



Order under Section 57
Residential Tenancies Act, 2006

File Number: CET-94300-20

In the matter of: 49, 6780 FORMENTERA AVE
MISSISSAUGA ON L5N2L1

Between: Bobbie Dilawar Unnisa Tenants
Amy Azra Hussainy

and

Neelima Datt Landlord
Sanjeev Chopra

Bobbie Dilawar Unnisa and Amy Azra Hussainy (the 'Tenants') applied for an order determining that Neelima Datt and Sanjeev Chopra (the 'Landlords') gave a notice of termination in bad faith.

This application was heard by videoconference on November 4, 2021. One Tenant, Amy Azra Hussainy, and both Landlords were present at the hearing.

Determinations:

T5 Application

1. On March 31, 2020, the Tenants filed a T5 application (T5) pursuant to s. 57(1) of the *Residential Tenancies Act, 2006* (the 'Act') alleging the Landlords gave them a notice to end their tenancy in bad faith. I am satisfied that this allegation can be considered as the T5 application was filed within one year of the date that the Tenants vacated the unit on April 15, 2019.

Facts Agreed By The Parties

2. The Tenants moved into the rental unit on August 1, 2016, and the Tenants vacated the rental unit on April 15, 2019.
3. The Tenants vacated the rental unit on the basis of a text message notification from the Landlords on March 8, 2019, asking the Tenants to vacate the rental unit by May 31, 2019 because the Landlord's mother intended to occupy the rental unit. In order CET-86625-19-RV, issued on February 8, 2021, the Board determined that the Tenants vacated the rental unit on the basis of the Landlords' text message notification of termination.

4. On February 8, 2021, in CET-86625-19-RV, the Board determined that the Landlords' text message substantially complied with the notice of termination requirements of s. 48 of the Act.
5. As of the date of this hearing, the Landlords have not paid to the Tenants one month's rent compensation in the amount of \$1883.00 pursuant to s. 48.1 of the Act. The Landlords do not contest the requirement for this payment.

T5 Application - Requirements to Succeed

6. This application is brought pursuant to s. 57(1)(a) of the Act, which reads as follows:

57 (1) The Board may make an order described in subsection (3) if, on application by a former tenant of a rental unit, the Board determines that,

(a) the landlord gave a notice of termination under section 48 in bad faith, the former tenant vacated the rental unit as a result of the notice or as a result of an application to or order made by the Board based on the notice, and no person referred to in clause 48 (1) (a), (b), (c) or (d) occupied the rental unit within a reasonable time after the former tenant vacated the rental unit.

7. Thus, in order to succeed on this application the Tenant must lead sufficient evidence to establish it is more likely than not that:
 - (1) The Tenants received a notice of termination under s. 48 of the Act; and
 - (2) The Tenants moved out of the rental unit as a result of the Landlords' notice; and
 - (3) The Landlord's mother did not in fact move into the rental unit within a reasonable time after the Tenant vacated; and
 - (4) The notice was given in bad faith meaning the Landlords had no intention of having their mother move into the rental unit.

Did the Tenants receive a notice of termination under s. 48 of the Act?

8. Both parties agreed at the hearing that the Tenants vacated the rental unit on the basis of a text message notification from the Landlords on March 8, 2019. On February 8, 2021, in CET-86625-19-RV, the Board determined that the Landlords' text message substantially complied with the notice of termination requirements of s. 48 of the Act . On the basis of the parties' concurrence, and the Board's February 8, 2021 determination, I therefore find that the Tenants received a notice of termination under s. 48 of the Act.

Did the Tenants move out of the rental unit as a result of the Landlords' notice?

9. Both parties agreed at the hearing that the Tenants moved out of the rental unit as a result of the Landlords' notice, and this was also determined by the Board on February 8, 2021 at the hearing of CET-86625-19-RV. On the basis of the parties' concurrence, and the Board's February 8, 2021 determination, I therefore find that the Tenants moved out of the rental unit as a result of the Landlords' notice.

Did the Landlord's mother move into the unit within a reasonable amount of time after the Tenants vacated the unit?

