Order under Section 57
Residential Tenancies Act, 2006

Citation: Darnell v Kaur, 2024 ONLTB 17178
Date: 2024-03-08
File Number: LTB-T-012399-23

In the matter of: 305, 225 Webb Drive
Mississauga ON L5B4P2

Between: Colin Darnell — Tenant
Nicole Darnell

And

Gurmanjit Kaur — Landlord

Colin Darnell and Nicole Darnell (the 'Tenant') applied for an order determining that Gurmanjit Kaur (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on February 28, 2024.

The Landlord and the Tenant attended the hearing. The Landlord was assisted by her daughter, Romeena Singh. **Determinations:**

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. I find the Tenants moved out of the rental unit because the Landlord gave the Tenant a notice of termination claiming the Landlord's daughter required possession of the rental unit, and that this notice was given in bad faith. Therefore, the Landlord must pay to the Tenants $12,103.70 within 30 days of the date of this order and a fine to the Board in the amount of $500.00 within 11 days from the date of this order.

PRELIMINARY ISSUE: STATUS OF ROMEENA SINGH

2. At the hearing, RS advised that she was a licensed paralegal and the daughter of the Landlord. RS sought to represent her mother at the hearing, with respect to the Tenant's application.

3. Subsection 1(6) of the *Law Society Act* defines the provision of legal service to include conduct where one "represents a person in a proceeding before an adjudicative body."

4. Subsection 30(5) of the Law Society of Ontario's By-Law 4 states:

> 30. The following may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide:
>
> 5. An individual,
>
> i. **whose profession or occupation is not and does not include the provision of legal services or the practice of law**,
>
> ii. who provides the legal services only for and on behalf of a related person, within the meaning of the Income Tax Act (Canada), and
>
> iii. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.
>
> [Emphasis added.]

5. Based on the submissions before the Board, I find the Landlord's daughter cannot provide legal services by appearing before the Board on behalf of her mother and is not exempt under by-law 4 by virtue of being a family member since her profession/occupation includes the provision of legal services. As the Landlord's daughter is a licensed individual, the exemptions found under the Board's Practice Direction on Representation also do not apply.

6. However, given that the Landlord was present and provided consent for her daughter to speak on her behalf, I permitted RS to proceed as the Landlord's agent.

Landlord gave N12 for own use in bad faith

7. By way of background, the rental unit is a condominium unit which has 1 bedroom and a den. This tenancy began in September 2017 and ended on May 31, 2022. The lawful monthly rent was $1,686.30 and was due on the first of the month.

8. The Tenant's T5 application was filed pursuant to subsection 57(1) of the *Residential Tenancies Act, 2006* (the 'Act') which requires the Tenant to prove each of the following, on a balance of probabilities:

   i. The Landlord gave the Tenant an N12 notice of termination under section 48 of the

Act; ii. The Tenant vacated the rental unit as a result of the N12 notice of termination;

iii. No person referred to in subsection 48(1) of the Act occupied the rental unit within a reasonable time after the Tenant vacated; and

iv. The Landlord served the N12 notice of termination in bad faith.

Tenant's Evidence

9. The Tenant's evidence was, on March 7, 2022, they received a call from the Landlord indicated that they had to move out of the rental unit by May 31, 2022 because the Landlord's daughter had finished college and required the rental unit for her own personal use. The Tenant confirmed that they did not receive a N12 notice of termination or any letter from the Landlord in this regard.

10. As they had a good relationship with the Landlord, they had no reason to doubt her intentions and they began looking for a new place that could accommodate their family including their pet dog, and their requirement of two parking spaces. However, it was very difficult to find something in the same area, in their budget, so they ended up moving to Milton.

11. The Tenant testified that on March 27, 2022, the Landlord came with her daughter to have the Tenants sign a N11 agreement to terminate the tenancy; a copy of this document was not provided to them – although it was requested twice by the Tenants.

12. The Tenant testified that before they moved out of the rental unit, they informed their neighbours that the Landlord had given them notice to vacate and to keep an eye out for them.

13. On June 28, 2022, the Tenants received a text from their former neighbour who indicated that his cousin had gone to view the rental unit which had been listed for rent for $2,650.00. Soon after, they began to text other neighbours who lived in the same building and conducted their own research for listings and found an ad listed on July 17, 2022 of their unit – this was 1.5 months after the Tenants moved out.

14. On November 18, 2022, the Tenants received a text from their former neighbour who indicated he received a package for Nicole V. and inquired whether that was for ND- which it was not.

15. The Tenants believe that they were misled to believe that the Landlord's daughter moved into the rental unit as her last text to the Tenants on July 16, 2022 suggests that she is experiencing difficulty with the lock on the rental unit on a daily basis.

