



Order under Section 57 Residential Tenancies Act, 2006

Citation: Bekkers v Bretgoltz, 2024 ONLTB 61410

Date: 2024-08-26

File Number: LTB-T-058992-23

In the matter of: 628, 250 Wellington Street West
Toronto ON M5V3P6

Between: Katrina Bekkers Tenant

And

Arkadi Bretgoltz Landlord
2008204 Ontario Inc.

Katrina Bekkers (the 'Tenant') applied for an order determining that Arkadi Bretgoltz and 2008204 Ontario Inc. (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on August 13, 2024.

The Landlord, Vlad Bretgoltz and the Tenant attended the hearing.

When the capitalized word "Landlord" is used in this order, it refers to all persons or companies identified as a Landlord at the top of the order. When the capitalized word "Tenant" is used in this order, it refers to all persons identified as a Tenant at the top of the order.

Preliminary Issue:

1. The Landlord requested that the application be dismissed as the Landlord never gave the N13 notice to the Tenant. The Landlord submits that he called the LTB and someone told him he wouldn't need to prepare as a notice was never given to the Tenant. The Landlord also submitted that the Board forms indicate that "the Landlord gave me a Form N13". The Landlord submitted that if I was to find that notice was given to the Tenant the Landlord would be requesting an adjournment to review the file and submit disclosure as they have not done so prior to the hearing.
2. Section 50 of the *Residential Tenancies Act, 2006* (the 'Act') states:
 - (1) A landlord may give notice of termination of a tenancy if the landlord requires possession of the rental unit in order to,
 - (a) demolish it;
 - (b) convert it to use for a purpose other than residential premises; or

(c) do repairs or renovations to it that are so extensive that they require a building permit and vacant possession of the rental unit.

(2) The date for termination specified in the notice shall be at least 120 days after the notice is given and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term.

Section 202 of the Act required the Board to ascertain the real substance of any transaction, it states:

In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so,

(a) may disregard the outward form of a transaction or the separate corporate existence of participants; and

(b) may have regard to the pattern of activities relating to the residential complex or the rent unit. [Emphasis added]

3. It is uncontested that the Landlord did not provide the Tenant with the N13 Form of the Board. However, this does not prohibit the Board in finding that the Landlord served a notice of termination on the Tenant in another form, in this case by email. In considering whether the Landlord's email message to the Tenant constitutes a notice of termination under section 50(1)(c), I adopted a contextual approach by applying section 202 of the Act. The Divisional Court in the case of *Pinto v. Regan* 2021 ONSC 5502, found that the Board must apply s. 202 of the Act to determine a landlord's intentions, in that case the Court held that although an N13 Notice of Termination was not served, it was the landlord's intention to obtain vacant possession of the rental units on a permanent basis without having to give notice to each of the tenants under s. 50 of the Act.
4. Applying section 202, I have considered the Landlord's email message from March 15, 2023, is advising the Tenant that they want to sell the residential complex and prior to selling they want to renovate the rental unit and the Tenant must vacate the unit. They asked the Tenant to agree on a termination date for the tenancy on June 15th or possibly June 1, 2023. I find that this email demonstrates the Landlord's intention to obtain vacant possession of the rental unit and is there in substance an N13 notice.
5. Therefore, I find that the email the Landlord sent the Tenant on March 15, 2023, constituted a N13 Notice pursuant to section 50(1)(c) of the Act because in the email, the Landlord requested vacant possession to complete renovations and provided a termination date of either June 1 or June 15, 2023, which is 120 days from the date of the email.
6. The Landlord's request for an adjournment was denied. The staff at the LTB do not provide legal advice, if the Landlord was unsure of his defence to this application, he could have sought out legal advice in advance of the hearing. However, I stood the matter down for two hours to allow the Landlord an opportunity to review the Tenant's submissions in the portal, although it was the Landlord's obligation to prepare prior to the hearing date as the allegations were clearly established in the Tenant's application. I was satisfied that the