10. The Tenant testified that the Landlord's mother did not move into the rental unit in May 2019. She testified further that according to the neighbours, somebody else was living in the rental unit other than the Landlord's mother. The Tenant did not provide the names of the neighbours or any declarations from the neighbours regarding their observations. The Tenant stated that the neighbours were unwilling to testify at the hearing as witnesses. The Tenant also testified that utility bills provided by the Landlord show reduced energy consumption after the Tenant vacated, an indication that the Landlord's mother did not move into the rental unit. The Tenant did not provide the time period of the reduced consumption, or a copy of the utility bills in question.
11. The Landlord testified that her mother moved into the rental unit at the end of May 2019 after arriving in Canada from India on May 19, 2019 as a Permanent Resident. The Landlord noted that her mother's time frame to accept her Permanent Residency, and move to Canada, expired on June 3, 2019. The Landlord submitted her mother's *Confirmation of Permanent Residence*, as well as an *Expedia – Air Canada* ticket receipt. The Landlord further testified that her mother resided in the rental unit from the end of May 2019 to the end of July 2020, and that numerous family members visited her mother in the rental unit during this time period. The Landlord stated that no one other than her mother lived in the rental unit during the period of May 2019 to July 2020. The unit was rented to a tenant starting August 1, 2020.
12. The Landlord testified further that her mother travelled to India on January 7, 2020 and was intending to return to the rental unit in May 2020 but was unable to return to Canada until September 2020 as a result of COVID lockdowns, flight cancellations, and travel restriction advisories in both India and Canada. The Landlord submitted a copy of the mother's airline ticket, with a scheduled return flight on May 18, 2020, as well as a refund voucher receipt from *Air Canada* for the cancelled return flight. The Landlord stated that during her mother's absence from the rental unit, utility costs were lower. The Landlord also noted that during this period some construction projects within the unit were completed resulting in some utility consumption, as well as various contractors attending the unit.
13. On the basis of the evidence provided, I am satisfied that the Landlord's mother moved into the rental unit at the end of May 2019 – within 45 days of the Tenants vacating the unit on April 15, 2019. I am also satisfied that the rental unit remained the mother's primary residence until the end of July 2020, a period of over one year. I find the Landlord's testimony in this matter to be compelling, given the mother's recent Permanent Resident status, close association with family in Canada, and, on a balance of probabilities, numerous visits from family members at the rental unit. I accept that the mother was absent from the rental unit from January 7, 2020 to September 2020, and unable to return to Canada over the period of May 2020 to August 2020 as a result of COVID restrictions and concerns. However, I find that this travel did not change the status of the rental unit as the mother's primary residence.

14. For these reasons, I find that, on a balance of probabilities, the Landlord's mother moved into the unit within a reasonable amount of time after the Tenants vacated the unit and continued to reside in the unit for a period slightly over one year.

Was the notice given in bad faith, meaning the Landlords had no intention of having their mother move into the rental unit?

15. The Tenant did not provide any evidence with respect to the intention of the Landlord to have her mother move into the rental unit.
16. The Landlord submitted a "Summary of Facts" with respect to this matter. Within this summary she notes that after her father died in India in 2014, she had many discussions with her mother about a possible move to Canada, and where to live. Her mother visited Canada several times between 2014 and 2019, and enjoyed the neighbourhood surrounding the rental unit. Her mother also wanted to live close to family – but on her own. The mother's daughter and granddaughters live in a building behind the rental unit. It is for these reasons, the Landlord submits, that she intended to move her mother into the rental unit, prompting the notice of termination to the Tenants on March 8, 2019.
17. On the basis of the evidence provided, I am satisfied that the Landlord intended, in good faith, to move her mother into the rental unit. The Tenant did not provide sufficient evidence to establish it is more likely than not that the Landlord had no intention of moving her mother into the rental unit. Therefore, I find that the Landlord's notice of termination to the Tenant was given with good intention for her mother to move into the rental unit.


Summary

18. For the Tenants' T5 application to succeed, the Tenants must establish, on the balance of probabilities, all four requirements listed in paragraph 7 above are met. The Tenants did not prove requirements (3) and (4). Thus, pursuant to s. 57(1)(a) of the Act, I find that the Landlords did not give a notice of termination to the Tenants in bad faith.
19. The Landlords acknowledged at the hearing that they are required to pay the Tenants one month's rent compensation in the amount of \$1883.00 pursuant to s. 48.1 of the Act. If the Landlords do not pay, the Tenants may file a T1 application with the Board.

It is ordered that:

1. The Tenants' application is dismissed.

November 22, 2021
Date Issued


Frank Ebner
Member, Landlord and Tenant Board

Central-RO
3 Robert Speck Pkwy, 5th Floor
Mississauga ON L4Z2G5

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