



Order under Section 57 Residential Tenancies Act, 2006

Citation: Stewart v BRIGHTON PROPERTIES, 2024 ONLTB 5420

Date: 2024-01-18

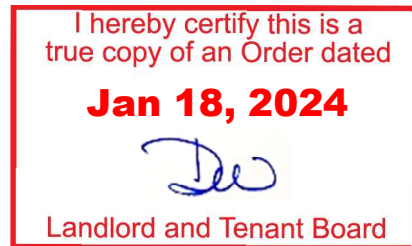
File Number: LTB-T-087967-23

In the matter of: lower, 309 INGERSOLL AVE
WOODSTOCK ON N4S4W8

Between: Ronald Stewart

And

BRIGHTON PROPERTIES



Tenant

Landlords

Ronald Stewart (the 'Tenant') applied for an order determining that BRIGHTON PROPERTIES (the 'Landlords') gave a notice of termination in bad faith.

This application was heard by videoconference on January 10, 2024.

The Landlords David Pye (DP) and Howard Pye (HP), the Landlords' witnesses Daniel Dionne, Brian Humphrey, Brain Rodenhurst, the Landlords' legal representative Kevin Kok, the Tenant and the Tenant's legal representative Wendy Cavaca attended the hearing.

Determinations:

1. The rental unit is a one bedroom apartment on the lower level of a four-plex.
2. The tenancy began around May 2005.
3. The Landlords are a partnership agreement between Howard Pye and his son David Pye.
4. The Tenant's disclosure includes various documents, communications, architectural drawings and photographs.
5. The Landlords' disclosure also included various documents, communications, architectural drawings and photographs.
6. Although this order does not specifically address each piece of evidence individually or reference all of the testimony, I have considered all of the evidence and oral testimony when making my determinations.
7. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.

The N13 Notice

8. As explained at the hearing, subsection 57(1)(c) of the *Residential Tenancies Act, 2006* (the 'Act') requires the Tenant to prove each of the following on a balance of probabilities:
 - The Landlords gave the Tenant an N13 notice of termination under section 50 of the Act;
 - The Tenant vacated the rental unit as a result of the N13 notice of termination;
 - The Landlords did not convert the rental unit within a reasonable time after the Tenant vacated; and
 - The Landlords served the N13 notice of termination in bad faith.
9. There is no dispute between the parties that the Landlords served the Tenant an N13 notice to terminate the tenancy.
10. There is also no dispute that the parties both signed an N11 agreement to terminate the tenancy on August 15, 2023 with a termination date of August 31, 2023.
11. The central issue in dispute is how the tenancy was terminated; meaning, did the Tenant vacate as a result of the N13 notice or the N11 agreement?

How Did the Tenancy Come to an End?

The Tenant's Evidence

12. The Tenant takes the position that on March 13, 2023, the Landlords served an N13 notice to terminate the tenancy on July 31, 2023 for the purpose of converting the residential back to a duplex from a four-plex.
13. The Tenant states that he vacated the rental unit on August 31, 2023 as a result of the N13 notice. He acknowledged that he did not vacate by the date specified in the N13 notice as he understood he was granted an extension by the Landlords.
14. It was the testimony of the Tenant that around mid August, 2023 the Landlords arrived at the residential complex with a form N11 to mutually terminate the tenancy. The Tenant said that he was threatened with Sheriff enforced eviction if he didn't move out as the residential complex would be condemned. He said he felt forced into signing the N11 agreement.

The Landlords' Evidence

15. It was the testimony of both DP and HP that they served the N13 notice with intention to convert the residential complex back to a duplex and potentially add an additional separate and distinct rental unit on the property as provided by municipal by-law. However, after significant consultation with various city experts, they decided to abort the project. The Landlords did not file an L2 application with the Board, related to the N13 notice.

