



Order under Section 57 Residential Tenancies Act, 2006

Citation: ROSSI v SHAH SAEED, 2024 ONLTB 2806

Date: 2024-01-12

File Number: LTB-T-056780-22

In the matter of: 25 MCKAY AVENUE
NEW TECUMSSETH ON L0G1W0

Between: Giancarlo Rossi Tenants
Linda Rossi

And

Begum Shah Saeed Landlord

Giancarlo Rossi and Linda Rossi (the 'Tenants') applied for an order determining that Begum Shah Saeed (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on October 4, 2023. The Tenants attended the hearing and were represented by Lawrence Pomfret. The Landlord attended the hearing and was represented by Arnold Miguel. Yaser Shahsaeed appeared as witness and/or agent for the Landlord.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities.
2. The Tenant's application was filed on June 28, 2022 and alleges that the Landlord served the Tenants with an N12 notice of termination in bad-faith.
3. The parties agree that on or about April 30, 2021 the Landlord served to the Tenants a N12 notice of termination asserting that the Landlord and their spouse required the rental

unit for their own personal use for a period of at least one year. The termination date on the notice was June 30, 2021.

4. The Landlord filed an application based on the N12 notice served and on November 4, 2021 order CEL-00082-21 was issued on consent of the parties terminating the tenancy on or before June 30, 2022.
5. The Tenants vacated the rental unit on December 1, 2021.
6. Shortly after vacating the rental unit, the Tenants discovered that the Landlord had listed the unit for rent. The Tenant's entered into evidence a copy of the real estate listing dated December 10, 2021 showing that the unit was being advertised for \$3,200.00 per month, which is \$1,400.00 more than the monthly rent the Tenants were paying.
7. The Tenants acknowledge that they vacated the rental unit prior to the termination date in the consent order, but stated that during this period they were looking to purchase a home of their own and found a good deal shortly after the hearing of the Landlord's L2 application. The Tenants purchased a home in Angus, Ontario and moved into the new home on or about December 1, 2021.
8. The Tenants take the position that had it not been for the Landlord serving the N12 notice and/or commencing eviction proceedings for the Landlord's own use, that they would have remained in the rental unit until they had saved enough funds to purchase a property in the same community as the rental unit.
9. The Landlord does not dispute that after the Tenants vacated, that the unit was advertised for rent or that as of the hearing date, neither the Landlord nor a member of their immediate family moved into the unit. The Landlord takes the position that the Tenants vacated the rental unit prematurely and not in accordance with the consent order issued by the Board and as such, the Landlord was unable to move into the unit as originally planned.
10. The Landlord confirmed at the hearing that the rental unit was re-rented on or about January 2022 and that the same tenants reside in the unit.
11. The Landlord's son testified that his mother was renting her own apartment at the time the Tenants vacated the rental unit and that she was on a fixed term lease expiring June or July 2022. When asked why the Landlord served the Tenants with the N12 notice despite being on her own fixed term lease, the Tenants son responded by stating that the Tenants were paying less than market rent for the rental unit.

Analysis:

12. The Landlord's N12 notice was served pursuant to section 48 of the *Residential Tenancies Act, 2006* (the Act). Section 57(1) (a) and 57(5) of the Act state:

57 (1) The Board may make an order described in subsection (3) if, on application by a former tenant of a rental unit, the Board determines that,

(a) 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 or as a result of an application to or order made by the Board based on 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;

(5) 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;

(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.

13. Based on the evidence before the Board, I find that the Landlord served the N12 notice of termination under section 48 of the Act in bad faith. The evidence is clear that after the Tenants vacated the unit that the Landlord immediately proceeded to re-rent the unit and advertised the unit for rent less than two weeks after the tenancy terminated. Further as of the hearing date (almost two years after the tenancy terminated) neither the Landlord nor their spouse moved into or occupied the rental unit per the notice of termination served.

14. I do not accept the Landlord's argument that the application should fail because the Tenants moved out of the rental unit prior to June 30, 2022 as per the consent order issued by the Board. The order issued by the Board clearly states that the Tenants must vacate the rental unit on or before June 30, 2022 and as such, the Tenants were in compliance with the order by vacating before this date.

15. I further note that the prior proceedings were commenced by the Landlord who required vacant possession of the rental unit and that the N12 notice served had a termination date of June 30, 2021. The evidence is clear that the Landlord, per their notice of termination requested vacant possession of the rental unit effective July 1, 2021 which was one year prior to the termination date consented to between the parties at the hearing of the Landlord's application. The testimony of the Landlord's son also confirms that the Landlord initially served the N12 notice because the Tenants were paying less than market rent. The evidence and pattern of events suggests to me that the Landlord's true intentions all along was to evict the Tenants to re-rent the unit for a higher rent.

