



Order under Section 57 Residential Tenancies Act, 2006

Citation: Butler v Kaur, 2024 ONLTB 61361

Date: 2024-08-16

File Number: LTB-T-065250-23

In the matter of: 315 LAVERS CRES
AMHERSTBURG ON N9V0C1

Between: D'arcy Butler Tenant

And

Baljinder Kaur
Satnam Singh Landlords

D'arcy Butler (the 'Tenant') applied for an order determining that Baljinder Kaur, Satnam Singh and Home 2 Home Properties (the 'Landlords') gave a notice of termination in bad faith.

This application was heard by videoconference on June 25, 2024.

Legal representative, B. Dean, for Home 2 Home Properties, the Landlords, the Landlords' legal representative, J. Narula, the Tenant and the Tenant's legal representative, S. Tarantino, attended the hearing.

Determinations:

1. The parties agree to remove Home 2 Home Properties from the style of cause. Home 2 Home is removed as a party to this application.
2. The issue to be determined by the Board is whether the Landlords gave the Tenant a notice of termination in bad faith. For the reasons that follow, I find that the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.

Background:

3. The residential complex is a 6,717 square foot, single family home. The property has four bedrooms, three bathrooms, a kitchen, living room, backyard and a one and a half garage.
4. It was uncontested that the Landlords provided the Tenant with an N12 notice for personal use of the property with a termination date of June 30, 2023. The Tenant vacated the rental unit on June 30, 2023.
5. It was uncontested that the Landlords sold the property on September 6, 2023.

6. It is the Tenant's position that the Landlords acted in bad faith and never intended to live in the property. The Landlords wanted to evict him so that they could sell the home.
7. The remedies requested by the Tenant in his application are: \$4,700.00 for moving and storage expenses, \$37,200.00 for general compensation and that the Landlord pay a \$35,000.00 fine to the Board.
8. The Tenant's remedies exceed the Board's monetary jurisdiction of \$35,000.00. The Tenant indicated a desire to proceed with the hearing of the application and voluntarily waived the portion of the claim that exceeds the Board's monetary jurisdiction.
9. The Tenant submitted that there is a presumption of the Landlords' bad faith, as it was agreed that the rental unit was sold three months after the Tenant vacated the unit.

Legislation & Analysis

10. Section 57 of the *Residential Tenancies Act, 2006* (the 'Act') provides tenants with a remedy if a Landlord gives a notice of termination in bad faith, the former tenant vacates the rental unit as a result of the notice, and the person who is supposed to occupy the unit does not do so within a reasonable time after the former tenant vacates.

Bad Faith Allegation

11. On an application to the Board, the person who alleges a particular event occurred has the burden of proof to establish that it is more likely than not that their version of events is true. In this application, the burden typically falls on the tenant to establish that the notice of termination was served in bad faith.
12. Subsections 57(5) and 57(6) of the Act establish a rebuttable presumption of bad faith on the following ground:
 13. 57(5) For the purposes of an application under clause (1)(a) and (c), it is presumed, unless the contrary is proven on a balance of probabilities, that a Landlords gave a notice of termination under section 48 in bad faith, if at any time during the period described in subsection (6) the Landlords,

...

(c) advertises the rental unit, or the building that contains the rental unit, for sale;

...

57(6) The period referred to in subsection (5) is the period that,

- a) begins on the day the Landlords gives the notice of termination under section 48; and
- b) ends one year after the former tenant vacates the rental unit.

14. On the basis of the uncontested evidence before me, I find that the Landlords served the Tenants with an N12 notice of Termination and that the Tenants vacated the rental unit on the basis of that notice.
15. I also find, based upon, the agreed evidence, that the Landlord sold the property on September 6, 2023. Two months, 6 days after the Tenant vacated pursuant to the termination notice, creating a rebuttable presumption that the Landlords served the N12 notice in bad faith. In other words, in this case, the burden falls on the Landlords to establish that they did not serve the notice of termination in bad faith.