16. The Tenants submit that even though they did not receive a written notice (N12) that the verbal notice from the Landlord was the only reason they moved out of the rental unit and

incurred many losses; they had a parking agreement that went on until September 2022 which had been paid in advance and they did not receive a refund for the months of June – September 2022. They had to move further away because the rents were not affordable and their requirements could not be accommodated; ND went from a 10-minute to a-30 minute drive to work.

17. The Tenants confirmed that at no point between March 28, 2022 and November 2022 did the Landlord inform the Tenants that circumstances had changed and gave them the option to move back, or not move out at all.

Landlord's Evidence

18. RS confirmed the conversation of March 7, 2022 took place between the Landlord and the Tenants but submits that the Tenants were told the Landlord's daughter may have plans to move in. She submits that the N12 was not provided because the parties agreed to sign a N11; she also submits that the compensation was not given to the Tenants because the last month rent was applied. RS further submits that the Tenant proposed the termination date of May 31, 2022 and the Landlord accepted this date.

19. RS maintains the position that it is not prohibited to use a N11 form, nor was this form misused by the Landlord; the Landlord did not violate the Act or its rules and therefore the Landlord should not be held liable.

20. RS submits that she was not able to move into the rental unit - she recalls staying in the unit occasionally after the Tenants moved out; she submits that the Tenant had always expressed an interest in moving out to a bigger place and that she never had the intention of misleading the Tenants.

21. RS accepts that the rental unit was advertised online and clarifies that initially she was trying to see if she could get a roommate to help her afford the place; when this was not possible, she had a property management list it for rent.

22. RS confirms the rental unit was re-rented in September 2022 to NV.

23. On cross-examination, RS confirmed that she did not have any bills in her name, nor did she change her address to the rental unit. She also confirmed that she did not tell the Tenants that the plans had changed because she was embarrassed and didn't feel that she owed the Tenants an explanation.

24. The Landlord seeks that the Tenant's application be dismissed.

ANALYSIS

25. On the question of whether the Landlord gave the Tenant a N12 notice of termination, I find that she did. Although the phone call from the Landlord does not constitute proper notice under section 48 of the Act, it is a notice of termination under section 48 for the purposes of s. 57(1)(a). I find the elements required on a notice of termination, found at ss. 43(1) and 48(1) of the Act, are present. The notice was given by the Landlord, had a termination date of May 31, 2022 (as agreed to by the parties), and identified the reason for the notice as the Landlord's daughter requiring the rental unit.

26. In other words, I find the Tenants are entitled to make this application. A tenant should not be deprived of the remedies available when a bad faith notice is served just because the landlord failed to serve the notice in the proper form and in compliance with the Act. To decide otherwise would defeat the purpose of section 57 and produce an unjust result.

27. While the Landlord's agent indicated that the daughter moving into the rental unit was not definitive, I find the first-hand testimony from the Tenant, who was a party to the conversation with the Landlord, indicates otherwise. The Tenant's evidence is also corroborated by his text messages to his former neighbours sent at the time the notice was received.

28. While the Landlord submits that the Tenants had 20 days to review or request a N12 and get legal advice prior to signing a N11 agreement to terminate the tenancy, this doesn't change the fact that the Landlord gave them the notice and that they relied on this notice when they moved out.

29. The next question before the Board is whether the Tenants vacated the rental unit as a result of this notice; I find that they did. I say this because there was ample evidence before me to suggest that the Tenants did not intend to move, but for the Landlord's notice. A copy of the parking agreement was submitted into evidence as well as support letters from the Tenant's neighbours to support this assertion showing the Tenants long-term commitment to their unit.

30. While the Landlord states that the Tenants wanted a bigger space, I do not find a direct connection between the timing of that conversation, which was unclear, and when the Tenants moved out.

31. The next question before the Board is whether the Landlord's daughter moved into the rental unit within a reasonable period of time after the Tenant vacated. I find that she did not.

32. I say this based on RS' own evidence that she did not occupy the rental unit on a full-time basis; that she did not change her address on any government-issued identification or have any bills come to the rental unit in her name.

33. In the context of applications for eviction based on an N12 notice for landlord's own use, it is well settled law that temporary or part-time residency does not constitute "residential occupation" under section 48(1). (See for example: *Kohen v. Warner*, [2018] O.J. No. 3307 (Ont. Div. Ct.).) I see no reason not to apply the same principle to the phrase "occupied the rental unit" in s. 57(1)(a). Camping out for a few nights is not sufficient to constitute occupation of the rental unit. The Landlord's daughter never really lived in the unit; she never moved in.

34. The final question before the Board is whether the notice given to the Tenants was in bad faith. Based on my above analysis, the first three steps of the test have been met. With respect to the last step, I have to determine whether the Landlord rebutted the presumption of bad faith in section 57(5) which says:

> 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;**
>
> …
>
> [Emphasis added.]

