



Order under Section 57 Residential Tenancies Act, 2006

Citation: But v Dervishi, 2024 ONLTB 22471

Date: 2024-04-04

File Number: LTB-T-022128-23

In the matter of: 1228, 80 HARRISON GARDEN BLVD
NORTH YORK ON M2N7E3

Between: Tsz tung But Tenant

And

Elton Dervishi Landlord

Tsz tung But (the 'Tenant') applied for an order determining that Elton Dervishi (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by video conference on March 19, 2024.

The Landlord, the Tenant and the Tenant's agent, Jason Chan, attended the hearing.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the amount the Landlord must pay the Tenant is **\$4,573.75.**
2. I find that the Landlord gave the Tenants the notice to terminate the tenancy in bad faith.
3. Subsection 57(1) (a) of the Act establishes a four-part test. In order to be successful in their T5 application, the Tenant must establish all of the requirements of subsection 57(1)(a) on a balance of probabilities:
 - the Landlord gave a notice of termination under section 48 of the Act (the N12notice);
 - the notice was given in bad faith;
 - the Tenant vacated the rental unit as a result of the N12 notice or Board Orderbased on the N12 notice; and
 - the person named in the N12 notice did not move into the rental unit within areasonable time after the Tenants vacated.

Bad Faith Allegation

1. 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.
2. The Tenant submitted that they vacated the unit pursuant to the Landlord's N12 notice. The Landlord terminated the tenancy in bad faith as the unit was never occupied by the Landlord's mother as claimed in the N12 notice.
3. This was supported by the Landlord listing the unit for rent only five days after the Termination date on the N12 Notice, and within 3 weeks of the Tenant vacating, pursuant to the termination notice. This creates a rebuttable presumption that the Landlord served the N12 notice in bad faith.
4. Here, the burden falls on the Landlord to establish that they did not serve the notice of termination in bad faith.
5. The Tenant relied on a memorandum dated March 14, 2022 in which the Landlord agreed to reduce the monthly rent from \$2000 to \$1775 on February 1, 2021. In February 2022, the Landlord attempted to increase the monthly rent back to \$2000, however the tenant refused to pay the increase. In the memorandum, the Landlord acknowledges that it was a discussion generated from this incident that prompted the N12 notice for their mother to move into the unit.

Rebuttable Presumption of Bad Faith

6. Subsections 57(5) of the Act establish a rebuttable presumption of bad faith on the following ground:

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 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 rent;
 - (b) enters into a tenancy agreement in respect of the rental unit with someone other than the former tenant;
7. The rebuttable presumption is engaged, as it was undisputed that the rental unit was advertised for rent 5 days after the termination date on the N12 notice and after the Tenant vacated. In addition, by the Landlord's own admission and by the rental listing provided by the Tenant it was confirmed that the unit was rented to a new tenant May 15, 2022 for \$2,300 per month.

8. The Landlord's evidence that their plans to have their mother move into the unit was thwarted by the rise in mortgage interest rates was unsubstantiated at the hearing.
9. The Landlord also referred to an external agreement allegedly signed by both parties as a full and final release of all contractual obligations under the Act. However, the Act governs the duties and responsibilities of both landlords and tenants. It imposes a strict mandate by disallowing landlords to contract out of their obligations; and as such any referenced external agreement is not binding under the Act.
10. I find that the Landlord failed to rebut the presumption of bad faith. The Tenant proved all the requirements in subsection 57(1)(a) and subsection 57(5).

Remedies

11. The Tenant's application asks for a rent differential, a reimbursement of their moving expenses, general compensation and a fine.
12. The Tenant submitted that their new rent for a unit which is comparable in size and location is \$2050.00 monthly. Therefore, I find that the Landlord must pay the Tenant \$3,300.00 for the increased rent that the Tenant has incurred for a one-year period after the termination date on the N12, the date the Tenant was required to move out of the rental unit.
13. Though the Tenant requested an additional \$775.62 in increased rent, it was determined that this was utility charges incurred by the Tenant as a result of moving to a new unit where utilities was paid in addition to the monthly rent. This amount of \$775.62 cannot be considered rent under the definition of the Act.
14. The Tenant requested that the Board grant a reimbursement of expenses related to moving. The Tenant failed to show evidence of \$200 payment to a driver or any evidence supporting cleaning charges of \$350. However, the Tenant submitted receipt from "U-Haul" as evidence of moving expenses incurred. I find that the Landlord must pay the Tenant \$300.15 for the reasonable out-of-pocket moving expenses and \$150 for reasonable cleaning cost that the Tenant have or may have incurred as a result of having to move out of the rental unit.
15. The Tenant requested \$1141.33 as general compensation for additional rent paid from April 15, 2022 to April 30, 2022. Upon receiving the N12 notice, the Tenant choose to vacate the rental unit fifteen days earlier than the termination date on the N12 notice. Therefore, this additional cost will not be granted. However, section 57(3)(1.1) of the Act mandates that the Board can order that the Landlord pay a specified sum to the former tenant as general compensation. Therefore, I find that the Landlord must pay the Tenant \$775.60 for general compensation, which represents the utility expenses that the tenant incurred over the 12 month period after the termination date on the N12 notice .
16. The Tenant also requested the Board order the Landlord pay an administrative fine for breach of the Act. The Board's Interpretation Guideline 16 provides insight into the Board's use of fines and states that an administrative fine is a remedy to be used to encourage

compliance with the Act and to deter landlords from engaging in similar activity in the future: “This remedy is not normally imposed unless a Landlord has shown a blatant disregard for the Act and other remedies will not provide adequate deterrence and compliance.”

17. In the present case, as the Tenants have been awarded a substantial monetary remedy, I find that this provides a sufficient deterrent. The request for an order for an administrative fine is denied.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$4,573.75. This amount represents:
 - \$3,300.00 for increased rent the Tenant have incurred for the one-year period from May 1, 2022 to April 30, 2023
 - \$450.15 for the reasonable moving, storage and other like expenses that the Tenant have incurred as a result of having to move out of the rental unit.
 - \$775.60 for general compensation.
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by April 15, 2024.
3. If the Landlord does not pay the Tenant the full amount owing by April 15, 2024, the Landlord will owe interest. This will be simple interest calculated from April 16, 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.

April 4, 2024
Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Ender Joseph

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.