



Order under Section 57 Residential Tenancies Act, 2006

Citation: Romary v Wlodarek, 2024 ONLTB 4526

Date: 2024-01-26

File Number: LTB-T-008579-23

In the matter of: 826 Fowles Court
Milton Ontario L9T0Z6

Between: Helen Romary Tenant

And

Andrew Miroslaw Wlodarek Landlord

Helen Romary (the 'Tenant') applied for an order determining that Andrew Miroslaw Wlodarek (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on December 13, 2023.

The Landlord and the Tenant attended the hearing.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay to the Tenant a total of \$5,053.00 which represents \$5,000.00 as general compensation and \$53.00 for the cost of filing the application.

Evidence and Analysis

2. Subsection 57(1)(a) 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 N12 notice of termination under section 48 of the Act;

- The Tenant vacated the rental unit as a result of the N12 notice of termination;
 - No person referred to in subsection 48(1) of the Act occupied the rental unit within a reasonable time after the Tenant vacated; and
 - The Landlord served the N12 notice of termination in bad faith.
3. There is no dispute that the Landlord served the Tenant with two Notices of Termination ('notice') under section 48 of the *Act*. The first was served on about December 14, 2021 with a termination date of April 1, 2022, and the second was served on or about March 9, 2022 with a termination date of May 31, 2022. It is also undisputed that the Tenant moved out in accordance with this notice on June 30, 2022. It was further undisputed that in October 2022, the rental unit was listed for rent. The central factual dispute is whether the Landlord served the notice of termination in bad faith.

Presumption of Bad Faith

4. Subsection 57(5) of the *Act* provides that it is presumed, unless the contrary is proven on a balance of probabilities, that a landlord served a notice of termination under s. 48 in bad faith if, within 12 months of the tenant vacating the unit, the landlord lists it for rent (among other activities).
5. The Tenant testified that she moved out of the rental unit on June 30, 2022 as a result of the Landlord's N12 notice. The Tenant testified that on or about October 7, 2022, the unit was listed on "HouseSigma" which is a leasing advertising platform. The Landlord does not dispute that the unit was listed for rent within 12 months of the Tenant vacating. The presumption of bad faith under subsection 57(5) therefore applies.
6. The Landlord testified that he was working on contract in Poland for most of the Tenant's tenancy but that in late 2021 his son, who was living in Toronto, lost his job and needed support. The Landlord stated at that time he started to look for internal postings within his company which would allow him to return to Canada.
7. The Landlord stated that he was successful in obtaining an IT Management position on contract with a financial institution in Canada, but on the condition that he would be back in the Milton area by the beginning of April 2022. The Landlord stated that the rental unit was the only property he had in Canada and so, because he needed to occupy the unit for himself and his wife, he served the Tenant with a N12 notice on December 14, 2021 with a termination date of April 1, 2022. The Landlord testified he served the Tenant in good faith with the intention of occupying the unit indefinitely. The Landlord submitted a an airline itinerary showing arrival to Toronto from Poland for him and his wife on April 3, 2022.
8. The Landlord testified that in communications with the Tenant it became clear that she would not vacate the unit on April 1, 2022 as requested. The same emails submitted into evidence by both parties state that the Tenant was having a difficult time finding another suitable rental unit given the high cost of rent and also due to the fact that her son went to

school in the area and she did not want to move away from the school district prior to the end of the academic year.

