



Order under Section 57 Residential Tenancies Act, 2006

Citation: Sheppey v Anna Moore Realty Inc., 2024 ONLTB 22967

Date: 2024-03-26

File Number: LTB-T-055873-22

In the matter of: 2, 196 BLAKE STREET
BARRIE ON L4M1K3

Between: Stephanie Sheppey Tenant

And

Anna Moore Realty Inc. Landlord

Stephanie Sheppey (the 'Tenant') applied for an order determining that Anna Moore Realty Inc. (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on October 5, 2023. The Tenant, the Landlord's agent, Anna Moore, the Landlord's witness, Phillip Moore ('P.M'), and the Landlord's legal representative, Jennifer Fiegehen attended the hearing.

Determinations:

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 a total of \$7,673.00.
 - Pay an administrative fine of \$7,000.00 to the Board.

2. This is an application based on Section 57 of the Act, which provides that a Tenant who was given a Notice of Termination under section 48 in bad faith may bring an application, and if the board determines that;
 - (a) the landlord gave a notice of termination under section 48 in bad faith, the former tenant vacated the rental unit as a result of the notice or as a result of an application to or order made by the Board based on the notice, and no person referred to in clause 48 (1) (a), (b), (c) or (d) occupied the rental unit within a reasonable time after the former tenant vacated the rental unit;

3. Section 57(1) (a) contains a three-part test. In order to be successful the Tenants must establish all three of the requirements of subsection 57(1)(a) on a balance of probabilities.

- First, that the Landlord gave a notice of termination under section 48 of the Act (the N12 notice) in bad faith;
 - Second, that the Tenants vacated the rental unit as a result of the N12 notice or a Board order based on the N12 notice; and,
 - Third, that the Landlord did not move into the rental unit within a reasonable time after the Tenants vacated.
4. There was no dispute that the Landlord served the Tenants with an N12 notice of termination under s.48 stating they in good faith require the rental unit for their child's residential occupation by July 31, 2021, for a period of at least one year.
 5. There is no dispute that the Tenant vacated the rental unit on July 1, 2021.

Bad Faith:

6. With respect to the issue of whether the N12 notice was served in bad faith, there was no dispute that the Landlord listed the rental unit for rent within the one year after the Tenant vacated.
7. Section 57(5) of the Act provides that in circumstances such as this there is a rebuttable presumption that the N12 notice was served in bad faith:

57(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,

- a) advertises the rental unit for rent;
- b) enters into a tenancy agreement in respect of the rental unit with someone other than the former tenant; ...

8. For the following reasons, based on the evidence and testimony before me, I do not find that the Landlord has met the burden of establishing that the N12 notice was served in good faith.
9. Although the validity of the notice of termination is largely irrelevant on an application pursuant to section 57 of the Act. The Landlord is a corporation, section 48(5) states that an N12 served in accordance with section 48 does not authorize a landlord to give a notice of termination of a tenancy with respect to a rental unit unless, the rental unit is owned in whole or in part by and individual; and the landlord is an individual.
10. A copy of the tenancy agreement was submitted, and the Landlord's legal name noted on the agreement was Anna Moore Reality Inc. the Landlord also testified and confirmed at the hearing that the company owns the residential complex in which the rental unit was located and was aware that a corporation cannot serve an N12 notice of termination, and

the notice would most likely have failed had the eviction proceeding in connection with the notice served went forward.

