



Order under Section 57 Residential Tenancies Act, 2006

Citation: Gordon v Prothero, 2024 ONLTB 1059

Date: 2024-01-05

File Number: LTB-T-050979-22

In the matter of: 2, 8708 HWY 9
TOTTENHAM ON L0G1W0

Between: Michelle Gordon Tenant

And

Jess Prothero Landlord

Michelle Gordon (the 'Tenant') applied for an order determining that Jess Prothero (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on September 6, 2023.

The Landlord and the Tenant attended the hearing. The Tenant's Legal Representative D. Carr was also present.

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. This application was filed under subsection 57(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') which 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. It is uncontested that on May 12, 2021, the Landlord gave the Tenant a N12 to terminate the tenancy so it could be used for residential occupation by the Landlord's daughter and her boyfriend. The Tenant vacated the rental unit as per the N12 notice in the summer of 2021 but she could not remember the exact date. The Landlord paid the Tenant compensation the Landlord was required to pay under section 48.1 of the Act.

4. What is in dispute is whether the Landlord's daughter moved into the unit and whether the N12 notice was served in bad faith.

Tenant's evidence

5. The Tenant described the residential complex as three-unit property where the Landlord lived in the main unit, the Tenant occupied the unit at the backside of the property and another unit in the basement which was also tenanted. The original owner of the property was the Landlord's father Frank Prothero. On his death, the property was passed to the Landlord and his sister. The Tenant has always dealt with Jess Prothero and paid rent to him.
6. The Tenant testified that she believes that the Landlord's daughter Paige did not move in because she saw a Facebook post dated February 25, 2022 in which the Landlord's daughter Paige commented that she was still in Ottawa. (Screenshot of the Facebook post tendered as evidence) She was also told by a third person that Paige and her husband still worked in Ottawa.
7. She testified that the Landlord renovated the rental unit after she moved out. Shortly after she saw a picture of the tenant who occupied the basement unit. She believes that the basement tenant moved into her unit and the Landlord's daughter is still in Ottawa. This picture is also around the same timeframe. After these incidents, she was blocked from the Paige's and the basement tenant's social media.
8. The Tenant also stated that she has driven past the house and Paige's car is not parked outside.

Landlord's evidence

9. The Landlord testified that his daughter did move in as mentioned on the N12 and the Tenant witnessed this since she delayed moving out by a month and his daughter moved into his unit on or around May 31, 2021, since she had to vacate her unit in Ottawa. The Tenant was supposed to move out of the rental unit by May 31, 2021, but since she could not find a place, so he gave her an extension rent free till July 18, 2021. He also showed the Tenant some other rental units in the area, but she didn't like any of those.
10. The Landlord cleaned up the place for his daughter and she has been here ever since till the day of hearing. He testified that his son-in-law's kids have lived in Lindsay for the last five years. His daughter also had some difficulty finding a job in the pandemic but is now gainfully employed and he presented her pay stubs as evidence from April/May 2023.
11. The Landlord testified that his son-in-law is a licensed plumber, and it took time for the transfer to happen between Ottawa and Toronto, so his son-in-law continued to work in Ottawa and live during the week with his parents. On weekends he would drive back to Tottenham and stay at the rental unit with his wife. He has now finally transferred to Toronto. Therefore, the Tenant did not see his car on the driveway especially if she drove by weekdays. His daughter's car was in the garage for almost ten months for some

repairs. An email dated May 31, 2021 was submitted to show that a transfer process was started between two local stations.

12. The Landlord submitted a letter from his neighbours attesting to his daughter living at the rental unit since spring of 2021 up to the hearing date. An email from the basement tenant states that she moved out of the rental unit and moved to another town and the picture in question is from her new rental unit. She sent pictures of the table from her new rental unit which the Tenant claimed was in her rental unit. She sent pictures of her family sitting around it as well. No witnesses were called for direct testimony.
13. The daughter's driver's license and son-in-law's driver's license were also submitted into evidence. Both ID's list the property address. The Tenant's representative questioned the two ID's because they were both dated in 2023. The daughter's license was renewed in April 2023 on her birthday, but the son-in-law's was on a different date than his birthday. The Landlord could not explain why.. The Landlord testified that since the property is a house, it does not have separate unit numbers so no ID or package will list the unit number as was the case when the Tenant lived there.
14. The Landlord also submitted an amazon receipt in his son-in-law's name from June 2021 but it did not list the rental unit specifically just the property address. The Landlord testified that most amazon packages are delivered to the main door, and he always gave them to the Tenant when she lived here.
15. The Landlord also testified that his daughter Paige's mom and brother live in Ottawa and the one picture that the Tenant is relying on is from her visit to her mom's. The picture in question shows a highway with police cars stopping people and Paige has captioned it, "Trying to prove I live just on the corner of the next street, be safe this weekend folks!". The Landlord testified that the picture was taken when Paige was visiting her mother in Ottawa and since it was the same weekend when there was a huge COVID-19 demonstration in Ottawa, so the police were stopping everyone and only letting people who lived in the area go past that point. Her picture was for others to be careful in the area. The picture does not mean that Paige did not move here to Tottenham. He also submitted two pictures -one from Paige's Ottawa apartment and one inside a trailer of a U-Haul showing her stuff packed and ready to move dated May 27, 2021.

Analysis

16. On any application before the Board, the party making an allegation in an application has the onus of proving those allegations on a balance of probabilities. The standard of proof requires the party to show with evidence that, "more likely than not", their assertions are true and that evidence "must be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test."
17. Based on all of the evidence I find that the Tenant has not established on a balance of probabilities the Landlord served the N12 in bad faith or that his daughter did not move into the rental unit within a reasonable amount of time after the Tenant vacated. In fact the Landlord's testimony which was uncontested was that his daughter actually moved into the property before the Tenant vacated the rental unit and the Tenant was aware of the same.

18. The Tenant relies primarily on two pictures taken from social media – one by the Landlord’s daughter and one by another tenant to prove that the Landlord’s daughter did not move in.
19. I find the Landlord’s evidence more convincing and find that it establishes that his daughter lives in the rental unit. His testimony was concise and credible. He could testify to both the pictures the Tenant is relying on and established that the previous basement tenant moved out of her unit sometime in 2021 and the picture Tenant is referring to is from February/ March of 2022. The second picture was of Landlord’s daughter stating she is in Ottawa. He clarified that the daughter was only visiting her mom and brother who live there. The Landlord provided evidence to his son-in-law transferring over to Toronto from Ottawa and enrolling in a course at George Brown in 2021 summer. Some of the evidence he provided respecting his daughter’s current place of residence was not specific to the rental unit, but I find his explanation credible that since the rental unit is in a house where he resides as well, there are no separate unit numbers in the address for ID’s or deliveries and he generally hands out the packages.
20. The Tenant may have faced many challenges due to the move and I sympathise with her but that does not mean that the Landlord served the N12 notice in bad faith or that the Landlord’s daughter did not move into the rental unit. Since the Tenant could not prove to me on a balance of probabilities that the Landlord served the N12 in bad faith, the Tenant’s application is dismissed.

It is ordered that:

1. The Tenant’s application is dismissed.

January 5, 2024

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Sheena Brar

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.