Order under Section 135
Residential Tenancies Act, 2006

Citation: Mohan v Mann, 2024 ONLTB 62364
Date: 2024-08-30
File Number: LTB-T-021419-23

In the matter of:	2064 Barnboard Hollow Oakville ON L6M0C7
	Tenant
Between:	Santana Mohan
	And
	Landlords
	Parminder Mann Baldip Mann

Santana Mohan (the 'Tenant') applied for an order determining that Parminder Mann (‘PM’) and Baldip Mann (the 'Landlords'):

- collected or retained money illegally; and,
- gave a notice of termination in bad faith.

This application was heard by videoconference on August 1, 2024.

The Landlords and the Tenant attended the hearing. The second-named Landlord testified on behalf of both Landlords.

Determinations:

1. The application before the Board is based on a T1 application, which alleges the Landlord failed to provide compensation as required pursuant to s. 48(1), and a T5 application alleging that the Landlord failed to move into the rental unit in a reasonable amount of time contrary to s. 57(1)(a) of the *Residential Tenancies Act* (the ‘Act’).

2. The Tenant has proven that the Landlord collected or retained money illegally, and that the Landlord gave a notice of termination in bad faith. Therefore, the Landlord shall pay to the Tenant $15,388.00.

PRELIMINARY MATTER

3. The Tenant’s application claims the rent differential in both as a rent abatement and as a rent differential, resulting in a duplication of the claim.

4. The Tenant stated that she was willing to amend her application to include only the rent differential of $13,680.00.

5. As the proposed amendment does not prejudice the Landlord, I granted the amendment to the Tenant's application.

T1 APPLICATION

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 Landlord $1,660.00**.**

2. The Landlord gave the Tenant a notice of termination under section 48 of the 'Act' and did not pay the Tenant the compensation required by the Act.

3. During the hearing, the Landlord admitted he did not provide the compensation as required under s. 48(1) of the Act. He stated that because she had moved in 15 days early at the beginning of the tenancy, and had not paid rent for that two-week period, he did not feel he should have to pay her the compensation.

4. Section 48(1) of the Act states:

> **48.1** A landlord **shall compensate a tenant in an amount equal to one month's rent** or offer the tenant another rental unit acceptable to the tenant if the landlord gives the tenant a notice of termination of the tenancy under section 48.
>
> [Emphasis added]

5. The language found in this provision of the Act is clear. The Tenant must be provided with one month's rent as compensation if terminating the tenancy. Therefore, I find that the Landlord failed to provide the compensation as required.

6. The Tenant also claimed that the Landlord failed to apply her last months' rent to the last month of her tenancy. However, this was not claimed in the Tenant's application. The remedies are limited to those claimed in the application. Therefore, I do not make a finding with regard to this allegation.

T5 APPLICATION

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 $13,680.00.

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. The Tenant proved some of all of the requirements in subsection 57(1)(a). The Tenant submitted into evidence a copy of a text message sent by the Landlord to the Tenant on July 1, 2024. The text message reads:

> "Good morning Santana! Sorry to say that we want you to please vacate this property as of August 15, 2022, because my son wants to move here. You are awesome Tenant, and we don't have any issue or problem with you. We are very sorry for any inconvenience caused to you. Thanks."

4. On July 2, 2022, the Landlord gave the Tenant an N12 notice ('N12') with a termination date of August 30, 2022. The N12 checks the boxes indicating that the intended occupants are "my spouse" and "my child." However, handwritten between both boxes on the N12, is the word "or". When read together, the N12 reads that the intended occupant is going to be the spouse or the child.

5. The Tenant moved out on or about August 31, 2022. The parties had differing evidence as to the specific date the Tenant moved out; however, the parties agree that the Tenant did move out.

6. Therefore, I find that the Tenant has made out the first two parts of the legal test as found in s. 57(1)(a) of the Act.

NO PERSON REFERRED TO IN SUBSECTION 48(1) OF THE ACT MOVED IN

7. The Tenant alleges that no one listed on the N12 moved into the rental unit within a reasonable time. She also states that she has many friends who still live on the street and that they have said that the rental unit was "being used as a parking lot" and that the Landlord comes and goes but did not seem to be living in the rental unit. However, as none of these people were called to testify to their observations, the Board gives this testimony little evidentiary weight.

8. However, the Tenant also testified that she saw a motorcycle in the driveway. She also says that she went past the rental unit several times, and knocked on the door, and no one ever answered the door. Further, she states that she looked inside the windows of the rental unit sometime in December 2022 and she saw paint brushes and cans, a step stool, and she noted there was no furniture in the unit.

9. The Tenant also testified that rental unit had been re-rented. She submitted into evidence a copy of a text message dated April 12 which states:

> "Good afternoon, this is Amr, the new Tenant at 2064 Barnboard Hollow. We've received two envelopes under the name of Snatana [sic] Louise, and I assume they might be yours…."

10. The Landlord says that he and his son did move into the rental unit on the first Saturday of September 2022, although he did not know the date. He says that he and his wife were having marital problems and that he had to move in but the couple have since reconciled.

PM, who was in the room with the Landlord, agreed that there had been marriage problems, but the pair had reconciled. He told the Board that he purchased the motorcycle for his son, and that it was his son's motorcycle that the Tenant saw in the driveway.

11. Further, the Landlord submitted two letters into evidence from the Landlords' counsel. Both letters refer to the marital issues the parties were engaged in.

12. The letter of July 4, 2022, is from the counsel of PM, which states, in-part:

> "I understand that you have indicated that you will move out of the house and into the rental property in Oakville. Please provide me with confirmation today that you have given the tenants notice of same and advise when they will be vacating so that you may move in…."

