



Order under Section 57 Residential Tenancies Act, 2006

Citation: 1701150 ONTARIO LIMITED v SHEIK, 2024 ONLTB 1061

Date: 2024-01-30

File Number: LTB-T-073024-22

In the matter of: 53 THRESHINGMILL BLVD
OAKVILLE ON L6H0V6

Between: 1701150 ONTARIO LIMITED

Tenant

And

SAMIH SHEIK

Landlord

1701150 ONTARIO LIMITED (the 'Tenant') applied for an order determining that SAMIH SHEIK (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on November 29, 2023.

The Landlord, the Tenant's Agent G. Magno and the Tenant's witness J. Gamarra attended the hearing.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities.
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:
 - a) The Landlord gave the Tenant an N12 notice of termination under section 48 of the Act;
 - b) The Tenant vacated the rental unit as a result of the N12 notice of termination;
 - c) No person referred to in subsection 48(1) of the Act occupied the rental unit within a reasonable time after the Tenant vacated; and
 - d) The Landlord served the N12 notice of termination in bad faith.

Preliminary Issue:

3. I asked the parties about the corporate Tenant having standing at the Board. Neither party tendered the lease in evidence, but the Landlord agreed that the Tenant on the lease was 1701150 Ontario Limited.
4. Mr. Magno testified that he is one of the directors of 1701150 Ontario Limited. The Tenant's agent further testified that the Tenant rented the house for he and his wife, Jimena Gamarra, to live in. According to him, he used the rental unit for residential purposes, but that the lease was between the Landlord and a numbered corporation for "credit worthiness" reasons. The Landlord did not contest this evidence. There is nothing express in the *Residential Tenancies Act, 2006*, S.O., 2006, c.17 (the 'Act') that prohibits a corporation from being a Tenant. In any event, pursuant to s. 202 of the Act, when I unpack the substance of the transaction between the parties, based on this uncontested evidence, I am satisfied that the Tenant rented this unit for residential purposes and this application proceeds on that basis.

Analysis of Bad Faith:

5. First, I am satisfied on a balance of probabilities that the Landlord gave the Tenant notice to vacate the rental unit. Both parties agree that the Landlord did not give the Tenant an N12 notice pursuant to s. 48 of the Act. The Landlord's position was that as no N12 notice was given, the Tenant's application cannot proceed.
6. While the Landlord did not give the Tenant an N12 notice, the parties agreed that the Landlord sent an e-mail to the Tenant's agent on July 26, 2021, stating that his wife and children would be moving into the house at the end of June 2022 and that he wanted the Tenant's agent and his wife to vacate the house by the end of April 2022 so that some renovations could be completed before they moved into the home.
7. In this case, the Landlord clearly told the Mr. Magno to vacate the rental at the end of April 2022 because the Landlord's family was moving. Mr. Magno acted on that notice and moved out. Allowing the Landlord to circumvent the Act because he did not issue a specific form would be unfair and I find that the notice by e-mail was substantially compliant with the notice requirements of the Act pursuant to s. 212. Thus, I find the Landlord gave the Tenant a notice of termination for the purposes of s. 57(1)(a) of the Act.
8. Second, I am satisfied on a balance of probabilities that the Tenant vacated the rental unit because of the Landlord's email of July 26, 2021. Mr. Magno testified that moving by the end of April 2022 posed problems for him as he counter proposed a move out date at the end of May 2022 in an e-mail dated July 28, 2021. On July 30, 2021, the Landlord sent an e-mail in response stating that he needed vacant possession by the end of April 2022.
9. Mr. Magno testified that because of the Landlord's notice, he and his wife moved out of the rental unit at the end of September 2021. An e-mail from Mr. Magno dated August 30, 2021 was tendered in which he stated that he and his wife would vacate the unit at the end of September 2021. The Landlord did not contest this evidence.

10. Third, I am satisfied on a balance of probabilities that the Landlord's wife and children did not occupy the rental unit within a reasonable time after the Tenant vacated. The Landlord did not contest that his wife and children did not move in as he had indicated in his e-mail of July 26, 2021 and that they have not, to date, moved into the rental unit.

