



Order under Section 57 Residential Tenancies Act, 2006

Citation: ABU-SHAAR v DESROSIERS, 2023 ONLTB 82008

Date: 2023-12-22

File Number: LTB-T-065830-22

In the matter of: 1852 APPLEFORD STREET
OTTAWA ON K1J6T4

Between: LINA ABU-SHAAR Tenants
FAISAL ZYADEH
HANA ZYADEH

And

DEBRA DESROSIERS Landlords
PAUL GIBBARD

LINA ABU-SHAAR, FAISAL ZYADEH and HANA ZYADEH (the 'Tenants') applied for an order determining that DEBRA DESROSIERS and PAUL GIBBARD (the 'Landlords') gave a notice of termination in bad faith.

This application was heard by videoconference on December 13, 2023.

One of the Landlords, Debra Desrosiers (DD), one of the Tenants, Lina Abu-Shaar (LA), and TC Taggart from Attaché TMS Associates, attended the hearing.

Determinations:

1. ATTACHE TMS ASSOCIATES is removed as a party in this application as it was the Property Management company hired by the Landlords during the tenancy. Their actions were only as a result of the Landlords' direction. DD and LA did not oppose removing the property management company as a party.
2. As explained below, the Tenants proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlords must pay to the Tenants an amount totalling \$7,463.55. The Tenants are also entitled to the costs of filing this application.

3. 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 Landlords 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 Landlords served the N12 notice of termination in bad faith.
4. There was no dispute that the Landlords gave the Tenants an N12 notice of termination under section 48 of the Act, that the Tenants vacated the rental unit as a result of that notice, or that the Landlords' child moved into the rental unit in July 2020. However, it was also not in dispute that the Landlords listed and sold the rental unit in January 2021.
5. Section 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 Landlords gave a notice of termination under section 48 in bad faith, if at any time during the period described in subsection (6) the Landlords,

- (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

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

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

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

7. DD stated that the N12 notice was not given in bad faith as her daughter and son-in-law occupied the rental unit and planned to live there for at least one year, however their circumstances changed. DD stated that when her husband and her returned to Canada in September 2020 they were staying with their daughter and son-in-law at the rental unit, while attempting to purchase another home just for them. DD stated that around November/December 2020 after being unsuccessful in purchasing a home for her husband and her, they along with her daughter and son-in-law, who enjoyed living together, decided that they would buy a bigger property together.
8. DD stated that they bought and moved into a house together in December 2020. Then they placed the rental unit for sale in January 2021 as the proceeds from this sale were necessary for the financing for the purchase of the bigger home as they had taken out a bridge loan in the interim.
9. Based on the evidence before me I was not satisfied on the balance of probabilities that the Landlords circumstances changed and it was necessary to sell the rental unit. The Landlords voluntarily chose to purchase another property and sell the rental unit within the timeframe that their child ought to have continued to occupy the rental unit. The N12 notice of termination given to the Tenants clearly stated, "the following person intends to move into the rental unit and occupy it for at least one year: my child."
10. Consequently in accordance with subsection 57(5) of the Act, it is presumed that the Landlords gave the notice in bad faith as they advertised the rental unit for sale and sold it within the referred period as set out in subsection 57(6) of the Act, being up to one year after the Tenants vacated.

Remedies

11. In the application, the Tenants requested an abatement of rent for one year. The monthly rent for the unit was \$1,880.25. LA stated that the N12 notice of termination was given in March 2020 at the height of the global pandemic wherein a state of emergency had been declared in the province requiring everyone to stay in place. LA stated that it was a stressful time in their lives to try and find another unit at that time.
12. Given the circumstances and restrictions in place as a result of the COVID pandemic at that time, I find it was most likely an extremely challenging time to find and rent another unit. Given this, I find that a rent abatement of rent totalling \$3,761.50 representing 50% for the months of March, April, May and June 2020 is appropriate in the circumstances.
13. LA stated that the only unit they could find and secure in this timeframe was approximately thirty kilometers away from their respective workplaces, more expensive (\$2,100.00), smaller (3 bedroom), and an end unit townhouse. The rental unit was a 4 bedroom single family dwelling.

14. Therefore, I find that the Landlords must pay the Tenants \$2,631.00 (\$219.25 x 12) for the increased rent that the Tenants have incurred for a one-year period after the Tenants moved out of the rental unit.
15. In the application, the Tenants requested expenses related to moving and storage of \$1,071.05. LA stated that they paid \$1,600.00 cash to the only moving company they could find at this time. LA also stated that they incurred expenses for transferring services and utilities such as hydro, internet, and water, as well as expenses for mail forwarding with Canada Post. LA further stated that they had increased expenses in gas for their cars as their new unit was further away from their work, which they continued to attend as their work was deemed essential services during this time.
16. Based on the evidence before me, I find that the Landlords must pay the Tenants \$1,071.05, the amount claimed, for the Tenants' reasonable out-of-pocket moving, storage and other like expenses that they incurred as a result of having to move out of the rental unit.

It is ordered that:

1. The total amount the Landlords shall pay the Tenants is \$7,516.55. This amount represents:
 - \$3,761.50 for a rent abatement.
 - \$2,631.00 for increased rent the Tenants have incurred for the one-year period from July 1, 2020 to June 30, 2021.
 - \$1,071.05 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 Landlords shall pay the Tenants the full amount owing by January 2, 2024.
3. If the Landlords do not pay the Tenants the full amount owing by January 2, 2024, the Landlords will owe interest. This will be simple interest calculated from January 3, 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.

December 22, 2023

Date Issued

15 Grosvenor Street, Ground Floor

Lisa Del Vecchio

Member, Landlord and Tenant Board

Toronto ON M7A 2G6

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