



**Order under Section 57
Residential Tenancies Act, 2006**

Citation: Borek v Srour, 2024 ONLTB 24848

Date: 2024-04-22

File Number: LTB-T-024462-23

In the matter of: 2093 Wharncliffe Street South
London Ontario N6P1K9

Between: Arkadiusz Borek Tenant

And

Omar Srour Landlord

Arkadiusz Borek (the 'Tenant') applied for an order determining that Omar Srour (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on March 27, 2024.

The Landlord and the Tenant attended the hearing.

Preliminary issue:

During the hearing, Omar Srour ('OS') requested to remove Magnificent Homes which, originally listed as the Landlord, from the Application. The rental property is registered to 2840945 Ontario Inc., of which he is one of the owners. The Tenant did not object to the request to amend. Additionally, I find that there is no prejudice to the Tenant from amending the application to remove Magnificent Homes because it does not change the substance of the claim. Therefore, I granted the request to amend the application. That amendment is reflected in this order.

Determinations:

1. 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 Facts:

2. The tenancy began in September 2015.
3. The rental unit is a single family detached bungalow house with quite a sizeable piece of land, the monthly rent was \$2,500.00.
4. It is not contested that in July 2021, the Landlord purchased the rental unit and the land and Omar Srour ('OS') is one of the owners.
5. It is not contested that the Landlord served the Tenant with the N13 notice of termination with the termination date was December 1, 2022, in accordance with section 50 (1)(a) of the *Residential Tenancies Act, 2006* (the 'Act'). In the N13 notice, the Landlord claims that they require vacant possession of the rental unit for the purpose of demolishing the rental unit and building a new multi townhouse project.
6. It is not contested that the Tenant moved out of the rental unit on November 30, 2022, in response to the N13 notice.
7. It is not contested that after the Tenant moved out of the rental unit, the Landlord advertised the rental for rent and also re-rented it in February 2023.

The Law:

8. The only remaining issue to be determined is whether the N13 notice was given in bad faith.
9. Subsection 57(1)(c) the Act of requires the Tenant to prove each of the following on a balance of probabilities:
 - The Landlord 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 Landlord did not demolish, convert or renovate the rental unit within a reasonable time after the Tenant vacated; and
 - The Landlord served the N13 notice of termination in bad faith.

Analysis:

10. In this case, I am not satisfied that the test in subsection 57(1)(c) of the Act has been proven. Specifically, I am not satisfied that the Landlord gave the Tenant a notice of termination under section 50 of the Act in bad faith.
11. OS, one of the owners of the Landlord company, testified that the Landlord purchased the rental unit and the land on July 9, 2021, for the purpose of developing the land for other forms of housing. In May 2022, the Landlord hired a consultant company to review the land of the rental unit and planned to develop a new townhouse project. The consultant's proposal was submitted during the hearing as evidence. On June 7, 2022, the Landlord requested a consultation meeting with the City of London, requesting the demolition

documents from the City of London. On September 9, 2022, the Landlord received the meeting invite from the City of London and requested the Landlord to complete the demolition permit document. In the meantime, the Landlord continued to work with an engineering company to help them with the engineering of the site. On November 30, 2022, the Tenant moved out of the rental unit.

12. On December 8, 2022, the Landlord received an update from a consultant company working with the City of London. The consultant company informed the Landlord that the work permit process and study would take more time due to unexpected water flood hazards on the land. The development project would not be approved with the City of London until the study was completed by the City's consultant company.
13. In February 2023, the Landlord decided to temporarily list the rental unit for rent. OS further testified that the Landlord had to demolish the property or re-rent the property; otherwise, they would lose their insurance.
14. On February 10, 2023, the T5 was filed with the LTB. The Landlord subsequently contacted the Tenant and offered the Tenant to move back into the rental unit. However, the Tenant refused because he had already signed a one-year lease agreement with his new landlord for the rental unit. OS testified that the Landlord continued to list the rental unit for rent, and a new tenant moved into the rental unit in May 2023.
15. The evidence before me it is undisputed that the rental unit was advertised for rent in February 2023, which is two months after the Tenant vacated.
16. I find that the Landlord has met that onus. The Landlord provided consistent and credible evidence during the hearing, proving their genuine-intention to take possession of the rental unit to demolish it and build a new townhouse project on the land. OS provided evidence by way of email correspondences between the Landlord and the City of London, the meeting and work permit documents, emails from their engineering company, and emails from the consultant company of the City of London. Although the Tenant testified that he believed the Landlord did not intend to demolish the rental unit, the Tenant only offered speculation and did not have reliable evidence to determine that the Landlord served a bad faith notice. The Tenant also affirmed during cross-examination that the Landlord told him about their intention for the rental unit in May 2022 before the N13 notice served.
17. I accept that the Landlord re-rented the rental unit as a result of the City of London's delayed work permit study process after the N13 notice was served, and they chose to re-rent it after the Tenant refused to re-occupy the rental unit due to their insurance requirement. Therefore, based on the evidence before me, I find that the Landlord served the N13 notice in good faith because they intended to demolish the rental unit at the time of service, and due to unforeseen circumstances beyond their control, their plans were dismantled and delayed. As soon as the Landlord became aware of the potential extent of the delay, he contacted the Tenant and offered to let the Tenant move back into the rental

unit. I find that a reasonable explanation was provided for the failure of the demolition plan after the Tenant vacated.

18. Based on the above, I cannot find that the Landlord gave the notice of termination in bad faith. Accordingly, the Tenant's application shall be dismissed.
19. This order contains all the reasons for the decision within it. No further reasons shall be provided.

It is ordered that:

1. The Tenant's application is dismissed.

April 22, 2024

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Joy Xiao
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.