11. Finally, I am satisfied that the notice of termination continued in bad faith for the reasons that follow. Subsections 57(5) and 57(6) of the Act state:

57(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;

(6) 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 tenant vacates the rental unit.

12. The Landlord did not dispute that the rental unit was listed for rent shortly after the Tenant vacated the rental unit and that it was subsequently rented. As such, the rebuttable presumption is engaged in this case.

13. The Landlord said he genuinely intended for his family to reside in the rental unit when he gave the Tenant the notice to terminate the tenancy. However, his circumstances changed. The Landlord testified that he did not anticipate that the Tenant's agent and his wife would vacate the rental unit at the end of September 2021, seven months before he had asked them to leave. He stated that he could not afford to leave the property vacant for this amount of time, so he rented it out for the duration prior to the termination date in the notice.

14. The Landlord further testified that his wife and children were not able to move into the property when the Tenant moved out. At the time, he and his family were living in the UAE, where the Landlord works. The Landlord testified that his wife and children had planned to move back to Canada to allow his son to start kindergarten in Canada and this plan required time to execute.

15. The Landlord testified that because of the Tenant's notice to vacate at the end of September 2021 he had no choice but to offer the property for rent. He testified that in 2021 it was not possible to find a tenant for a short term rental, especially given the type of rental it was and that as a result, he rented the property to a US government employee who worked in Canada for a period of two years for more money than the Tenant rented it.

16. However, the Landlord also testified that there was a material change in circumstances *prior* to the Tenant moving out of the rental unit. He testified that his company informed him that they would no longer subsidize his home in Dubai in mid-August 2021 and he realized that he would not be able to afford to pay for the home in Dubai and have his family move into the rental unit rent free. The Landlord expressed that he realized he would not be able to afford the rental unit without it being rented prior to the Tenant moving out at the end of September 2021. As such, even if the Landlord had a good faith intention to move into the rental unit at the time he served notice, he had every opportunity to communicate to the Tenant that the cause for serving the notice no longer existed and the Landlord failed to do so. As such, the Landlord proceeded with the N12 notice in bad faith.

Remedies:

17. The Tenant seeks the following remedies:

- a) An abatement of rent in the amount of \$2,900.00;
- b) A rent differential for one year in the amount of \$34,800.00;
- c) Out-of-pocket expenses for moving and storage; and
- d) General compensation in the amount of \$5,000.00

18. The Tenant's claim for an abatement of rent was the difference between the Tenant's rent at 53 Threshingmill and the new rental. At the hearing, I explained that this claim was the same as a claim for rent differential and I address that below.

19. Paragraph 1 of s. 57(3) of the Act states that the Board can order that a landlord pay a specified sum for all or any portion of any increased rent that a former tenant has incurred or will incur for a one-year period after vacating the rental unit. Based on the evidence before me, I make an award of \$12,000.00 for a rent differential pursuant to paragraph 1 of s. 57(3).

20. The Tenant claims a rent differential for one year in the amount of \$34,800.00. The Tenant's agent testified that he and his wife moved into a new residence in Mississauga and tendered the OREA Agreement to Lease for the new property. The Agreement to Lease was dated August 10, 2021. The lease term was for 10 months starting October 1, 2021. The Tenant is as Tre Memovia Developments Ltd. At the hearing, the Tenant's agent testified that Tre Memovia Developments Ltd. is an "arm" of 1701150 Ontario Limited and that he and his brother are the directors for this corporation. While the evidence on the connection between the two corporations was vague, the Landlord did not contest it and I accept that Mr. Magno and his wife moved into the new rental unit and used it for residential purposes after moving out of 53 Threshingmill.