35. It is uncontested that the rental unit was advertised on the Landlord's daughter's Facebook page a month after the Tenants moved out of the rental unit and in July 2022 by a property management company retained by the Landlord. Further, the Landlord's own evidence confirms that the unit was re-rented in September 2022 to another Tenant at a higher rent.

36. While the Landlord's agent maintains that she did not feel she owed the Tenants an explanation of the change in her circumstances, I find the evidence is insufficient to establish whether anything really changed. I say this based on the Landlord's agent's own assertion that at the time the notice was given, the daughter did not know when or if she would be moving into the Tenants' unit at the time the notice was given.

37. For all the above reasons, I find that the notice given pursuant to section 48 of the Act was not given in good faith. I further find that the Landlord has not rebutted the presumption of bad faith.

Remedies

38. In terms of remedy, the Tenants' application seeks a rent abatement, a fine, the increase in rent they now must pay for their new home and moving expenses.

39. With respect to the rent abatement, this remedy is not typically awarded on a T5 application where a Tenant is awarded the rent differential for twelve months and moving/out-of-pocket expenses. The purpose of each of the remedies available under the Act is to compensate the Tenant for the losses they have suffered as a result of the Landlord's breach of the Act, which in this case is serving the Tenant with an N12 notice in bad faith. Where a rent differential and moving expenses provide compensation for the losses suffered, this objective is accomplished. The request for an abatement is therefore denied.

40. However, the amount the Tenants essentially seek under this remedy is the one-month compensation that they were not paid. Section 57(3)4 says the Board may make, "Any other order that the Board considers appropriate". I find it is proper and fair for me to exercise such discretion in the case at hand and grant this amount.

41. I say this because, firstly, section 48.1 of the Act requires a landlord to compensate a tenant in an amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant if the landlord gives the tenant a notice of termination of the tenancy under section 48. As I have found the Tenant vacated for reasons pursuant to section 48, the Landlord is required to compensate him one month's rent in the amount of $1,686.30- the amount the Tenant requests. As the Board must take into account resources and expediency, it would be contrary to both to require the Tenants to file a different application to request this money that is rightfully owed to them.

42. I do not find *Beaugé v. Metcap Living Management Inc.,* 2012 ONSC 1160, which says the Board cannot award something not requested in the application, applies here. I say this because the amount being awarded does not exceed the remedies requested in the application.

43. In terms of the rent differential, pursuant to section 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.

44. The Tenants were paying $1,686.30 in monthly rent when they vacated the rental unit on May 31, 2022. Their new monthly rent is $2,500.00, resulting in a monthly differential in the amount of $813.70. Therefore, the Landlord will be ordered to pay to the Tenants' rent differential of $813.70 per month for the maximum 12 months or $9,764.40.

45. The Tenants also requested expenses related to moving and storage in the amount of $600.00. This is essentially a reimbursement of the loss of four months of their second

parking spot that they had prepaid at $150.00 each month. I find it appropriate to grant this amount to the Tenants pursuant to subsection 57(3)(4) of the Act.

46. The Tenants 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."

47. Displacing a tenant is a serious act as it has both financial, personal, social and emotional impacts. It takes away housing stability, forces tenants to "start from scratch" and is laborious in nature. In circumstances such as these, a landlord should be held accountable for their bad faith service of the notice of termination.

48. Based on the evidence before the Board, I find the Landlord has not shown a blatant disregard of the Act, rather they have shown a lack of due diligence and education as to their responsibilities under the legislation. Being ignorant of the law is not an excuse to not abide by the legislation. Given that the amounts awarded to the Tenants are substantial in nature, I find it appropriate to award a nominal fine of $500.00 which will provide adequate deterrence and compliance.

49. Finally, as the Tenants were successful in their application, they are also entitled to reimbursement of the application filing fee and an order will issue for same.

50. This order contains all the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is $12,103.70. This amount represents:

    - $1,686.30 for the one-month compensation owed to the Tenants;
    - $9,764.40 for increased rent the Tenants have incurred for the one-year period from June 2022 to May 2023.
    - $600.00 which represents the financial loss for the Tenants' prepaid parking for the period June 2022 – September 2022; and
    - $53.00 for the cost of filing the application.

2. The Landlord shall pay the Tenant the full amount owing by April 8, 2024.

3. If the Landlord does not pay the Tenant the full amount owing by April 8, 2024, the Landlord will owe interest. This will be simple interest calculated from April 9, 2024 at 7.00% annually on the balance outstanding.

4. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

5. The Landlord shall pay to the Landlord and Tenant Board an administrative fine in the amount of $500.00 by March 19, 2024.

March 8, 2024
Date Issued

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Sonia Anwar-Ali
Member, 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.

Payment of the fine must be made to the LTB by the deadline set out above. The fine can be paid by certified cheque, bank draft or money order made payable to the Minister of Finance. If paying in person, the debt can also be paid by cash, credit card or debit card.