9. The Landlord testified he then cancelled his flights to Canada and hired a legal representative to serve another N12 to the Tenant on March 10, 2022 with a new termination date of May 31, 2022. The Landlord did not provide any documentary evidence regarding the flight cancellation.
10. The Landlord stated that when the Tenant eventually moved out on June 30, 2022, he flew to Canada and moved into the rental unit sometime in early July 2022. His wife followed and occupied the rental unit with him in August 2022. The Landlord did not provide any supporting evidence of these flights, such as receipts or a flight itinerary.
11. The Landlord testified that he and his wife were not accepted into the neighbourhood by the neighbours and they felt unwelcome. The Landlord stated he and his wife would receive “dirty looks” by neighbouring residents and because of this they stopped using the patio and felt like victims in their own home. Additionally, the Landlord stated that the 3month delay in securing his house back for his personal use created an issue with his work contract and that consequently, his work no longer considered him a suitable candidate for the project he was hired for which was supposed to start in April. The Landlord also did not provide any supporting evidence in support of their testimony on this point.
12. The Landlord testified that he stayed for 3 months in the rental unit but due to the situation with the neighbours and because he could not find other work in Canada, he and his wife had to return to Poland. The Landlord testified it was these changes in circumstances which lead to the Landlord listing the unit for rent again in October 2022.
13. The Tenant testified that sometime in late November 2021 the Landlord asked to speak with her over the telephone about her tenancy. The Tenant stated at this time the Landlord suggested he would like to increase the Tenant’s rent to \$2,100.00 from the \$1,554.00 that she had been paying. The Tenant testified that she objected to this increase, advising the Landlord that it far exceeded the increase allowed by Act at the time. The Tenant testified that when she refused the rate increase the landlord said “that’s fine, I’ll just take my unit back”. The Landlord denied making this statement and also denied attempting to raise the rent to \$2,100.00.
14. The Tenant testified that she tried to obtain alternate rental accommodations when she received the Landlord’s first N12, but that she was having a particularly hard time during the winter weather and the distance she was having to drive to look for places which were in her price range. The Tenant further testified that she did not want to leave the rental unit and offered to meet the Landlord halfway with the rent increase but the Landlord refused. The Tenant submitted email correspondence with the Landlord dated January 24, 2022, in which she states the following:

Hi Andrew,

It has been very difficult to look for places given the weather and the surge of omicron, particularly as well as I am having to drive an hour away to look at places.

In our last conversation you offered a rent increase to \$2100, I wonder if you would consider if I met you halfway at \$1827.24 per month?

15. The Landlord responded two days later with the following:

I'm in the process of going back and a lot of things have been already arranged. I am sorry but can't accept your proposition.

16. I accept the Tenant's testimony that the Landlord attempted to raise the rent as she indicated. I find her evidence is supported in part by the above email exchange, in which the Landlord did not deny that he had tried to raise the rent. As a result, I do not find the Landlord to be credible on the issue of the rental increase. I prefer the Tenant's testimony and I accept, on a balance of probabilities, that the Landlord did attempt to raise the Tenant's rent.

17. For the following reasons, based on the evidence and testimony before me, I do not find that the Landlord has met its burden of rebutting the presumption that the N12 notice was served in bad faith.

18. The Landlord testified that the catalyst to looking for work in Canada and therefore needing the rental unit back was his son losing his job and needing the Landlord's support. The Landlord did not call his son, submitting that he didn't know his son's testimony would be required.

19. I do not think the Landlord's failure to call his son is particularly troubling, however I note that most of the Landlord's testimony was not supported by documentary evidence, including in circumstances where one would expect such evidence. For example, while he submitted an itinerary regarding his original cancelled flight, the Landlord provided no documentary evidence such as receipts or tickets regarding the second flight to Canada when he and his wife allegedly occupied the unit. He also did not submit any supporting documents regarding his claim that his contractual arrangement with the financial institution was cancelled or otherwise fell through. The Landlord could provide no reasonable explanation as to why he did not submit supporting evidence on these points.

20. I would have expected the Landlord to produce some documentary evidence in support of his claims regarding the second alleged flight, and even more so regarding the alleged change in employment circumstances that resulted in his need to return to Poland. In the absence of a satisfactory explanation as to why he did not produce what I would expect to be readily available evidence on a key issue in this application, I decline to find that there was a change in the Landlord's employment circumstances as he alleged.

21. Moreover, the Landlord stated part of the reason for vacating the rental unit after only three months was due to feeling unwelcome in the neighbourhood and getting "dirty looks" from the neighbours. The Landlord made no claims that threats of violence or damage to

property were received. I do not find it plausible that the Landlord would spend the time, effort, and money to move he and his wife from Poland only to leave 3 months later because of a general sense of feeling unwelcome. I do not accept the Landlord's testimony on this point.