13. The letter of August 5, 2022, is from the law firm representing the Landlord. In the body of the letter, it states:

> "Nevertheless, and in the spirit of focusing attention on the substantive issues, my client will move out of the matrimonial home and into the Oakville rental property. This will occur on or around Friday, September 2, 2022…."

14. The Landlord told the Board the reason he first indicated it would be his son that would move in is because he did not want to share his personal circumstances with the Tenant. He told the Board that he was working in the rental unit, so it is not surprising the Tenant observed paint and a stepstool. The Landlord did not explain why the N12 states that it may be either PM or his son, and then ultimately, it was the Landlord and his son who moved into the rental property.

15. With regard to the furniture, the Landlord states that he was low on finances at the time. He says that everything was broken, referring to the fridge and stove. He had to pay for new things, so that left little money left over for furniture. He told the Board he had ordered internet and suggested it does not make sense that he would do this if he was not living there. In support of this, the Landlord placed into evidence a copy of his Bell Internet Invoice which provide an order confirmation number, a date of September 8, 2022, for installation services and includes the address of the rental unit.

16. The Landlord testified that the rental unit was re-rented on March 1, 2023. By this time, he and his wife had reconciled, and so he re-rented the rental unit.

ANALYSIS

17. Section 57(5) of the Act creates a rebuttable presumption of bad faith. That is to say that once the Tenant establishes the first two parts of the test found in s. 57 (1)(a) of the Act, the onus then shifts to the Landlord to show that he did move in.

18. Section 57(5) of the Act states, in-part:

> (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,
>
> (b) enters into a tenancy agreement in respect of the rental unit with someone other than the former tenant;

19. The Landlord acknowledges and agrees that he did re-rent the unit March 1, 2023. However, he states that after he moved into the rental unit, he and his wife reconciled, and he moved back into the marital home. As he no longer needed the rental unit, he re-rented the unit to a new tenant.

20. Section 202(1) of the Act states:

> **202** (1) 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 rental unit.
>
> [Emphasis added]

21. Section 202(1) instructs me, then, that I may need to look behind the obvious, or outward, form of a transaction to instead refer to the pattern of behaviour to inform my deliberations.

22. The Landlord's evidence was inconsistent. For example, the Landlord first states the rental unit is for his son in the text message. The Board understands the Landlord may not wish to reveal the real reason for needing the rental unit. In essence he was concerned about his privacy.

23. However, when issuing the N12 the next day, July 2, 2022, why not specify that it was the Landlord and his child that needed the rental unit, rather than his "spouse." Clearly identifying the intended occupant when the N12 was issued would not have resulted in any more or less privacy-related information being provided to the Tenant. In fact, by selecting "my spouse" on the N12, it leads to the same information being shared as it would if he indicated that he was moving in. In other words, if the Landlord did not want to share this type of personal information with his Tenant, having selected his spouse did not change this.

24. Further, when I contrast this with the letter of July 4, 2022, from his wife's lawyer, this letter indicates that the Landlord will be moving, not his wife or his son. I note this letter is dated only two days after the N12 was given to the Tenant. Again, on August 5, 2022, the correspondence from the Landlord's lawyer, indicates that it is the Landlord who planned to move in and not his spouse as identified as a possibility in the N12 notice.

25. In addition, the Landlord's testimony was that he bought the motorcycle for his son. However, he also stated he that he was short on money and could not afford furniture when he moved into the rental unit. It is unclear to the Board how the Landlord could afford the motorcycle, but not furniture.

26. Although the Landlord provided an internet service confirmation for the address, this is insufficient to establish that he actually moved into the rental unit. No other evidence was provided. For example, a neighbour who may have observed him moving into the rental unit or had attended the rental unit, or his son, who certainly could have testified as to where he was living during the period in question, or a receipt for a moving truck.

27. Further, the two letters from the parties' lawyers only establish that there were marital problems between the couple, but do not establish that the Landlord actually moved in. Therefore, I do not find that the Landlord discharged his evidentiary burden. I find, on a balance of probabilities, that the Landlord did not move into the rental unit. As such, I find that the Tenant has satisfied the third portion of the legal test found in s. 57(1)(a).

28. Lastly, when I review the evidence of the Tenant, she attended several times to the rental unit, and not once was the door ever answered. When she peeked into a window, there was no evidence of anyone living there.

29. As I find that the Landlord did not move in, I find that the N12 notice was given in bad faith.

REMEDIES

30. Therefore, I find that the Landlord must pay the Tenant $13,680.00 for the increased rent that the Tenant has incurred or will incur for a one-year period after the Tenant moved out of the rental unit. The Tenant's testimony is that her rent is now $2,870.00, but her application claims that her rent was $2,800.00. The Tenant agrees that this was her rent, but her rent has gone up since the application was filed. However, the Tenant is not seeking the new rent.

31. The rent differential is calculated: $2,800.00 (new rent) - $1,660.00 (old rent) = $1,140.00 per month x 12 months = 13,680.00.

32. I find the Tenant's claim of $13,680.00 to be appropriate in the circumstances. I say this because the purpose of this remedy is to deter Landlords from evicting tenants under false pretenses and to offset a Tenant's costs arising from the Landlords' breach.

33. This Order contains all the reasons within it. No other order shall issue.

It is ordered that:

1. The total amount the Landlord shall pay to the Tenant is $15,388.00. This amount represents:

    - $13,680.00 for rent differential.
    - $1,660.00 for the compensation owing.
    - $48.00 for the cost of filing the application.

2. The Landlords shall pay the Tenant the full amount owing by September 3, 2024.

3. If the Landlords do not pay the Tenant the full amount owing by September 3, 2024, the Landlord will owe interest. This will be simple interest calculated from September 4, 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 30, 2024
Date Issued

Jane Dean
Member, Landlord and Tenant Board

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