



Order under Section 57 Residential Tenancies Act, 2006

Citation: Mathews v Ponce, 2024 ONLTB 1065

Date: 2024-01-04

File Number: LTB-T-053028-22

In the matter of: 614, 60 Colborne Street
Toronto Ontario M5E0B7

Between: Kaitlyn Mathews Tenants
Jessica Mathews

And

Federico Ponce Landlord

Kaitlyn Mathews and Jessica Mathews (the 'Tenants') applied for an order determining that Federico Ponce (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on September 19, 2023.

The Landlord and the Tenants attended the hearing. Landlord's support person Rey Cuevas was also present.

Determinations:

1. The Landlord testified that his name is Federico Ponce and not Eric Ponce. The Tenants called him Eric but that is not his legal name. The application is amended to reflect the correct name of the Landlord.
2. As explained below, the Tenants proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenants \$5,928.00 on or before January 31, 2024.

Applicable Law

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 Tenants an N12 notice of termination under section 49 of the Act;
 - The Tenants vacated the rental unit as a result of the N12 notice of termination;
 - No person referred to in subsection 49(1) or 49(2) of the Act occupied the rental unit within a reasonable time after the Tenants vacated; and
 - The Landlord served the N12 notice of termination in bad faith.

4. Subsection 49(1) of the Act states the following:

A landlord of a residential complex that contains no more than three residential units who has entered into an agreement of purchase and sale of the residential complex may, on behalf of the purchaser, give the tenant of a unit in the residential complex a notice terminating the tenancy, if the purchaser in good faith requires possession of the residential complex or the unit for the purpose of residential occupation by,

- (a) the purchaser;
- (b) the purchaser's spouse;
- (c) a child or parent of the purchaser or the purchaser's spouse; or
- (d) a person who provides or will provide care services to the purchaser, the purchaser's spouse, or a child or parent of the purchaser or the purchaser's spouse, if the person receiving the care services resides or will reside in the building, related group of buildings, mobile home park or land lease community in which the rental unit is located.

Termination of the tenancy

Tenant's evidence and submissions

4. The Tenants allege that the N12 was given in bad faith and the rental unit was re-rented within months of them moving out for a much higher rent.
5. The Tenant testified to the following timeline:
 - February 2022: Landlord called and asked the Tenants to move since he needed to sell the house in 60 days.
 - March 22, 2022: Landlord listed the house on Condos.ca
 - March 30, 2022: Tenants told Landlord they will be moving out.
 - March 31, 2022: Showings stopped
 - April 30, 2022: Tenants moved out
 - May 2, 2022: The listing for sale was unavailable
 - May 2, 2022: The Tenants found a 'For Rent' listing for the rental unit for \$2900.00 which is \$825 higher than their rent.
6. The Landlord called Kaitlyn Mathews around Feb 26, 2022, and told her the Tenants have 60-days to move as he has to sell the unit as he is not able to carry the mortgage. The Landlord took pictures of the condo around March 21, 2022, but he never used the same

in the listing. He listed the one bedroom plus den as a two-bedroom apartment for rent on May 2, 2022.

7. The Landlord promised the Tenants one-month's rent for March 2022 as compensation and there were discussions about post-dated cheques which the Landlord tried to cash but due to insufficient funds later returned. I do not find that is not relevant to this application. The payment of compensation is only required where the Landlord has served a N12 notice. The Landlord did give the Tenants one month's rent free.
8. The Tenants also testified to the hardships they faced due to Landlord's actions. The Tenants because they believed had a good relationship with the Landlord wanted to move out as requested. The Landlord kept pressurizing them to move out and kept asking them if they had found a place. The Landlord could not increase their rent legally, so he evicted them.

Landlord's evidence and submissions

9. The Landlord stated that he never served the Tenants with a N12 form. He stated that he called the Tenants in February 2022 and asked them to move in 60-days. The Tenants complied so there should be no application with the Board.
10. He added that he was laid off from his job and carrying two mortgages and living expenses was getting overbearing. He was paying out of pocket to carry the rental unit. He decided to sell the rental unit but by the time he put up the house for sale, the market softened, and he only got five viewings in a month out of which the Tenants refused entry to two viewings even with proper notice.
11. The condo was up for sale for 49 days until May 10, 2022, and he removed the sale listing since there were no showings at all after April 1, 2022. After the Tenants moved out, he asked his realtor to list it for rent around May 1, 2022, as he was desperate to cover his expenses. He also testified that he never told the Tenants that the rental unit was not selling so they could continue to stay because the Tenants had already found another place. It took 56 days for the rental unit to be re-rented. He leased it at \$2,699.00 per month to cover his expenses.
12. The Landlord testified that his wife is retired, and they were drowning in debt, but he was very accommodating to the Tenants and was sorry to disrupt their life. He gave the Tenants a good recommendation too and had a good relationship with the Tenants. He testified that he had a brain aneurysm in June 2022 and was on insurance money for eight months while he recuperated. It was just an unfortunate series of events.

