



Order under Section 57 Residential Tenancies Act, 2006

Citation: Cargill v Sheikh, 2024 ONLTB 14216

Date: 2024-04-11

File Number: LTB-T-072817-22

In the matter of: 14 Owens Road
Brampton Ontario L6X0S1

Between: Christine Cargill Tenant

And

Zubair Sheikh Landlord

Christine Cargill (the 'Tenant') applied for an order determining that Zubair Sheikh (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on November 16, 2023.

Only the Tenant and the Tenant's legal representative, Mr. Bowers, attended the hearing.

As of 9:30 AM, the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB. A Notice of Hearing for a previous hearing, July 14, 2022, respecting this application had been returned as undelivered. The Notice of Hearing for this hearing was not returned. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded and with only the Tenant's evidence.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenant \$11,869.00.

Landlord gave N12 for own use in bad faith

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 all of the requirements in subsection 57(1)(a).
4. Based on the uncontested evidence before me, I am satisfied the Landlord served an N12 notice to terminate to the Tenant in July, 2021. In that notice the Landlord stipulated that the rental unit was required for the use of the Landlord's son.
5. The Tenant testified that she left the rental unit on November 25, 2021 in response to the N12 notice to terminate. The Tenant asserts that the Landlord advertised the rental unit for lease immediately after her departure. The Tenant has provided photographs of a "For Lease" sign on the lawn of the rental unit, which she asserts was placed shortly after she vacated the rental unit.
6. Section 57(5) of the Act creates a presumption of bad faith *inter alia* in circumstances where the person stipulated in the N12 notice does not move into the rental unit, and where the rental unit has been advertised for rent within one year of the date of service of the N12 notice to vacate.
7. On the uncontradicted evidence before me, this presumption applies to the circumstances of this case, and I find that the Tenant has established that the N12 notice was issued in bad faith, and that the Tenant is entitled to damages arising from the Landlord's breach of Section 57(1) of the Act.
8. Section 57(3) of the Act delineates the various heads of damage available to a Tenant who has established a breach of Section 57(1), as is the case here. These include an amount reflecting an increase in rent between the rent charged at the rental unit at the time the N12 was served, and the new rent paid by the Tenant at new premises for a period of up to one year, an abatement of rent, out-of-pocket expenses reflecting moving and storage costs, and an order reflecting general damages.
9. The Tenant sought to amend the application to reflect different damage claims related to rent abatement, rent differential, and general damages. The Tenant had filed this proposed amendment to the application on November 11, 2023. Without accepting the damage claims, I was prepared to accept the amended application.

10. In the amended application the Tenant seeks a rent abatement of \$11,760.00. This claim is derived from what appears to be a rent differential calculation of \$980.00 per month for one year. This is not the appropriate calculation for a rent abatement claim. Rent abatement is intended to reflect the compromise of the Tenant's enjoyment of the rental unit prior to her leaving the rental unit. The Tenant's testimony indicated that there was a compromise of her enjoyment of the unit associated with the period following the service of the N12 notice, which was approximately four months, during which period the applicable rent was, according to the application, \$2,600.00 per month. In the circumstances of this case, on the evidence before me, I find that a rent abatement of 10% for the four months prior to November 25, 2021, or \$416.00 is appropriate.
11. In the amended application, as in the original application, the applicant sought a rent differential award of \$8,400.00, which was based on a calculation reflecting a rent differential between the rental unit and the Tenant's new accommodation of \$700.00 per month for 12 months. I find, on the evidence before me that the Tenant's new accommodation is substantially similar to the rental unit. In light of the consistency of the calculation between the original application and the amended application, and the error in the rent abatement calculation described above, I find that the appropriate award associated with rent differential is \$8,400.00.
12. The Tenant advances a claim for out-of-pocket expenses amounting to \$1,742. Without exception, this claim appears to be based on expenses the Tenant incurred during the course of the tenancy, and are not in any way associated with moving or storage costs associated with her vacating the rental unit. This claim is denied in its entirety.
13. The amended application seeks a general damages award of \$5,000.00 to reflect the stress and anxiety associated with the Landlord's breach. In this case I find that the Landlord's breach did cause the Tenant considerable stress for her and her family. The Tenant testified that it was very challenging and stressful to find new accommodation suitable to the needs of her family. I find that an appropriate award for this claim is \$3,000.00.
14. The Tenant is entitled to her costs of filing the application.

Remedies

15. As explained above, I find that the Tenant experienced a compromise of her enjoyment of the rental unit for the four months prior to her leaving the rental unit equivalent to 10% of the rent paid during that period. Therefore, I find that a rent abatement of \$416.00 is appropriate in the circumstances.

16. After the Tenant vacated the rental unit pursuant to the N12 notice served upon her by the Landlord, she entered into a new lease for new accommodation. This new lease was at a monthly rent of \$700.00 more per month than she had been paying at the subject rental unit. Pursuant to section 57(5) a tenant is entitled to a rent differential award equivalent to up to one year following the termination of their tenancy pursuant to an N12 notice that has been given in bad faith. According to the evidence before me the Tenant's new accommodation is substantially similar in size and amenities to the subject rental unit. Therefore, I find that the Landlord must pay the Tenant \$8,400.00 for the increased rent that the Tenant has incurred for a one-year period after the Tenant moved out of the rental unit.
17. As explained above, I find that the Landlord's breach caused the Tenant considerable anxiety and stress. Therefore, I find that the Landlord must pay the Tenant \$3,000.00 for general compensation.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$11,869.00. This amount represents:
 - \$416.00 for a rent abatement.
 - \$8,400.00 for increased rent the Tenant incurred for the one-year period from November 25, 2021 to November 24, 2022.
 - \$3,000.00 in general damages.
 - \$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 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 ord

April 11, 2024

Date Issued

Paul Sommerville

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

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

Payment of the [fine {and} costs] must be made to the LTB by the deadline set out above. The [fine {and} costs] can be paid by certified cheque, bank draft or money order made payable to the Minister of Finance. If paying in person, the debt can also be paid by cash, credit card or debit card.