Presumption of Bad Faith

16. As the Landlords sold the rental unit within 1 year of the Tenant vacating the property, section 57(5) of the Act shifts the burden to them to establish that there was good faith in the termination of the tenancy.
17. As noted above, the Landlords are presumed to have given the N12 in bad faith because they sold the property after the Tenant moved out. However, for the reasons that follow, I find that the Landlords have rebutted the presumption and established that the N12 was not given in bad faith.
18. The Landlord Satnam Singh disputed the application of the presumption of bad faith. He testified that at the time the Notice of Termination was given to the Tenants, he had full intention of residing in the rental unit with his wife.
19. The Landlord testified that he purchased the home in Amherstburg because both he and his wife are truck drivers. They travel to the U.S. on a regular basis and are only home one to two days a week. The rental property is very close to the boarder, so it made sense to own a house there.
20. When the home was purchased, their dog had an accident and required treatment in the U.S. The Landlords were forced to stay in the U.S. for three months. The Landlords decided to rent their home while their dog got better. The lease with the Tenant was signed for a one year term and then continued on a month to month basis.
21. The Landlord testified that both he and his wife are self employed. In May 2023 his contractor payments started to bounce. The Landlord relied on bank statements confirming that payments went NSF on May 12, 2023, July 14, 2023 and July 19, 2023. Due to his payments bouncing, the Landlords were forced to use their savings to pay for the mortgage. The Landlords immediately started to have financial trouble.
22. Regardless of the financial trouble they were facing, The Landlord asserts that they moved into the property on July 1, 2023. The Landlord relied on copies of their utility bills for July and August 2023 that where under their names. The Landlord asserts that he hired a cleaning company to clean the property after the Tenant vacated and relied on a cleaning bill from the property management company dated July 14, 2023.

23. The Landlord hoped to find work in Windsor, however, they were unable to find work. The Landlord testified that he interviewed at Deal Transport, On Freight Logistics, Titanium Transport and Giggs Transport. The Landlords were unsuccessful in finding work while the mortgage and bills continued to pile up. The Landlords had no choice but to sell their dream home.
24. The Landlord testified that he contacted his mortgage provider who advised him that he could withhold his mortgage for six months. Instead of going into debt, the Landlords decided to sell their home. The Landlord lost \$40,000.00 as a result of the quick sale. The Landlord asserts that they were left with no choice but to accept the reduced offer because their savings had depleted and they had no more money to pay the mortgage. Additionally, on September 1, 2023, the Landlord was able to find a job in Cambridge, the distance between Cambridge and Windsor is three hours, he could not make the long commute on a daily basis.
25. The Tenant's representative argues that although the Landlords' payments started to bounce in May 2023, the Landlords waited until July to start to look for work in Windsor where they could have started to look for work since April 2023 when the N12 notice was served. Additionally, the Landlords put the house up for sale only 20 days after they moved in. If there were genuine intentions to live in the home, the Landlords would have kept the home for a longer period of time before deciding to sell. The Landlord stated that they made a decision to look for work in Windsor upon move in because they did not have a vehicle to travel back and forth from Toronto to Windsor for interviews. By the time the Landlords moved, they no longer had money to pay the mortgage, they were in financial distress and had no other choice but to sell the home.
26. The Tenant's representative argues that the Landlord could have paid the mortgage through the Tenant's rental income, instead, the Landlord evicted the Tenant. The Landlord asserts that the intention was to move into the home and live there. They made a decision to move and look for a job until they moved but unfortunately it did not work out. The Landlord testified that to date, they still don't own or rent their own home and currently live with his in-laws.
27. I am satisfied on a balance of probabilities that the Landlords had genuine good faith intentions to occupy the rental unit when they served the N12 notice. I am persuaded by the Landlord's evidence that they intended to move into the rental unit and although they started to have financial trouble in May 2023, he hoped to find work in Windsor. I further accept his testimony that he moved into the rental property with his wife on July 1, 2023 and moved out after the property sold.
28. I find that there is sufficient evidence that rebuts the presumption of bad faith as there was a change of circumstances in the Landlords' life which led to them selling the rental property. I find that the Tenant and the Tenant's representative failed to provide evidence that established a bad faith intention or that failed to rebut the Landlords' evidence regarding the change of life circumstances.
29. Therefore, the burden of proof remains with the Tenant to establish that the requirements of s. 57(1)(a) of the Act have been met.

Subsection 57(1)(a) Tenants' Burden of Proof

30. As the rebuttable presumption has been successfully addressed by the Landlord, it is the Tenant's obligation to prove on a balance of probabilities the 3 elements contained in subsection 57(1)(a) of the Act, as outlined above.
31. The second and third elements of subsection 57(1)(a) are uncontested; the parties agree that the Tenant moved out due to the N12 notice and it was uncontested that the Landlords sold the rental property, due to a change of life circumstances.
32. The burden is on the Tenant to establish the first element of subsection 57(1)(a), that the Landlord gave the N12 notice in bad faith.
33. For the reasons set out above, and based on the evidence before me, I find the evidence of the Landlord to be straightforward, detailed and consistent; There was discrepancy on whether the Landlord had a car to look for work in Windsor before July 2023, however, I accept the Landlord's testimony that he made a decision to move and look for work in Windsor after he moved into the property. The evidence was presented without hesitation and was credible. I find that the Landlords' explanations were reasonable and on a balance of probabilities that the Landlords provided the N12 notice in good faith but that circumstances legitimately changed.
34. As the Tenant did not establish the bad faith of the Landlords in serving the N12 notice, the application must be dismissed.

It is ordered that:

1. The Tenant's application is dismissed.

August 16, 2024

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Mayra Sawicki

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.