Remedies:

General Compensation:

16. The Tenant's application claims a rent abatement in the amount of \$21,600.00. This amount consists of 12 months worth of rent. At the hearing, the Tenant's representative sought to amend the application to include a claim for general compensation pursuant to subsection 57 (3) 1.1 of the Act and not an abatement of rent.
17. When granting a claim for general compensation and in determining the amount of compensation to order, the Board must assess the overall impact the bad-faith eviction had on the tenant(s).
18. Based on the evidence and submissions before the Board, I find that the Tenants are entitled to a total of \$1,800.00 in general compensation, which is equivalent to one-months rent.
19. There is no dispute that the termination of tenancy had an impact on the Tenants as they had to move approximately 40 kilometers north from the rental unit, which placed them further from their family and friends. Despite this, I do find however that the Tenants themselves have also failed to mitigate their own losses. The consent order issued by the Board terminating the tenancy allowed the Tenants to remain in the rental unit until June 30, 2022. The Tenants chose to vacate seven months prior to the termination date in the order and as such, had sufficient time to look and secure alternate housing within the area they desired to be in. As such, I am not satisfied that ordering the sum 12 months of general compensation is appropriate.

Difference in rent:

20. The Tenant's application requests that the Landlord be ordered to pay the Tenants increased rent for a period of 12 months at a rate of \$108.00 per month. At the hearing the Tenants confirmed that they in fact purchased a property of their own and that the increased amount claimed is in fact their monthly mortgage payments on their new and current home.

21. Section 57(3) (1) specifically states that the Board may order a landlord to pay a tenants increased rent for their new unit if the Board is satisfied that the landlord has served a notice of termination in bad-faith. This section does not make reference to other costs such as mortgage payments. I further note that unlike rent, mortgage payments contribute to more than just the right to occupy a property, but also include additional costs such as interest payments to the lender.
22. The Tenants ultimately chose to purchase a property of their own rather than find a new rental unit and as such I find that it would be inappropriate to order the Landlord to pay the additional costs associated with the Tenant's mortgage payments.

Moving expenses:

23. The Tenant's application claims a total of \$15,181.60 for moving expenses. For the reasons below, this claim is denied.
24. The Tenants claimed moving expenses relating to the costs of closing and/or obtaining insurance on the new property. These costs claimed are as follows:
 - Electrical expenses - \$2,065.64
 - Fireplace wet inspection - \$250.00
 - Waste Management - \$78.29
 - Water analysis - \$1,582.00
 - Water treatment system - \$6,436.47
 - Sump pump backup - \$691.58
25. In my view, these expenses are the costs of homeownership and are required by a homeowner to ensure their property is up to Bylaw standards. As stated above, the Tenants chose to purchase a home of their own rather than finding a new rental unit and as such, must accept and assume the costs of being homeowners. The Tenants would not have been required to pay these costs had they rented a new unit after the tenancy terminated. Further, the Tenants provided no documentary evidence such as receipts and/or invoices to support these costs.
26. The Tenant's application also claims \$4,272.76 for hiring a moving company and \$104.86 for mail forwarding from Canada Post. As this is the Tenants application, the Tenants carry the burden in proving their claims on a balance of probabilities. The Tenants provided no documents, invoices or receipts to support these charges and/or expenses. As such, this request is also denied.

Administrative Fine:

27. The application requests that the Board order the Landlord to pay an Administrative Fine.

28. The Board's Interpretation Guideline 16 entitled Administrative Fines addresses when the Board generally imposes fines:

An administrative fine is a remedy to be used by the Board to encourage compliance with the Residential Tenancies Act, 2006 (the "RTA"), 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 RTA and other remedies will not provide adequate deterrence and compliance.

29. Based on the evidence before the Board, I find that it is appropriate to order the Landlord to pay an administrative fine of \$2,500.00. This amount is in consideration of the Landlords conduct and the remedies ordered above.
30. The evidence before the Board is clear that the Landlord filed an application with the Board and terminated the tenancy because the Landlord and their spouse required the rental unit for their own personal use. However, less than two weeks after the Tenants vacated the unit, the Landlord advertised the unit for rent for \$1,400.00 more per month. I find that the Landlord's true intentions all along were to terminate the tenancy to simply re-rent the unit for market rent. I further note that the Landlord's son also confirmed during the Landlord's evidence that the reason the N12 was served was because the Landlord no longer wished to rent to the Tenants because they were paying below market rent.
31. I find that the Landlord's actions do show a blatant disregard for the legislation and the Tenants rights under the Act.

Filing Fee:

32. The Tenants paid \$53.00 for the costs of filing the application and are entitled to reimbursement of those costs.
33. This Order contains all the reasons for this matter. No further reasons will issue.

It is ordered that:

1. The Landlord shall pay to the Tenants \$1,853.00 This amount represents:
 - \$1,800.00 for general compensation.
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenants the full amount owing by January 23, 2024.

3. If the Landlord does not pay the Tenants the full amount owing by January 23, 2024, the Landlord will owe interest. This will be simple interest calculated from January 24, 2024 at 7.00% annually on the balance outstanding.
4. The Landlord shall pay to the Landlord and Tenant Board an administrative fine in the amount of \$2,500.00 by January 23, 2024.

January 12, 2024

Date Issued

Fabio Quattrociocchi

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.