21. The rent at 53 Threshingmill was \$4,100.00 per month. The rent at the new rental unit at 37 Minnewawa was \$7,000.00 per month. Mr. Magno testified that 53 Threshingmill was a 4 bedroom, 3 bathroom home. The basement was unfinished. It had a double car garage and a backyard. He estimated it to be approximately 3400 sq. feet. He testified that 37 Minnewawa had 4 bedrooms and 4 bathrooms and a finished basement, as well as a double car garage and a backyard. Mr. Magno testified that 37 Minnewawa was old and dated compared to 53 Threshingmill. He estimated the house to be about 3600 sq. feet. His evidence is that both homes were in good, quiet neighbourhoods. In cross-examination, Mr. Magno agreed that the lot size at 37 Minnewawa was larger than that of 53 Threshingmill.
22. In cross-examination, Mr. Magno testified that there were few options available when it came to renting a new home and that he worried he and his wife would be homeless if they did not rent 37 Minnewawa. He also testified that 37 Minnewawa was the cheapest option available, that inventory of available rentals was drying up and that is why they did not wait until April 30, 2022 to move.
23. I find that the Tenant is entitled to some rent differential in this case. However, the Tenant will not receive the entire amount claimed for the following reasons. The two rental units are not directly comparable. The new rental at 37 Minnewawa is larger and has more amenities than 53 Threshingmill. It contains an additional bathroom, a finished basement and is on a larger lot. In addition, the rent for 37 Minnewawa was 40% greater than that of 53 Threshingmill. The Tenant had an obligation to mitigate its damages pursuant to s. 16 of the Act.
24. Mr. Magno testified that there were no comparable units available for a similar price at the time he received notice from the Landlord due to the ongoing pandemic and the fact that rental prices were higher than they had previously been. While I can take notice of the fact that the COVID 19 pandemic was happening at the time notice was given, I have no objective evidence before me that shows that there was a lack of inventory in rental units or that prices were much higher than they had been previously that would justify a rent differential of \$2,900.00 per month.
25. In addition, the lease for 37 Minnewawa was signed 15 days after the Landlord gave notice to the Tenant. While a Tenant is able to move out sooner than the termination date in a notice under s. 48 of the Act as set out in s. 48(3), in this case, given the 9 month notice period, and in the absence of evidence that justifies moving out so soon, I do not find that the Tenant attempted to mitigate its damages by finding a rental unit comparable to 53 Threshingmill.
26. Given all these circumstances, I find it reasonable to award a rent differential of \$1,000.00 for a period of 12 months. I base this award on my findings that the Tenant moved out because of the notice, that it would have been difficult to move during the pandemic and because I accept that finding a comparable unit would have been difficult at any time. However, in my view, the Tenant failed to take any measures to mitigate loss prior to renting a unit that was both larger and significantly more expensive.

27. The Tenant claimed \$3,000.00 in moving costs as well as an additional \$3,000.00 in moving costs on the application. However, the Tenant did not tender any evidence of any moving costs incurred, such as receipts. Therefore, I find there is insufficient evidence to support a claim for \$6,000.00 in moving expenses.
28. The Tenant claimed \$5,000.00 for general compensation as compensation for pain and suffering. Mr. Magno testified that he and his wife had to uproot their lives and that they lost connection with their community because of the move. Jimena Gamarra testified that she suffered a great deal over having to move from the rental unit. She testified that because of moving she had to change family doctors and dentists. In addition, her new medical providers were not as conveniently located as her previous providers had been. She also testified that moving during COVID was stressful and that it was difficult to find a new rental unit they could afford. She testified that she did not seek medical attention for this stress.
29. The Tenant did not present any medical evidence indicating an emotional injury with a causal connection to the move, or to confirm the mental distress suffered by the Tenant. I am satisfied that the impact of the breach on the Tenant is appropriately covered under the rent differential.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$12,000.00. This amount represents a partial increase in rent the Tenant has incurred for the one-year period from October 1, 2021 to September 31, 2022.
2. The Tenant is also entitled to recover \$53.00 for the cost of filing the application.
3. The Landlord shall pay the Tenant the full amount owing by February 11, 2024.
4. If the Landlord does not pay the Tenant the full amount owing by February 11, 2024, the Landlord will owe interest. This will be simple interest calculated from February 12, 2024 at 7.00% annually on the balance outstanding.
5. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

January 30, 2024

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Angela Long

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.