



Order under Section 57 Residential Tenancies Act, 2006

Citation: Kotskulych v Karapici, 2024 ONLTB 19639

Date: 2024-03-22

File Number: LTB-T-022580-23

In the matter of: 2, 6 ELWAY CRT
NORTH YORK ON M6B2N8

Between: Ivan Kotskulych Tenant

And

Valentina Karapici Landlord

Ivan Kotskulych (the 'Tenant') applied for an order determining that Valentina Karapici (the 'Landlord') gave a notice of termination in bad faith.

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

The Landlord, the Landlord's daughter Anisa Karapici acting as a support person and the Tenant attended the hearing.

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.
2. Subsection 57(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') requires the Tenant to prove each of the following on a balance of probabilities:
 - The Landlord gave the Tenant an N12 notice of termination under section 48 of the Act;
 - The Tenant vacated the rental unit as a result of the N12 notice of termination;
 - No person referred to in subsection 48(1) of the Act occupied the rental unit within a reasonable time after the Tenant vacated; and
 - The Landlord served the N12 notice of termination in bad faith

3. For the first test of “bad faith”, under subsection 57(5) of the Act it is presumed, unless the contrary is proven on a balance of probabilities, that the Landlord gave a “bad faith” notice, if at any time during the period from the date of the notice to one year after the Tenant vacated the unit, that the Landlord,

a) advertises the rental unit for rent;

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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.

4. The Landlord served the Tenant a N12 notice for the purpose of the Landlord’s own occupation on July 27, 2022 with a date of termination of September 30, 2022.

5. The Landlord filed her L2 application based on the N12 notice with the Board, this matter was heard on March 20, 2023. The hearing member issued an order stating:

“The parties consented to an order from the Board dated April 5, 2023 (LTB-L-06623522), which terminated the tenancy effective May 31, 2023.

Further, the Tenant provided written confirmation to the Board on June 28, 2023 that he has vacated the rental unit effective June 24, 2023.”

The order on consent terminating the tenancy was based on the Landlord’s L2 application in respect of an N7 notice of termination.

6. Ultimately, as the Tenant had vacated the rental unit on consent pursuant to the L2 application in respect of an N7 notice, the hearing member dismissed the Landlord’s L2 application based on the N12 notice.

7. In the case before me, the Tenant filed his T5 application with the Board on March 24, 2023 alleging the Landlord served the N12 notice of termination in bad faith, that she had a place to live, owns multiple rental units yet proceeded with the serving of the N12 notice and moved into the rental unit.

8. The rental unit as subject of this application is a triplex, the Tenant rented out one of three rooms, sharing the kitchen and other amenities with two other tenants. The Landlord became aware that she was in violation of the North York Zoning By-law 7625, on or about June 20, 2022. Specifically that:

- *“RM5 Boarding or Lodging House is not a permitted use. Section 20 (a);*

- *You are hereby required to correct the noted violation(s) and bring the property into compliance.”*
9. The Landlord proceeded to serve the N12 notice upon three tenants, two tenants vacated the rental unit pursuant to the notice. The Landlord testified that she moved into the rental on October 1, 2022, the Tenant as subject of this application did not vacate and continued to reside in the rental unit with the Landlord, sharing amenities.
 10. As of the date of the hearing the Landlord continues to reside in the rental.

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11. Based on the evidence before the Board, on a balance of probabilities the Tenant has not proven the allegations with respect to the test under subsection 57(1)(a) of the Act and the Landlord has not undertaken any actions as contemplated under subsection 57(5), therefore the application must be dismissed.
12. Lastly, the N12 notice was served upon the Tenant on July 27, 2022 with a date of termination of September 30, 2022, the Tenant continued to reside in the rental unit for almost nine (9) additional months beyond the date of termination. He vacated the rental unit on June 24, 2023, through the engagement of the Court Enforcement Office (Sheriff).
13. In reliance on subsection 202(1) of the Act, based on the evidence before me, the Tenant vacated the rental unit pursuant to the Board order on consent dated April 5, 2023 in respect of (LTB-L-066235-22) pursuant to the Landlord’s L2 filing on the basis of an N7 notice which terminated the tenancy effective May 31, 2023, and not pursuant to the N12 notice.
14. 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.

March 22, 2024

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Alicia Johnson
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.