing the N9 Notice but testified that he did so only because he felt constant pressure from the Landlord to vacate. The Tenant submitted into evidence WhatsApp messages dated September 2, 2025, in which the Landlord told him that he wanted the Tenant to leave the rental unit. In those messages, the Landlord also alleged that the Tenant had caused damage to the unit.
6. In additional messages entered into evidence from September 5, 2025, the Tenant informed the Landlord that he intended to remain in the rental unit until the Board resolved the dispute. The Tenant testified that he does not believe he caused any damage to the rental unit.
7. Later that same day, the Landlord replied by messaging the Tenant that he should “not delay the inevitable” and stated that he “regrets renting” to him. The Tenant reiterated in response that he would follow the appropriate legal process and allow the Board to address the matter.
8. On September 19, 2025, the Landlord served the Tenant with an N2 Notice proposing to increase the rent to \$3,000.00 per month effective January 1, 2026. The N2 Notice, along with a letter the Landlord sent to the Office of the Public Guardian and Trustee, were entered into evidence. The Tenant testified that the proposed increase made him extremely anxious and that he was seeking stability in his living situation.
9. After receiving the N2 Notice, the Tenant began searching for alternative living accommodations however none of the options he pursued ultimately worked out.
10. During cross-examination, the Tenant confirmed that although the Landlord initially issued an N2 Notice increasing the rent to \$3,000.00, the Landlord later reconsidered and served a revised N2 Notice proposing an increase to \$1,000.00 per month effective January 1, 2026.
11. When asked why he signed the N9 Notice despite the reduced rent increase, the Tenant testified that he continued to feel under constant pressure from the Landlord, particularly due to the threat of a significant rent increase and the Landlord’s desire to advertise the rental unit.

12. The Tenant was also asked whether he had secured a new rental unit before signing the N9 Notice. He confirmed that he had entered into a prospective new lease however the new landlord later withdrew from the agreement at the last moment. This timing coincided with the Tenant serving the N9 Notice.

Testimony of Gregory Keefe

13. Mr. Keefe is a social worker since 2022, working with St. Michael's Hospital. He has a background in mental illness, and has worked with the Tenant since September 2023.
14. It was the witness' position that the Tenant could not have been thinking rationally when he signed the N9 Notice. The Tenant is vulnerable and any eviction would put him into a dire situation.
15. In cross-examination, the witness confirmed it wasn't the Tenant's health situation that put the Tenant into stress, it was likely more the interactions with the Landlord.

Evidence of the Landlord

16. The Landlord chose not to call any evidence at the hearing.

Analysis

17. The Tenant bears the burden to prove, on a balance of probabilities, that the motion should be granted to set aside the ex parte order.
18. Section 77(8) of the *Residential Tenancies Act* (the Act) states:
- 77(8)** If the respondent makes a motion under subsection (6), the Board shall, after a hearing,
- (a) make an order setting aside the order under subsection (4), if,
 - (i) the landlord and tenant did not enter into an agreement to terminate the tenancy, and
 - (ii) the tenant did not give the landlord notice of termination of the tenancy;
 - (b) make an order setting aside the order under subsection (4), if the Board is satisfied, having regard to all the circumstances, that it would not be unfair to do so; or
 - (c) make an order lifting the stay of the order under subsection (4), effective immediately or on a future date specified in the order.
19. The Tenant acknowledges that he signed the N9 Notice. His primary submission, however, is that the notice was executed under coercion and/or duress arising from the Landlord's conduct.
20. It is well-established law that a contract or agreement may be set aside if it is shown that a party entered into it while under duress. The onus rests with the party alleging duress to prove, on a balance of probabilities, that the circumstances surrounding the execution of the agreement amounted to duress.

