



Order under Section 57 Residential Tenancies Act, 2006

Citation: Spence v Adams, 2024 ONLTB 6763

Date: 2024-01-26

File Number: LTB-T-048909-22

In the matter of: 124 Stevenson Road North
Oshawa Ontario L1J5M5

Between:	Sarah Spence Zachary LePage Karen Spence Paul Spence Alex Spence	Tenants
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And

Robert Adams	Landlord
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Sarah Spence, Zachary LePage, Karen Spence, Paul Spence and Alex Spence (the 'Tenants') applied for an order determining that Robert Adams (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on January 16, 2024.

The Landlord's Legal Representative, T. Williams, the Landlord, and two of the Tenants, Sarah Spence and Zachary LePage, attended the hearing.

Determinations:

1. As explained below, the Tenants proved the allegations contained in the application on a balance of probabilities.
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 Tenant 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 Tenant vacated; and
 - The Landlord served the N12 notice of termination in bad faith.
3. There was no dispute that the Landlords gave the Tenants an N12 notice of termination under subsection 48(1)(a) and (c) of the Act, that the Tenants vacated the rental unit on

September 30, 2021 as a result of that notice, and that the Landlord and his children did not move into the rental unit. It was also not in dispute that the Landlord listed and sold the rental unit in March 2022.

4. Subsection 57(5) of the Act states:

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 Tenants;
- (c) advertises the rental unit, or the building that contains the rental unit, for sale;
- (d) demolishes the rental unit or the building containing the rental unit; or
- (e) takes any step to convert the rental unit, or the building containing the rental unit, to use for a purpose other than residential premises.

Emphasis Added

5. Subsection 57(6) of the Act states:

The period referred to in subsection (5) is the period that,

- (a) begins on the day the Landlord gives the notice of termination under section 48; and
- (b) ends one year after the former Tenants vacate the rental unit.

6. The Landlord and his children only intended to reside in the rental unit if and when extensive renovations, including the addition of a second floor, were completed at the rental unit. Although the Landlord served the N12 Notice on the Tenants in August 2021, the Landlord did not have any architectural drawings or building permits. The Landlord stated that he only received the architectural drawings in December 2021.
7. The Landlord confirmed that the only work completed prior to serving the N12 Notice on the Tenants was testing the soil and confirming that the footings would support a second storey. The Landlord stated that he was originally told, during the initial designs which was after the Tenants vacated, that the second story joist was sufficient, only to subsequently find out through attempting to obtain building permits that the joist would have to be removed. Which meant that the electrical and HVAC systems would also have to be redone.

8. The Landlord stated given the increasing costs and delays with the project it became way over his budget so he opted to sell as they could not afford two mortgages. At no time, did the Landlord contact the Tenants when his intended renovation plan changed to allow them to move back into the unit.
9. The Tenants asserted that the Landlord gave the N12 Notice in bad faith to have them vacate in order to take advantage of the real estate market at the time and sell the unit. It was not disputed that the Landlord did complete some minor repairs to the rental unit prior to listing the property for sale.
10. Given the above and pursuant to subsection 57(5) of the Act, the N12 Notice was presumed given in bad faith. The rental unit was listed and sold within the one year period after the Tenants vacated. There was no dispute that Landlord and his children would only occupy the rental unit when and if significant renovations were completed. Therefore, the Landlord ought to have had the designs, permits, and costs assessed for this major renovation prior to serving the N12 Notice on the Tenants.
11. Further, I find it more likely than not that the Landlord intended to sell the rental unit given the market at the time and the fact that the rental unit was sold for \$225,100.00 over asking price. The rental unit was tenanted for almost three years, if the Landlord's intended renovation project simply fell through within a couple of months after the Tenants vacating, I find it more likely than not that the Landlord would have contacted the Tenants or re-rented the unit.

Remedy

12. The Tenants requested general compensation equal to one year of rent paid to the Landlord pursuant to subsection 57(3) (1.1) of the Act. The Tenants monthly rent at the time of vacating was \$1,890.00. The Tenants had resided in the rental unit for almost three years with their two young children. The female Tenant was pregnant at the time of service of the N12 Notice in August 2021 which was also during the COVID pandemic. The Tenants stated that having to find alternate accommodations and move during this time with short notice was very stressful.
13. The Landlord's Legal Representative submitted that this amount is unreasonable. She further submitted that the Tenants are not seeking increased rent or moving costs.
14. There was no dispute that the Tenants did not seek remedies for the moving costs or their increased rent of \$1,010.00 per month. In an application a party can request any remedy available to them at law.
15. Based on the evidence before me, I was satisfied that having to find a rental unit and move while pregnant with two young children during a global pandemic would be extremely stressful. Therefore, I find that the Landlord must pay the Tenant \$22,680.00 as general compensation.

It is ordered that:

1. The total amount the Landlord shall pay the Tenants is \$22,733.00. This amount represents:
 - \$22,680.00 for general compensation.
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenants the full amount owing by February 6, 2024.
3. If the Landlord does not pay the Tenants the full amount owing by February 6, 2024, the Landlord will owe interest. This will be simple interest calculated from February 7, 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.

January 26, 2024
Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Lisa Del Vecchio
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.