



**Order under Section 57
Residential Tenancies Act, 2006**

Citation: MARSH v BODLA, 2024 ONLTB 13860

Date: 2024-03-08

File Number: LTB-T-056660-22

In the matter of: 24 ARTHUR FACH DRIVE
CAMBRIDGE ON N1T2G6

Between: DEREK MARSH Tenant

PIR MAHMOOD AHMAD BODLA Landlords
TALAT AFZA
And

DEREK MARSH (the 'Tenant') applied for an order determining that PIR MAHMOOD AHMAD BODLA and TALAT AFZA (the 'Landlords') gave a notice of termination in bad faith.

This application was heard by videoconference on January 15, 2024.

The Landlords, the Landlords' Representative Simila Waslat, the Tenant and the Tenant's Representative Michael Cameron attended the hearing.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlords must pay the Tenant a total of \$13,641.47, which represents:

- \$2,311.20 for a rent abatement.
 - \$3,288.00 for rent differential.
 - \$4,989.27 for moving costs.
 - \$53.00 for the cost of filing the application.
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. It was uncontested that the Landlords served the Tenant with a Notice of Termination ('notice') under section 48 of the Act in October 2021 and that the Tenant moved out because he received this notice. It was also uncontested that the rental unit was listed for sale a short time after the Tenant had vacated and that no person specified by section 48 of the Act occupied the rental unit within a reasonable period of time.

Evidence and Analysis

4. The Tenant testified that, pursuant to the Landlord's N12 Notice he and his family moved out of the rental unit on December 15, 2021. The Tenants stated that on or about May 9, 2022, the rental unit was listed for sale; therefore, the presumption of bad faith under section 57(5) applies. What this means is that the Landlords must prove it is more likely than not that when they gave the N12 to the Tenant they genuinely intended that they would move in.
5. The Landlord, Talat Afza (TA), testified the Landlords had rented out their home while they were in Pakistan and required vacant possession of the rental unit so they could return to Canada. The Landlords essentially allege that unforeseen circumstances, political turmoil, floods and a bad real estate market in Pakistan resulted in delaying their return to Canada, which in turn led to the Landlords listing the rental for sale and then for lease.
6. TA testified that because she was unable to sell her home in Pakistan, she was unable to complete the move to Canada due to health issues and the 150 day wait for health care in Canada to take effect. Financially, the move to Canada was no longer possible.
7. TA further testified that she received advice from a real estate agent in Canada to sell the rental unit to purchase a smaller home in Canada and the proceeds of the sale of the rental

unit would help finance the move. The home did not sell and sat vacant for 8 months and then the Landlords listed the property for lease.

8. For the reasons that follow, I do not find that the Landlords have rebutted the presumption that they served the N12 in bad faith.
9. I find that the N12 notice was served prematurely, with no real plan in place for returning to Canada and moving into the rental unit. The Landlords had not listed their home in Pakistan for sale, and financially were unable to move prior to the sale.
10. TA testified that if the Tenant had requested additional time, it would have been granted, therefore, again showing the Landlord had no set timeline to actually move into the rental unit. As of the date of this hearing, the Landlords had not moved into the rental unit.
11. For all of these reasons, I find that the Landlords served the notice of termination in bad faith and have breached section 57(1)(a) of the Act.

Remedies

12. The Tenant in his application requests the following remedies:

- Rent abatement totalling \$23,112.00, which equated to 100% of the rent for a period of 12 months;
- Rent differential, totaling \$3,288.00
- Moving expenses, totaling \$4,989.27 • General damages, totaling \$6250.00; and
- An Administrative fine.

Rent Abatement

13. A rent abatement is a contractual remedy geared towards the premise that if a tenant is paying 100% of the rent for a bundle of goods and services but is not receiving the full benefit of those goods or services, that they should be abated the difference for what they are not receiving but paying for.
14. As a result of the N12 notice, undoubtably the Tenant lost some reasonable enjoyment of the rental unit. I do not find a 100% rent abatement to be appropriate in the circumstances. In order for the Tenants to be successful in receiving 100% abatement, they would need to prove that essentially living in the rental unit would be near impossible, or full and complete use and enjoyment of the unit was lost for that period of time. The Tenant did not provide such evidence.

15. The Tenant was notified of the Landlords' intention to reclaim the rental unit in October 2021 and the Tenants vacated December 15, 2021. The Tenants testified that it was difficult to find another suitable rental unit and that they looked at many options. The increase in price of rental units and the limited availability, forced the family to move to another city, London, ON, to be able to afford rent. This move also created problems with the Tenant's son with schooling and the Tenant's wife with loss of income from babysitting. The move also impacted the family by having to move so far away from friends, family and work.
16. I find that the uncontested evidence of the Tenant regarding the stress of a move as well as packing and preparing contributes to a loss of enjoyment; therefore, the Tenant is entitled to an abatement. I find an abatement of 10% to be fair in the circumstances. 10% of \$1,926.00 is \$192.60 for 12 months equals \$2,311.20. An order for this amount will issue.

Rent Differential

17. The Tenant's new rental unit is in London, ON, is over an hour drive away from their former unit, friends, family and work. I have considered the Tenant's testimony regarding the difficulty finding a comparable unit in the Cambridge area and the increased cost in a rental unit in that area of approximately \$1000.00 per month. I have also considered the adverse impact of having to move to move such a distance, away from friends and family and the commute back to Cambridge daily for work: therefore, I find that the Tenant is entitled to rent differential.
18. The Tenants are paying \$274.00 more per month in rent. \$274.00 for 12 months equals \$3,288.00. Therefore, the Landlords shall be ordered to pay a rent abatement in this amount.

Moving Costs

19. The Tenants have claimed \$4,989.27 for moving costs and have calculated those expenses on the basis of the cost for a moving truck and the services of a moving copy. Bank statements and a copy of the invoice for the moving company was provided. The Tenant is entitled to the cost of moving.

Administrative Fine

20. 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."

21. I find that the actions of the Landlords in this case to demonstrate a disregard for the Act. However, I find that the remedies already awarded should provide adequate deterrence from engaging in similar acts.

22. This order contains all of the reasons intended to be given, no further reasons shall issue.

It is ordered that:

1. The total amount the Landlords shall pay the Tenant is \$13,641.47. This amount represents:
 - \$2,311.20 for a rent abatement.
 - \$3,288.00 for rent differential.
 - \$4,989.27 for moving costs.
 - \$53.00 for the cost of filing the application.
2. The Landlords shall pay the Tenant the full amount owing by March 19, 2024 .
3. If the Landlords do not pay the Tenant the full amount owing by March 12, 2024, the Landlords will owe interest. This will be simple interest calculated from March 20, 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.

March 8, 2024

Date Issued

Brenda Mercer

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.