11. The Landlord has a property management company and was sharing an office with her eldest son. She says that he came to her asking for a possible place to live and they decided that the Tenant's unit was a good fit. The Landlord testified that she did not know the intricacies involving the move as it was organized by her son, Phillip.
12. The Landlord called P.M to testify at the hearing. Overall P.M's testimony was inconsistent and therefore not the most reliable. P.M testified that in 2020 he was planning to relocate to Greece however the COVID-19 pandemic precluded him from being able to do it during that time.
13. P.M testified that he moved into the rental unit in the second week of July 2021 and lived in the rental unit approximately 3 months. The Landlord testified that she did not help P.M with his move and relocation to the rental unit and P.M testified that he did not plan much of the move as his mother was the one taking care of the specifics.
14. When P.M was also asked about specifics regarding the rental unit like the number of the rental unit, shelving in the bathroom, and colours or wallpaper in the rental unit- he could not remember or needed to change his testimony. P.M also testified that he never changed his mailing address to the rental unit.
15. It also appeared that P.M was traveling for most of the time that he was 'residing' in the rental unit. There were Instagram posts that P.M had made during travels he was presumably on, which triggered him to change some of his testimony during the hearing.
16. P.M also testified that he was working as a realtor and in approximately the middle of September 2021, he obtained a job with a client of his who offered him a position in Toronto. He tried commuting but it was no longer feasible for him, so he decided to relocate. P.M says he moved out mid October and the rental unit was re-rented in November or December of 2021.
17. I do not believe that the Landlord's child moved into the rental unit. I say this because I do not find the testimony of the Landlord or their witness creditable on this point. Neither the Landlord or their son could speak to the specifics regarding the move. The Landlord said that her son was the one who dealt with it and P.M said that his mom (the Landlord) dealt with it.
18. I would assume that if there was a genuine intention for someone to move into a space there would be some planning that would go into the move it's self. The Landlord's lack of evidence on this point is also concerning. There were no receipts, no proof of utility bills, or like documents submitted into evidence. Although may not be required- however it is the Landlord's burden to prove that the notice was given in good faith and so I would think these documents may have supported the Landlord's case.
19. P.M also had a hard time recollecting what the unit looked like, and the unit number. He says that he had lived in many properties, so it was hard for him to remember. However,

he could remember the colour and make of the vehicle he was driving as well as other specific dates around getting job offers and relocating to Toronto. P.M also did not forward or change his mail to the rental unit, which I think also speaks to whether there was a genuine intention to reside in the rental unit.

20. I also do not find that such a brief period occupation by the Landlord's child is sufficient to constitute actual residential occupation for the purpose of s.57(1)(a).
21. The Landlord obtained vacant possession by serving a notice of termination under s.48(1) of the Act. That section states that a Landlord may, by notice terminate a tenancy if the landlord and/or their child, in good faith, requires possession of the rental unit for the purpose of residential occupation for a period of at least one year.
22. The legal tests set out in sections 48 and 57 have a slight distinction from each other with respect to the one-year requirement. Section 48 of the Act is in the context of eviction and section 57 is in the context of a tenant's application for bad faith.
23. In order for a landlord to be successful on an application for eviction pursuant to section 48, the Landlord must satisfy the Board that the individual who intends to occupy has a genuine intention to occupy for a period of at least one year. This one-year requirement is not addressed in section 57 of the Act.
24. The Supreme Court held in *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 (SCC), [1998], The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
25. The purpose of the Act as defined in section 1 is in part to provide protections for residential tenants from unlawful evictions and to balance the rights and responsibilities of residential landlords and tenants. It is clear that the legislature intended landlords to be permitted to evict tenants to allow the landlord to move in only if the landlord (or their family member) will live in the unit for at least one year. I am of the view that, although section 57 does not address this requirement, it would be unreasonable to ignore the one-year requirement when determining whether the Landlord has actually occupied the rental unit.
26. I do not believe that the legislature intended to create a potential legal 'loophole' where a landlord services a notice for personal use, obtains vacant possession, occupies the rental unit for a short period of time, and just by the virtue of occupying escapes the accountability of giving a notice in bad faith.
27. Therefore, the Tenants have satisfied the tests contained in s.57(1) and are entitled to remedies under s.57(3) of the Act.

Remedies

Rent Abatement:

28. The Tenant requests a rent abatement of \$6,600.00 which represents 100% of the rent for a period of 6 months. An abatement of rent is a contractual remedy that recognises the idea that if a tenant is paying rent for a bundle of goods and services and is not receiving everything being paid for then they are entitled to an abatement proportional to the difference between what is being paid for and what is being received.
29. In order for the Tenant to be successful for a 100% rent abatement, they need to establish that the unit was basically uninhabitable or that the Tenant lost 100% use or enjoyment of the rental unit. I do not find this is the case here. However, the Tenant did state that she lost some enjoyment of the rental unit in having to look for other accommodations, packing, and the stress of the move. I accept that evidence and therefore find a 10% abatement is warranted for the months of April 2021 to June 2021 (3 months). 10% of \$1,100.00 is \$110.00 for 3 months is \$330.00. An order for this amount shall issue.