21. In *Stott v. Merit Investment Corp.*, 1988 CanLII 192 (ON CA) Finlayson J.A. stated, in part, as follows:

“...But not all pressure, economic or otherwise, is recognized as constituting duress. It must be a pressure which the law does not regard as legitimate and it must be applied to such a degree as to amount to “a coercion of the will”, to use an expression found in English authorities, or it must place the party to whom the pressure is directed in a position where he has no “realistic alternative” but to submit to it, to adopt the suggestion of Professor Waddams (S.M. Waddams, *The Law of Contract*, 2nd ed. (1984), at p. 376 *et seq.*). Duress has the effect of vitiating consent and an agreement obtained through [sic] duress is voidable at the instance of the party subjected to the duress...”

22. Furthermore, in the case of *Dos Santos v. Waite* 1995 Carswell 3384, affirmed 1996 CarswellOnt 3354 (Ont. CA) the court found that duress involves inducement by way of threats. In *Dos Santos* the Court of Appeal found that in order for an agreement to be set aside, it must be shown that the other parties to the agreement had knowledge of the duress.
23. After reviewing all of the evidence, I am not persuaded that the Tenant was coerced or under duress when he signed the N9 Notice. The Tenant stated repeatedly, both in his September 2025 messages to the Landlord and during the hearing, that he understood he was not required to vacate the rental unit. I do not find the Landlord’s communications to be threatening or of a nature that would amount to coercion or duress. A landlord is entitled to issue a notice of rent increase, and a tenant is entitled to challenge the validity of that increase. The Tenant’s contemporaneous messages demonstrate that he was aware of his rights and acted accordingly. Nothing in those messages suggests that he was coerced or that he had no choice to vacate, and I do not find that the cumulative effect of the Landlord’s actions (increasing rent and messages to the Tenant) amounted to coercion or duress. Furthermore, no evidence was led at the hearing to determine that the rental unit is not exempt from the Act with regards to guideline rent increases therefore I cannot determine whether the notices of rent increase were lawful.
24. The Tenant also asserted in his motion materials that the Landlord attempted to impose illegal charges. However, similar to the findings above, I do not find that the Landlord’s conduct resulted in coercion or duress for the purposes of invalidating the N9 Notice.
25. In accordance with *Stott*, the Board must determine whether the conduct at issue constituted pressure that the law does not regard as legitimate, and whether such pressure left the Tenant with no realistic alternative. Based on the evidence before me, I am unable to find that the Landlord’s actions deprived the Tenant of a realistic alternative. Of note, while not fatal to the argument, the Tenant did not call expert evidence to establish how his disabilities may have affected his decision-making capacity at the time he executed the N9 Notice. Mr. Keefe did not provide any specific evidence (other than his general opinion) that could help the Board determine the Tenant’s state of mind when executing the N9 Notice.

26. The evidence establishes that the Tenant signed the N9 Notice after securing a prospective new lease, and it was only when that arrangement collapsed that he moved to set aside the ex parte order. I find that this is the reason the Tenant executed the N9 Notice, and I conclude that he did so voluntarily and with the intention of being bound by the stated termination date of November 30, 2025.
27. I now consider all of the circumstances, as required under the Act. Having reviewed the entire record, I find that it would not be fair or appropriate to set aside Order LTB-L-108995-25. The Tenant executed the N9 Notice with the intention of being bound by it and later changed his mind. This does not accord with ordinary principles of contract law, and no circumstances were established on the evidence that would justify invalidating the N9 Notice.
28. Nonetheless, I have considered whether a delay in lifting the stay is warranted due to the Tenant's personal circumstances, including the health issues described by both the Tenant and his witness. Given the Tenant's previously precarious housing situation and his mental health considerations, I find it appropriate to lift the stay on Order LTB-L-108995-25 effective August 31, 2026. This delay provides the Tenant with ample time to secure alternative accommodations and to seek any assistance he may require in doing so. There is no apparent prejudice to the Landlord in delaying the lifting of the stay.

It is ordered that:

1. The motion to set aside Order LTB-L-108995-25, issued on January 26, 2026, is denied.
2. The stay of Order LTB-L-108995-25, is lifted on August 31, 2026.
3. Order LTB-L-108995-25 is unchanged.

March 25, 2026
Date Issued

Brett Lockwood
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.