22. For these reasons, and also because I have found that the Landlord attempted an unlawful rent increase, I am satisfied that the Landlord served the N12 notice in bad faith, and did not move in within a reasonable period of time after the Tenant vacated.

Remedies

23. The Tenant in her application requests the following remedies:

- General compensation totalling \$18,653.76, and
- An administrative fine.

General Compensation

24. The Board's authority to order general compensation is found at section 57(3)(1.1) of the *Act* which 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 [Emphasis added].

25. The Tenant and her son moved into the rental unit in 2015 and vacated in 2021; therefore, the tenancy was approximately 6 years. The Tenant testified that she had no plans to move from the unit for at least another 2 to 3 years until her son finished secondary school and decided where he would attend post-secondary education. The Tenant stated that it was extremely stressful to find a place to live with a rent that she could afford and that she spent many days looking in increasingly further jurisdictions but could not find anything suitable. When it became apparent that the Tenant could not find anything to rent within her price range, she testified that she had to resort to obtaining a loan from her mother to purchase a home in Tillsonburg, which is over 100 kilometers away from where she was living. The Tenant testified that at the time she had to purchase, there were bidding wars happening on homes and that she lost bids to several homes within her price range and within her preferred area. Tillsonburg was her last resort and her bid had to come in at the highest range in order to successfully purchase the home.

26. The Tenant provided an email from the Landlord stating that if she did not move out in accordance with the notice that she would be responsible for the Landlord's costs such as

hotel accommodations for his family. The Tenant was also sent an email by the Landlord's legal representative which stated the following:

I hope you acknowledge that Mr. Wlodarek has a right to occupy his house based on his ownership of 826 Fowles Court home.

He rented it to you while he moved temporarily to Poland, however now he decided to come back to Canada.

Mr. Wlodarek already purchased air tickets for him and his wife in order to come to Canada to re-establish Canadian residency.

In normal such situations the tenants would understand that they have to vacate the house as requested by the landlord.

In Mr. Wlodarek's case, he is forced to go through the applicable process available to him under Residential Tenancies Act.

This process involves giving N12 notice and filing application with Landlord and Tenant Board for eviction.

It is the extreme measure that the Landlord has to take and on top of that he is also paying for a legal representation.

Please let me know if we can amicable resolve the issue finishing your tenancy at Mr. Wlodarek's house in order to permit Mr. and Mrs Wlodarczyk to move in when they arrive to Canada.

It would be a major hardship for them if they would have to stay at the hotel until they get vacant possession of their house.

27. I am satisfied that these emails, which were sent to the Tenant during a stressful time occasioned by the Landlord's eviction notice, would have caused the Tenant further anxiety.
28. I accept the Tenant's evidence that the Landlord's breach had a serious and significant impact on the Tenant and her teenage son. She spent significant time and mental energy looking for suitable housing before deciding to move far away from where her and her son had lived for six years. Accounting for their stress and anxiety, and also that the Landlord's breach required the Tenant to move some 100 kilometres away, as well as my knowledge of like similar cases, I find an award of \$5,000.00 to be a reasonable and appropriate amount to compensate the Tenant for the impact that the Landlord's breach had on the Tenant and her family.

Administrative Fine

29. The Board's Guideline 16 provides that the purpose of a fine is to encourage compliance with the Act and to deter landlords from engaging in similar activities in the future. It goes on to say, "this remedy is most appropriate in cases where the landlord has shown a blatant disregard for the Act and other remedies will not provide adequate deterrence and compliance."
30. I find that the actions of the Landlord in this case do demonstrate a blatant disregard for the Act. However, I find that the significant general compensation I have awarded to the

Tenant should provide adequate deterrence from engaging in similar acts. As such, no fine shall be ordered.

31. This order contains all of the reasons intended to be given, no further reasons shall issue.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$5,053.00. This amount represents:
 - \$5,000.00 for general compensation.
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by April 30, 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.

February 23, 2024

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Melissa Anjema

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.