



Order under Section 57 Residential Tenancies Act, 2006

Citation: COLE v HUANG, 2024 ONLTB 22081

Date: 2024-03-28

File Number: LTB-T-063529-22

In the matter of: 26 DUNNETT DRIVE
BARRIE ON L4N0J7

Between: CHAD COLE Tenant
AMY MCNABB

And

XIAOYU HUANG Landlord
ZHENHONG ZHAO

CHAD COLE and AMY MCNABB (collectively the 'Tenant') applied for an order determining that XIAOYU HUANG and ZHENHONG ZHAO (collectively the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on January 18, 2024.

Only the Tenant Amy McNabb and Chad Cole and Kim Brock the Tenant's Representative attended the hearing.

As of 10:02 am, the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB.

Preliminary Issues

Adjournment Request

1. On January 16, 2024 the Landlord requested that the Tenant consent to an adjournment of this matter due to the health condition of the Landlord Xiaoyu Huang. In support of this

request the Landlord provided the Tenant's representative a Doctor's note advising that Xiaoyu Huang should be excused from work for 2 weeks. The Tenant requested additional information from the Landlord about the nature of the illness, and no response was provided. The Tenant did not consent to this request to adjourn.

2. Neither Landlord Xiaoyu Huang nor Zhenhong Zhao attended the hearing. The Doctor's note did not provide specific details why Xiaoyu Huang could not attend. There was no reason given why Zhenhong Zhao was not in attendance and no specific adjournment request was made by the Landlord. As no information was provided as to why the Landlord Zhoa was not present at the hearing, and no one attended to speak to the request, the adjournment request was denied and the hearing of this matter proceeded uncontested.

Monetary Jurisdiction of the LTB

3. The Tenant's requested remedies greater than the LTB's monetary jurisdiction of \$35,000. The Tenant's Legal Representative submitted that the LTB has jurisdiction to make an order up to \$35,000 per party and asked to proceed to recover the entire amount claimed.
4. As the remedies granted by this order do not exceed the LTB's monetary jurisdiction it was not necessary to address these submissions.

Determinations:

1. On August 25, 2022 the Tenant filed a T5 application with the LTB, and an amendment filed December 12, 2023. In terms of remedy, the Tenant requested: (a) rent differential (b) moving, storage and parking expenses (c) general compensation and (d) a fine.
2. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenant (a) rent differential for 1 year of \$9,060.00, and (b) moving costs and general damages for storage and parking fees of \$2,595.99.

Facts

5. On February 13, 2019, the Tenant entered into a lease on 26 Dunnett Drive, Barrie, Ontario for a term commencing on April 1, 2019. The Lease was signed by Xiaoyu Huang under a Power of Attorney. The lease identifies Xiaoyu Huang as the Landlord.
6. The Tenant testified that on April 25, 2022 the Tenants received an email from the Landlord stating that due to the health of the Landlord's mother the Landlord needed their mother to move into the rental unit. In subsequent exchanges between the Parties the Landlord identified that her husband needed the property due to his medical condition.
7. On May 2, 2022 Zhenhong Zhao, identified as the Landlord on the document, served an

N12 Notice of Termination (N12 notice) on the Tenant. The N12 notice states that the Landlord needed the property for themselves and their child and that they intended to move into the rental unit and occupy it for at least one year. The N12 notice sought possession of the rental unit by July 1, 2022. The Tenant's testified that no compensation was paid to the Tenant in relation to the N12 notice.

8. On May 9, 2022 the Landlord served an new N12 Notice of Termination ('second' N12 notice) on the Tenants. The second N12 notice states that the Landlord needed the property for themselves and their child and that they intended to move into the rental unit and occupy it for at least one year. The second N12 notice sought possession of the rental unit by July 10, 2022. No compensation was paid to the Tenant in relation to the second N12 notice.
9. Subsequent exchanges occurred between the Landlord and Tenant on the timing of when the Landlord needed the rental property. The Landlord offered to extend the termination date to September 1, 2022.
10. Based on the second N12 notice the Tenant looked for alternative housing and found a new property to reside in and on July 15, 2022 the Tenant served the Landlord with a Tenant's Notice to End the Tenancy (N9 Notice).
11. Subsequent to receiving the Tenant's notice to end their tenancy, on July 18, 2022 the Landlord responded that they no longer require the rental property so tenants could continue to use rental unit. No reasons or explanation were given or information as to whether the Landlord or their family member would take possession of the rental unit. It was the Tenant's evidence that at this time they had already made alternative housing arrangements and were subject to a new lease.
12. There is no evidence that the Landlord moved into the rental property after the Tenant's vacated the premise. The uncontested evidence before the Board is that the Landlord did not intend to move into the rental unit.