Rent Differential:

30. The Tenant in their application requested their increased rent for 12 months as a result of having to move out of the rental unit. In order to be successful in whole or in part for a rent differential, the Tenant must establish that the rental units are comparable.
31. The Tenant says that her former rental unit was \$1,100.00 per month which included parking and utilities. It was a one bedroom and one bathroom unit. The Tenant's new rental unit was \$2,000.00 per month, 2 bedroom, 1 bathroom, condo unit, utilities were not included or parking.
32. The difference in rent is \$900.00, however the Tenant received a nicer unit and an additional bedroom, therefore the unit was most likely slightly larger. I therefore do not find that the units are 100% comparable. I find that a rent differential of \$500.00 to be fair in the circumstances. \$500.00 for 12 months equals \$6,000.00 an order for this amount shall issue.

Moving Expenses:

33. The Tenant did not provide receipts or proof of payment for the costs associated with moving. I would expect that if the Tenant was expecting to be re-embursed for these expenses, she would have retained those documents. Therefore, I decline to award anything in relation to this remedy.

General Compensation:

34. The Board's authority to order general compensation is found at section 57(3)(1.1), which states:

An order that the landlord pay a specified sum to the former tenant as general compensation in an amount not exceeding the equivalent of 12 months of the last rent charged to the former tenant. An order under this paragraph may be made regardless of whether the former tenant has incurred any actual expenses or whether an order is made under paragraph 2 [Emphasis added].

35. The Tenant asks for amounts she was charged for increased hydro charges, parking, and set up fees with the utility provider. These charges were additional as they were not services included in her rent unlike at her former rental unit where utilities and parking were included. The Tenant requests \$80.00 per month for 12 months for hydro, \$25.00 for 12 months and a \$30.00 set up fee with the utility provider. I find these amounts reasonable and therefore an order for this amount shall issue for a total of \$1,290.00.
36. The Tenant also seeks \$1,100.00 which represents an additional month of compensation she says the Landlord told her she would receive provided that she moves out before the end of June. There was insufficient evidence to conclude that this agreement existed between the parties. Therefore, I decline to make an order for this claim.

Administrative Fine:

37. The Board's Guideline 16 suggests that the purpose of a fine is to encourage compliance with the Act and to deter landlords from engaging in similar activities in the future. It goes on to say, "this remedy is most appropriate in cases where the landlord has shown a blatant disregard for the Act and other remedies will not provide adequate deterrence and compliance."
38. The guideline also outlines in assessing quantum the member may consider the following:
- The nature and severity of the breach
 - The effect on the breach on the tenant
 - Any other relevant factors
39. I find that the Landlord's course of conduct is a blatant disregard for the Act. The Landlord serves an eviction notice that they had no authority to do pursuant to section 48(5) as outlined above. The Tenant was displaced from her home as a result of this conduct.
40. The Tenant says she was also subsequently evicted from her new rental unit as she could not afford the monthly rent in the new unit. The Landlord is a corporation with other rental units, and I am not persuaded that the already awarded remedies would provide adequate deterrence of engaging in similar type behaviour.
41. Therefore, I find an administrative fine of \$7,000.00 to be warranted in the circumstances.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$7,673.00. This amount represents:
 - \$330.00 for a rent abatement.
 - \$6,000.00 for increased rent the Tenant has incurred for the one-year period.
 - \$1,290.00 in general compensation

- \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by April 6, 2024 .
 3. If the Landlord does not pay the Tenant the full amount owing by April 6, 2024, the Landlord will owe interest. This will be simple interest calculated from April 7, 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.
 5. The Landlord shall pay to the Landlord and Tenant Board an administrative fine in the amount of \$7,000.00 by April 6, 2024.

2024 ONLTB 22967 (CanLII)

March 26, 2024

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

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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.

Payment of the fine and costs must be made to the LTB by the deadline set out above. The fine 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.