



Order under Section 57 Residential Tenancies Act, 2006

Citation: Gibel v Abumeeiz, 2024 ONLTB 8500

Date: 2024-02-05

File Number: LTB-T-073342-22
(formerly SWT-58003 -

22)

In the matter of: 1, 3021 DOUGALL AVE
WINDSOR ON

Between: Mitchell Gibel Tenants
Joseph Gibel

And

Taher Abumeeiz Landlords
2720016 Ontario Inc.

Mitchell Gibel and Joseph Gibel (the 'Tenants') applied for an order determining that Taher Abumeeiz and 2720016 Ontario Inc. (the 'Landlords') gave a notice of termination in bad faith.

This application was heard by videoconference on July 4, 2023.

The Tenants, the Landlord, Taher Abumeeiz, and the Landlords' Legal Representative, Christopher Hall, attended the hearing.

Determinations:

1. As explained below, the Tenants did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.
2. The residential complex consists of two units located above and behind a commercial property. The Tenants occupied the unit above the commercial store ('Unit 1') and moved into the unit in October 2008.

3. Subsection 57(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') requires the Tenants 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; and
 - The Tenant vacated the rental unit as a result of the N12 notice of termination; and
 - The notice was given in bad faith meaning the Landlord had no intention of moving into the rental unit; and
 - The Landlord's son did not in fact move into the rental unit within a reasonable time after the Tenants vacated.
4. There is no dispute between the parties about the first two elements of this test.
5. The central factual dispute between them is the allegation that the Landlord did not move into the rental unit within a reasonable period of time after the Tenants vacated. The Tenants claim the property was listed for rent on or around October 1, 2020, October 3, 2020, and November 9, 2020 and the Landlord did not move in.

Did the Landlord move into the rental unit?

6. In their testimony, the Tenants stated they were served with an N12 notice of termination ('N12 Notice') by the Landlord with a termination date of March 30, 2020. In accordance with the N12 Notice, the Tenants vacated the rental unit on March 30, 2020.
7. The Tenants testified that on October 1, 2020, they observed a "for rent" sign in the window of their former rental unit (Tenants' exhibit 1) and on October 3, 2020, they found advertisements on Kijiji showing their former unit available for rent (Tenants' exhibit 2). They stated the photos included in the advertisement were of their former unit and it is their belief that this evidence shows the Landlord did not move into the rental unit.
8. I would observe at this point that the reverse onus provision in subsection 57(5) of the Act applies to this situation. This provision states:

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

9. This provision means that, because there is evidence before me that, during the one year period after the Tenant moved out of the rental unit, the Landlord advertised the rental unit for rent and enter into a tenancy agreement with another tenant, the Landlord bears the burden of proof to establish that she did not serve the notice of termination in bad faith. For the following reasons, I find that the Landlord has met this burden.
10. It was the testimony of the Landlord that when he served the Tenants with the N12 Notice, it was his genuine intention to move into the rental unit. The Landlord stated he had recently divorced from his spouse and needed a place to live as he was living in his pizzeria for the first couple of months after the separation from his spouse. The Landlord stated he moved into the unit after the Tenants vacated and once his divorce was settled he moved out in May 2021.
11. The Landlord testified he did not advertise the unit for rent on Kijij as he is not technically inclined and he has a real estate agent who takes care of this for him however he did put the “for rent” sign in the window but the sign was for the purpose of renting the other unit at the back of the building. He stated the former tenant of the other unit vacated at the same time as they had purchased a home.
12. The Landlord’s representative submitted a copy of a tenancy agreement (Landlord’s exhibit 1) which shows the other unit was rented on September 1, 2021. The Landlord testified the other unit required extensive renovations which took approximately 18 months to complete. He testified that when the renovations were completed, renovations on Unit 1 were commenced and the unit was not rented until May 2023. The unit is now vacant.
13. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.

Analysis

14. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is genuine intention to occupy the premises and not the reasonableness of the Landlord’s proposal. This principle was upheld in *Salter v. Beljinac* 2001 CanLII 40231 (ON SCDC) where the Court held that the “good faith” requirement simply means that the Landlord sincerely intends to occupy the rental unit. The Landlord may also have additional motives for selecting a particular rental unit, but this does not affect the good faith of the Landlord’s notice.”
15. In the more recent case of *Fava v. Harrison*, [2014] O.J No. 2678 ONSC 3352 (Ont.Div.Ct.) the Court determined that while the motives of the Landlord are, per Salter, “largely

irrelevant”, the Board can consider the conduct and motives of the Landlord to draw inferences as to whether the Landlord desires, in good faith to occupy the property.”

16. Applying the above law, I will now consider whether the Landlord has rebutted the presumption in this case. The Landlord testified that he did require the unit for his own personal use. He testified that he moved into the rental unit and occupied the unit for a period of 13 months. The Tenants dispute the Landlord’s testimony that he moved in and allege he advertised their former unit for rent.
17. Based on the facts and evidence presented and on a balance of probabilities, I find that the Tenants did not meet the test in proving that the Landlord served a notice in bad faith and that at the time the N12 notice was served, there was no genuine intention for the Landlord to move into the rental unit. I find that the Tenants provided insufficient evidence that the Landlord’s actions constitute bad faith.
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 Tenants’ application is dismissed.

February 5, 2024

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Susan Priest
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.