Analysis

13. Here, it is undisputed that the Landlord never served a formal N12 notice under section 49(1). The Landlord submitted that because the Tenants were never served with an N12 notice containing the essential element of that notice, this application should be dismissed.

14. However, section 202 of the Act requires that the Board must have regard to the real substance of all transactions. In this case, the Landlord admitted they asked the Tenants to vacate to allow the Landlord to sell the rental unit.
15. Based on the Landlord's own testimony I find that the Tenants vacated because the Landlord told the Tenants that they had to vacate the rental unit within 60 days because he wanted to sell the unit. I find that this communication contains the essential elements of an N12 notice – a demand that the tenants vacate by a specific date because the landlord wanted vacant possession due to an anticipated sale of the rental unit.
16. It would be a ludicrous outcome for the Landlord to be allowed to rely on not serving a N12 as a means of circumventing the Act and avoiding the responsibilities under it when the whole basis for the termination is a reason contained within a purchaser's own-use notice.
17. Based on my above analysis, the first and second steps of the test have been met, namely that the Tenants vacated as a result of the N12 notice. With respect to the third step, it is undisputed that the Landlords did not sell the rental unit and thus it was never occupied by purchasers. Therefore, that part of the test in section 57(1)(b) has also been met.
18. Therefore, the remaining issue I must determine is whether the Landlord gave the Tenant the N12 notice of termination in bad faith.
19. The Landlord failed to demonstrate that vacant possession of the rental unit was required because he had entered into an agreement of purchase and sale and the purchaser, or their family intended. As set out above, the Landlord in fact had never entered into an agreement of purchase and sale and re-rented the house by July 1, 2022, two months after the Tenants vacated. The fact that the Landlord was experiencing financial difficulties does not mean that he was entitled to disregard the rules in the Act respecting how tenancies can be lawfully terminated.
20. On a balance of probabilities, I find that the Landlord served the Notice of termination in bad faith.

Remedies

21. The Tenants asked for rent differential in the amount of \$860.00 per month as their new monthly rent is \$2,900.00 instead of \$2,040.00, which they were paying at the rental unit.
22. However, the Tenants did not submit their new lease into evidence or any other supporting evidence as to their current monthly rent. The Tenant did testify that they are also paying \$2,900.00 twice in her testimony. I find the Tenant's testimony credible; the Tenants did not however, testify to the size of their current rental unit. Without a fair determination if the Tenants current living quarters being the same size, bigger or smaller, it is difficult to assess the rent differential amount.
23. Rent differential should reflect the additional rent that the Tenants have to pay but it should not require the Landlord to pay for any betterment in housing. Therefore, I am only willing

to grant the Tenants half of that amount. The total amount of rent differential the Tenant will be granted is $\$430.00 \times 12 \text{ months} = \$5,160.00$.

24. The Tenants also claimed \$875.00 in moving expenses. A receipt dated April 30, 2022 was submitted from Max Moving Corporation. I find that this was a reasonable expense incurred by the Tenants as a direct result of the bad faith eviction. Therefore, I find that the Landlord must pay the Tenants \$875.00 for the reasonable out-of-pocket moving, storage and other like expenses that the Tenants have incurred or will incur as a result of having to move out of the rental unit.
25. The Tenants also claimed \$500.00 in general compensation due to stress, anxiety and undue hardship they faced as a result of vacating the rental unit. The Landlord's bad faith conduct compelled them to move and put their careers on hold for the same. They had to accommodate the viewings by moving their schedules around when there was a showing as they felt unsafe letting people come and view their apartment without their presence. All this was done because the Landlord could not increase their rent to \$2,900.00 legally. The Landlord kept pressuring them to move by asking them constantly if they had a found a place. The Tenants had to move and pay so much more rent per month which caused extra stress and anxiety. Therefore, I find that the Landlord must pay the Tenants \$500.00 for general compensation.
26. This order contains all of 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 Tenants is \$6,588.00. This amount represents:
 - \$5,160.00 as rent differential.
 - \$500.00 as general compensation.
 - \$875.00 for the reasonable moving, storage and other like expenses that the Tenants have 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 Tenants the full amount owing by January 31, 2024.
3. If the Landlord does not pay the Tenants the full amount owing by January 31, 2024, the Landlord will owe interest. This will be simple interest calculated from February 1, 2024 at 7.00% annually on the balance outstanding.

January 4, 2024

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Member, Landlord and Tenants Board

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