Landlord was given sufficient time to submit any disclosure, yet he failed to do so seven (7) days in advance of the hearing as per Rule 19.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord shall be ordered to pay the Tenant \$25,669.93.
2. Subsection 57(1)(c) of the *Residential Tenancies Act, 2006* (the 'Act') requires the Tenant to prove each of the following on a balance of probabilities:
 - The Landlord gave the Tenant an N13 notice of termination under section 50 of the Act;
 - The Tenant vacated the rental unit as a result of the N13 notice of termination;
 - The Landlord did not demolish/convert/renovate the rental unit within a reasonable time after the Tenant vacated; and
 - The Landlord served the N13 notice of termination in bad faith.
3. The Tenant proved all of the requirements in subsection 57(1)(c) of the Act.
4. As per my finding above, the email sent to the Tenant on March 15, 2023, constituted a notice pursuant to section 50(1)(c) of the Act.
5. It was uncontested that the Tenant vacated the rental unit on May 6, 2023, prior to the vacate date in the notice. The Tenant did not give the Landlord written notice of her intention to occupy the rental unit when the repairs or renovations were completed as required by section 53 of the Act. Therefore, the Landlord was not required to allow the Tenant to move back into the unit.
6. The Tenant alleges that the Landlord did not renovate the rental unit as per the notice of March 15, 2023. There was no dispute that the Landlord listed the rental unit for rent on May 16, 2023. The Tenant submitted two advertisements from May 16, 2023, and June 4, 2023, as proof of rental listing into evidence.
7. Subsection 57(5) of the Act states:

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 Tenants;

(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.

Emphasis Added

8. Subsection 57(6) of the Act states:

The period referred to in subsection (5) is the period that,

(a) begins on the day the Landlord gives the notice of termination under section 48; and

(b) ends one year after the former Tenants vacate the rental unit.

9. The Landlord testified that when the Tenant moved out, all they did was paint the rental unit. The Landlord submitted that they had a potential investment buyer for the rental unit but on condition that the unit was tenanted. The Landlord testified that they listed the property for rent and ultimately found a new tenant on June 4th 2023. However, when the Landlords approached the potential investment buyer again, they backed out of the deal because too much time had passed.

10. Given the above and pursuant to subsection 57(5) of the Act, the Landlord has failed to prove on a balance of probabilities that the N12 Notice was not given in bad faith. There was no dispute that the Landlords listed the unit for rent ten days after the Tenant vacated. Further, despite the Landlords testifying that they had a potential investment buyer, it appears that there was never an Agreement of Purchase and sale, and that after the potential sale failed, they never notified the Tenant that she could stay.

11. Based on the evidence before me, I find that all the elements of the legal test in 57(1) have been proven. Specifically, I am satisfied the Tenant was given a notice of termination under section 50, the Tenant vacated the rental unit as a result of the notice, and since the Landlord did not do any extensive repairs or renovations to the rental unit, the notice was given in bad faith.

Remedies

12. The Tenant requested a rent abatement in the amount of three months rent because the Landlord did not pay any compensation. It is uncontested that the Landlord did not pay this compensation that is due on providing the Tenant with the notice of termination. I find it to be appropriate to order one month's rent compensation, in the amount of \$1,872.00, in these circumstances as pursuant to section 54(3) since there is fewer than 5 units, the Tenant was entitled to one month's compensation.

13. The Tenant requested the cost of moving expenses in the amount of \$1,310.93. This is a very reasonable cost for moving. The Tenant submitted a number of receipts totalling \$1,310.93 into evidence. Therefore, I find that the Landlord must pay the Tenant \$1,310.93

for the reasonable out-of-pocket moving, storage and other like expenses that the Tenant has incurred or will incur as a result of having to move out of the rental unit.

14. Section 57(3) 1.1 of the Act addresses compensation a tenant may request in these circumstances, it states:

An order that the landlord pay a specified sum to the former tenant as general compensation in an amount not exceeding the equivalent of 12 months of the last rent charged to the former tenant. An order under this paragraph may be made regardless of whether the former tenant has incurred any actual expenses or whether an order is made under paragraph 2.

15. The Tenant also requested general compensation for having to vacate the rental unit as a result of a notice given in bad faith. Therefore, I find that the Landlord must pay the Tenant \$22,464.00 (\$1,872.00 x 12 months) as per subsection 57(3) 1.1 of the Act for general compensation.
16. The Tenant further requested that the Board order the Landlord to pay an administrative fine. The amount that the Landlord is ordered to pay pursuant to this order is sufficient to ensure future compliance with the Act and so no fine will be ordered.
17. The Tenant is entitled to the costs of filing the application.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$25,699.93. This amount represents:
 - \$1,872.00 for a rent abatement.
 - \$1,310.93 for the reasonable moving, storage and other like expenses that the Tenant has incurred as a result of having to move out of the rental unit.
 - \$22,464.00 for general compensation.
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by September 30, 2024.
3. If the Landlord does not pay the Tenant the full amount owing by September 30, 2024, the Landlord will owe interest. This will be simple interest calculated from October 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.

August 26, 2024

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Teresa Hunt

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.