16. Both DP and HP testified that around the first week of April 2023, the Tenant was advised during an in-person discussion that the N13 notice was being revoked and his tenancy was secure. At the same time, the Landlords advised another tenant in the residential complex that his N13 notice was also revoked.
17. DP and HP testified that around August 14, 2023, the Tenant arrived at their shop around 8:00 am to advise them that he had just purchased an RV and would be moving out August 31, 2023. They said the Tenant was exuberant about this purchase and said the Tenant explained to them that he was "living a dream". The Tenant said that he would be able to live rent free, would be parking at a used car lot and called it a "gated community". The Tenant also said that he would not have bills such as gas and can live for free.
18. It was the evidence of the Landlords that the Tenant cancelled his Enbridge account prior to April 15, 2023. DP said he spoke with an Enbridge agent around mid April 2023 who confirmed the Tenant called to cancel his account prior to April 15, 2023.
19. DP said that he prepared the N11 agreement on August 15, 2023 with the termination date of August 31, 2023. The N11 agreement contains the signatures of the Tenant and HP. Both DP and HP said that at no time did the Tenant appear to be confused by the form N11, challenge the signing of the N11 or appear under duress.
20. In fact, DP testified that he visited the Tenant at the rental unit to discuss the Tenant's plans to live in an RV and the Tenant was determined and enthusiastic about the choice he made.
21. The Landlords' witness, Brian Humphrey (BH) testified that he lived in the upper unit at the residential complex and received an N13 notice to terminate his tenancy around March 2023. BH also said that around early April, 2023, the Landlords, while at the residential complex, advised him that the N13 notice was retracted and his tenancy was secure. He said there was no confusion that the Landlords did not intend to pursue the termination.
22. At the hearing, I explained that the Statutory Powers Procedure Act (the 'SPPA') applies to all proceedings before the Board (see section 184 of the *Residential Tenancies Act, 2006* (the 'Act')). Section 15 of the SPPA says that a Board Member may exclude anything unduly repetitious.
23. Further, s.183 says the Board shall adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter.
24. As a result of these provisions, the Landlords opted not to call any further witnesses as they would provide unduly repetitious testimony.

Law and Analysis


25. As previously described, in order for the Board to grant the Tenant's T5 application, I must first be satisfied that the Landlords served a notice of termination pursuant to s.50 of the

Act, the Tenant vacated as a result of that notice and the Landlords did not do what they claimed in the N13 notice.

26. Clearly, subsection 57(1)(c) of the Act articulates a three-part test. In order to be successful in the T5 application the Tenant must establish all three of the requirements of subsection 57(1)(c) on a balance of probabilities. Without having met all three elements of the legal test, the Board lacks jurisdiction to grant the Tenant's application.
27. I am satisfied that the Landlords served the N13 notice. However, I was more persuaded by the evidence of the Landlords that the N13 notice was retracted. I preferred that evidence of the Landlords that around the first week of April, 2023, while at the residential complex, the Tenant was advised that the Landlords had no further intent to pursue the N13 notice. This was also corroborated by the Landlords' witness. I find it more likely than not, that on that same day, the Landlords had the same conversation with the Tenant and the Landlords made clear their intent to revoke the termination notice.
28. Furthermore, the Landlords did not pursue the N13 notice with filing an L2 application with the Board.
29. In my view, the Landlords provided clear and credible testimony and documentary evidence that the N13 notice was retracted and the Tenant chose to end his tenancy August 31, 2023.
30. Based on the evidence before the Board and on a balance of probabilities, I also find, the Tenant solidified his plans to move out as detailed in the N11 agreement when he purchased the RV before April 15, 2023 and cancelled his Enbridge account.
31. The Tenant led insufficient evidence to support the proposition that he entered into an agreement to end his tenancy out of duress. I find the Tenant freely agreed to end his tenancy on August 31, 2023.
32. Given all of the above, I am not satisfied the Tenant vacated as a result of the N13 notice. Rather, I find he chose to end his tenancy and entered into an agreement in the N11 form, on August 31, 2023. Accordingly, the Tenant's application must be dismissed. The Tenant has not met the criteria set out in s. 57(1)(c) of the Act
33. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The Tenant's application is dismissed.



January 18, 2024

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Dana Wren

Member, Landlord and Tenant Board

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.