



Order under Section 57
Residential Tenancies Act, 2006

File Number: CET-00040-21

In the matter of: BSMT, 6 LYNCH STREET
COLDWATER ON L0K1E0

Between: Matthew Martin
Jennifer Newell

and

Summer Davey

I hereby certify this is a
true copy of an Order dated

AUG 15, 2022

Landlord and Tenant Board

Tenants

Landlord

Matthew Martin and Jennifer Newell (the 'Tenants') applied for an order determining that Summer Davey (the 'Landlord'), gave a notice of termination in bad faith (T5 application)

This application was heard by way of videoconference on May 5, 2022. The Tenants attended the hearing and were represented by Robin MacLeod Crowder. The Landlord attended the hearing and was represented by Stephanie Toomey.

Determinations:

Agreed facts:

1. The Tenants T5 application was filed on March 18, 2021 and alleges that the Landlord served the Tenants with a N12 notice of termination in bad faith.
2. The N12 notice was served to the Tenants on March 12, 2020 with a termination date of July 31, 2020 and asserted that the Landlord's parents required the rental unit for their own personal use. There was no hearing before the Board to determine the good faith of the Landlord or their parents.
3. The rental unit is a single detached dwelling. The Tenants resided in the basement unit and the Landlord resided on the upper floor.
4. The Tenants moved into the rental unit on March 1, 2017 and vacated on June 15, 2020.
5. The Landlord's parents resided at 4 Lynch Street, which is located next door to the rental unit. On August 26, 2019, the Landlord's parents home caught on fire and was uninhabitable due to the fire.

Tenant's evidence:

6. Both Tenants provided oral testimony at the hearing. The Tenants were first advised of the Landlords intentions on or about February 15, 2020.
7. The Tenant, Jennifer Newell testified that she believes the Landlord commenced these eviction proceedings solely because the Tenants filed a T2 application against the Landlord on July 19, 2019. The Tenants entered into evidence order CET-87332-19 issued on August 26, 2021 (TT exhibit #1). This order confirms that the parties consented to an order requiring the Landlord to refrain from harassing the Tenants.
8. The Tenant Matthew Martin testified that since vacating the rental unit, he would drive by the home approximately once per month and observed that the Landlord's parents' vehicles were not parked in the driveway of the rental unit.
9. On cross examination the Tenants agreed that the Landlord's parents' vehicles were frequently parked at their old residence, which is located next door to the rental unit.
10. The Tenants stated that they believe the Landlord's parents never resided in the rental unit or in the home, but were moving around from temporary residences. No evidence was submitted to support this allegation.
11. The Tenants submitted into evidence various Facebook comments and postings from the Landlord's Facebook account (TT exhibit #2). The comments were posted to the Ontario Landlords Association Facebook page and made reference to the Landlord's willingness to evict the Tenants.

Landlord's evidence:

12. The Landlord testified that her parents resided next door to her and that when their home caught fire, their insurance company provided them with temporary housing for six months. After the six-month period, the Landlords parents' home was not rebuilt and as such, they required housing.
13. The Landlord testified that her father was ill and hospitalized from October 2019 until April 2021, when he deceased. Since the Tenants vacated, the Landlord's mother was residing with the Landlord on the upper floor of the rental unit and utilizing the basement unit to store her furniture and building materials for her home. The Landlord submitted into evidence a sworn affidavit signed by her mother on February 4, 2022 (LL exhibit #1). The Affidavit is consistent with the Landlord's testimony.
14. The Landlord stated that effective July 2021, her mothers home had been rebuilt, that she had moved all of her belongings out of the basement unit and as a such, the rental unit was vacant. The Landlord re-rented the unit to a new tenant on August 1, 2021.

15. On cross-examination the Landlord agrees that she joined and made comments on a Facebook page for landlords but argued that this was because she was an inexperienced Landlord who was looking for advice on how to proceed with her situation.

Analysis:

16. Section 48(1) and 57 of the *Residential Tenancies Act, 2006* (the Act) state in part:

48 (1) A landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by,

(c) a child or parent of the landlord or the landlord's spouse;

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;

(5) For the purposes of an application under clause (1) (a), it is presumed, unless the contrary is proven on a balance of probabilities, that a landlord gave a notice of termination under section 48 in bad faith, if at any time during the period described in subsection (6) the landlord,

(a) advertises the rental unit for rent;

(b) enters into a tenancy agreement in respect of the rental unit with someone other than the former tenant;

(c) advertises the rental unit, or the building that contains the rental unit, for sale;

(d) demolishes the rental unit or the building containing the rental unit; or

(e) takes any step to convert the rental unit, or the building containing the rental unit, to use for a purpose other than residential premises.

(6) The period referred to in subsection (5) is the period that,

(a) begins on the day the landlord gives the notice of termination under section 48; and

(b) ends one year after the former tenant vacates the rental unit.

17. Based on the evidence and submissions before the Board, I am not satisfied on a balance of probabilities that the Landlord served the Tenants the N12 notice in bad faith. It is undisputed that the Landlord's parents' house caught fire and as such, the parents required alternate housing. It is also undisputed that the Landlord's parents did not physically sleep or live in the rental unit, but rather used the rental unit for storage.
18. The Tenant's representative argues that the Landlord attempted to convert the rental unit for a purpose other than non-residential use pursuant to section 57(5)(e) and as such, should be presumed to have given the notice in bad faith. I disagree with the Tenant's argument. In *Sertic v. Mergarten, 2017 ONSC 263* the Divisional Court upheld the Board's decision determining that storage of personal items constitutes residential use.
19. I accept the evidence of the Landlord who was credible and consistent throughout the proceedings that her mother resided on the upper floor of the rental unit, while using the basement unit for storage of her personal furniture and supplies while awaiting her home to be rebuilt. The Tenants provided no evidence to suggest that the Landlord's parents were residing elsewhere. I find that the Landlord's mother parking her vehicle next door to the rental unit to be reasonable as this was her original residence and within walking distance to the rental unit. The Tenants also provided no evidence to dispute the Landlord's testimony that her father became ill after the fire, subsequently deceased and was ultimately unable to reside in the rental unit or the house.
20. I also do not find the Landlord's comments via Facebook sufficient to determine that the Landlord served the notice in bad faith. The comments and posts made make no reference to the Landlord wishing to evict the Tenants in bad faith, but rather indicate that the Landlord was frustrated with the whole process.
21. Although the Landlord subsequently re-rented the unit to a new Tenant on August 1, 2021, I find that this is not relevant in determining if the N12 notice was served in bad faith as this new tenancy commenced more than one-year after the notice was served or after the Tenant vacated the rental unit as prescribed in section 57(6) of the Act.
22. As the Board is not satisfied that the Landlord served the Tenants an N12 notice of termination in bad faith, the application must be dismissed.
23. This Order contains all the reasons for this matter. No further reasons will issue.

It is ordered that:

1. The Tenants application is dismissed.

August 15, 2022
Date Issued



Fabio Quattrocchi
Member, Landlord and Tenant Board

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