



Order under Section 57 Residential Tenancies Act, 2006

Citation: Longboat v Kantoor, 2024 ONLTB 18163

Date: 2024-03-27

File Number: LTB-T-065419-22

In the matter of: Main Floor, 1007 Beach Blvd.
Hamilton ON L8H6Z8

Between: Sharon Longboat Tenants
Thomas Lundie

And

Veeru Kantoor Landlord

Sharon Longboat and Thomas Lundie (the 'Tenants') applied for an order determining that Veeru Kantoor (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on February 6, 2024.

The Tenant Sharon Longboat, the Landlord's Spouse Dennis Khanna, and the Landlord's Legal Representative Edwin Alexander attended the hearing.

Determinations:

1. As explained below, the Tenants proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenants \$5,820.51.
2. Subsection 57(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') requires the Tenants to prove each of the following on a balance of probabilities:
 - The Landlord gave the Tenants an N12 notice of termination under section 48 of the Act;
 - The Tenants 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 Tenants vacated; and

- The Landlord served the N12 notice of termination in bad faith.
3. The parties agree that:
- The Landlord gave the Tenants an N12 notice of termination under section 48 of the Act (the 'N12 Notice');
 - The Tenants vacated the rental unit as a result of the N12 notice of termination and corresponding L2 eviction proceedings; and
 - No person referred to in subsection 48(1) of the Act occupied the rental unit within a reasonable time after the Tenants vacated.
4. The only contested issue before me is whether the Landlord served the N12 notice of termination in bad faith.

Presumption of bad faith

5. Subsection 57(5) of the Act states that, if a landlord advertises the rental unit for rent or enters into a new tenancy agreement for the rental unit with someone other than the former tenant within one year after the tenant vacates, it is presumed that the landlord gave the N12 notice in bad faith unless the contrary is proven on a balance of probabilities.
6. The Landlord's Spouse, Dennis Khanna, indicated that he acted as the Landlord's agent in the tenancy and in all legal proceedings between the parties. Mr. Khanna is the person who was supposed to move in per the N12 Notice the Landlord gave the Tenants.
7. Mr. Khanna did not contest that he listed the rental unit for rent in August 2020, two months after the Tenants moved out. Therefore, the presumption of bad faith under subsection 57(5) of the Act applies in this case. The onus is on the Landlord to show, on a balance of probabilities, that the N12 Notice was served in good faith.
8. For the following reasons, I find that the Landlord failed to rebut the presumption of bad faith, and has not proven, on a balance of probabilities, that the N12 Notice was served in good faith.
9. Mr. Khanna testified that the rental unit was in bad shape when the Tenants moved out and he intended to renovate the rental unit before moving in. According to Mr. Khanna, he experienced significant delays in obtaining the construction materials for the renovation due to COVID-19, which is why he was unable to move into the rental unit for a whole year after the Tenants moved out. Mr. Khanna testified that, despite advertising the unit for rent in August 2020, he did not re-rent it for the year when he was doing renovations and moved into the rental unit in June 2021 once the renovations were complete.
10. In cross-examination, Mr. Khanna admitted that when the Tenants moved out, he intended to re-rent the unit "as is", but potential Tenants declined to move in due to the poor state of the rental unit. Only after Mr. Khanna was unable to re-rent the unit did he decide to renovate it and move in himself. According to Mr. Khanna, he was unaware that he was still

required to move in after the Tenants vacated the rental unit because the Tenants had agreed to terminate the tenancy at the L2 hearing based on the N12 Notice.

11. I find Mr. Khanna's excuse to be unacceptable; ignorance of the Act does not change the Landlord's obligations. Furthermore, the Landlord was represented at the hearing for the L2 application and was represented at the hearing before me. Clearly Mr. Khanna was able to get legal advice and chose not to. The Landlord was not present to advise the Board of her good faith in giving the N12 Notice to the Tenants.
12. The Landlord failed to rebut the presumption of bad faith under section 57(5) of the Act. Therefore, I find that the Landlord gave the N12 Notice to the Tenants in bad faith. The Tenants have proven all parts of the legal test under section 57 of the Act.

Remedies

13. The Tenants requested \$13,440 for a rent abatement, \$767.51 for moving expenses, and \$500 for general compensation on the application, as well as an administrative fine.
14. Rent abatements are awarded when a tenant is not receiving the full bundle of goods and services they are paying for under their tenancy agreement. The Tenant testified that she was able to enjoy the rental unit fully up until the date the Tenants vacated. Therefore, the request for a rent abatement is denied.
15. Although a rent abatement is not the appropriate remedy in these circumstances, given the impact on the Tenants, I find it appropriate to grant the remedy as general compensation. There is no prejudice to the Landlord in granting the remedy as general compensation instead of a rent abatement, as the Landlord was put on notice that \$13,440 would be claimed on the application and had the opportunity to make submissions regarding both remedies at the hearing.
16. General compensation is awarded for a tenant's mental distress or hardship that resulted from their landlord's actions. For the following reasons, I find that the Tenants' lifestyle has drastically changed as a result of the Landlord's actions and the Landlord will be required to pay the Tenants general compensation.
17. The Tenant testified that the rental unit is the main floor of a house with a backyard backing down directly to Lake Ontario. The Tenants had direct access to a walking path on the beach and had their own vegetable garden. According to the Tenant, she had her grandchildren visit every weekend. The rental unit has a large eat-in kitchen, large patio doors facing the lake, and a covered porch for the summer. The Tenants were able to do smudging ceremonies at the beach and had a connection with the land around the rental unit.
18. In contrast, the Tenants are now living in a 1-bedroom apartment on King Street, with city noise and traffic right outside the window. The Tenants' new unit is smaller, with the kitchen

only having space for two chairs. The Tenant testified that this is the only affordable unit she could find in the same area and is unable to have family gatherings anymore due to the lack of space. The Tenant wanted to stay in the same area so she could keep walking her grandchildren to school.

19. I am satisfied that the Tenant has a reduced capacity to connect with her family and to conduct her cultural practices as a result of the Landlord's actions, which contributes to a significant decrease in the Tenant's quality of life. Therefore, I find that the Landlord must pay the Tenants \$5,000 in general compensation.
20. Administrative fines are a remedy imposed on landlords to encourage compliance with the Act and to deter landlords from engaging in similar conduct 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. In the matter before me, the Landlord has shown a lack of understanding of his obligations rather than a blatant disregard for the Act. Therefore, the request for an administrative fine is denied.
21. The Tenants incurred moving costs as a result of the Landlord's actions and is entitled to reimbursement of those costs. The Tenant presented receipts which were largely notes confirming that the Tenant paid several family members and friends to help with the move. However, based on my knowledge of similar situations, I am satisfied these are reasonable moving expenses. Therefore, I find that the Landlord must pay the Tenants \$767.51 for the reasonable out-of-pocket moving, storage and other like expenses that the Tenants have incurred as a result of having to move out of the rental unit.

It is ordered that:

1. The total amount the Landlord shall pay the Tenants is \$5,820.51. This amount represents:
 - \$5,000.00 for general compensation.
 - \$767.51 for the reasonable moving, storage and other like expenses that the Tenants have incurred as a result of having to move out of the rental unit.
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenants the full amount owing by April 15, 2024.
3. If the Landlord does not pay the Tenants the full amount owing by April 16, 2024, the Landlord will owe interest. This will be simple interest calculated from April 17, 2024 at 7.00% annually on the balance outstanding.
4. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

March 27, 2024

Date Issued

Kate Sinipostolova

Member, Landlord and Tenant Board

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