Merits of Application

13. Pursuant to section 57(1) of the *Residential Tenancies Act, 2006*, S.O. 2006, c.17 (the 'Act'), the Board may make an order against a landlord if, on application by a former tenant of a rental unit, the Board determines that,

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 ... 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.

14. Subsection 57(1) (a) of the Act establishes a four-part test. In order to be successful in their T5 application, the Tenants must establish all of the requirements of subsection 57(1)(a) on a balance of probabilities:
 - the Landlord gave a notice of termination under section 48 of the Act (the N12 notice);
 - the notice was given in bad faith; ○ the Tenants vacated the rental unit as a result of the N12 notice or Board Order based on the N12 notice; and
 - the person named in the N12 notice did not move into the rental unit within a reasonable time after the Tenants vacated.
15. The Tenant provided evidence to the Board that:
 - The Tenant received two N12 notices from the Landlord to terminate the tenancy for their own use.
 - They vacated the property “as a result of” the N12 notices.
 - It was only after the Tenant’s found a new property and served an N9 notice that the Landlord stated they did not need the rental property.
 - There is no evidence that the Landlord or their child moved into the rental property.
16. The Landlord did not attend the hearing to provide any evidence to counter the Tenant’s evidence.
17. Given the Tenant’s uncontested evidence before the Board, we find that on the balance of probabilities the Landlord served the Tenants with a notice of termination in bad faith and violated section 57 of the Act, as they did not move into the rental unit within a reasonable time of the Tenant vacating the rental unit.

Remedies

18. The Tenant’s application asks for (a) rent differential for 1 year (b) moving, storage and parking expenses (c) general compensation and (d) a fine.

Rent differential

19. The Tenant testified that they were forced to move out of the rental unit and rented a an apartment unit that was smaller than the rental property. At the hearing, the Tenant submitted her new lease which lists the new monthly rent at \$3,255.00 which is an increase \$755.00 from the \$2,500.00 that they were paying at the rental unit.
20. Pursuant to s. 57 of the Act, the Board may order that the Landlord pay a specified sum to the Tenant for all or any portion of any increased rent that the Tenant has had to pay for a one-year period after vacating the rental unit.

21. As the Landlord did not move into the unit within a reasonable time of the Tenant vacating, we find that the notice of termination was given in bad faith and the Tenant was required to move into smaller and more expensive rental accommodation, the Landlord will be ordered to pay to the Tenant's rent differential of \$755.00 per month for the maximum 12 months or \$9,060.00 in total.
22. In circumstances such as these, a landlord should be held accountable for all reasonably foreseeable consequences arising directly out of their bad faith service of the notice of termination.

Moving expenses and General Compensation

23. The Tenant requested that the Board grant a reimbursement of there expenses related to moving, storage and parking fees. The Tenant provided evidence of moving expenses in the amount of \$1,155.99, general compensation for storage fees of \$30.00 per month (\$360.00 for 12 months) and for parking fees of \$90.00 per month (\$1,080.00 for 12 months). The Tenant is entitled to the moving costs, storage and parking costs as these costs were a direct consequence of the Landlord serving the notice of termination in bad faith. The Landlord is ordered to pay the Tenant's the cost of moving in the amount of \$1,155.99. storage in the amount of \$360.00 and parking costs in the amount of \$1,080.00
24. The Tenant also requested that the Landlord pay further general compensation of \$30,000 which is equal to 12 months at the rate of \$2,500 per month, plus a fine. We find that the Tenant did not provide sufficient evidence to establish that general compensation should be awarded. As such the request for general compensation is denied.
25. The Tenant also requested the Board order the Landlord pay an administrative fine for breach of the Act. The Board's Interpretation Guideline 16 provides insight into the Board's use of fines and states that an administrative fine is a remedy to be used to encourage compliance with the Act and to deter landlords from engaging in similar activity in the future. "This remedy is not normally imposed unless a landlord has shown a blatant disregard for the Act and other remedies will not provide adequate deterrence and compliance."
26. As the Tenant has been awarded a substantial monetary remedy so we find that this provides a sufficient deterrent. The request for an order for an administrative fine is denied.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$11,708.99. This amount represents:
 - \$9,060.00 for increased rent the Tenant has incurred for the one-year period from the start of new tenancy.

- \$2595.99 for the reasonable moving expenses and general compensation for storage and parking expenses that the Tenant has incurred as a result of having to move out of the rental unit.
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by April 2, 2024.
 3. If the Landlord does not pay the Tenant the full amount owing by April 30, 2024, the Landlord will owe interest. This will be simple interest calculated from May 1, 2024 at 7.00% annually on the balance outstanding.
 4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

2024 ONLTB 22081 (CanLII)

March 28, 2024

Date Issued

Stephen Rotstein

Vice Chair, Landlord and Tenant Board

Nicola Mulima

Vice Chair, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

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