



Order under Section 57 Residential Tenancies Act, 2006

Citation: Brisson v Jenkins, 2023 ONLTB 79395

Date: 2023-12-07

File Number:
LTB-T-055297-22

In the matter of: 50 WOODHOUSE ST
SIMCOE ON N3Y1E9

Between: Christine Brisson Tenant

and

Murray Jenkins
Rana Khader Landlords

Christine Brisson (the 'Tenant') applied for an order determining that Murray Jenkins and Rana Khader (the 'Landlords') gave a notice of termination in bad faith.

This application was heard by videoconference on November 28, 2023.

The Tenant and the Landlords attended the hearing. **Determinations:**

1. As explained below, I find that the Landlords served the N12 Notice of Termination ('N12 Notice') in bad faith and the Tenant's application is granted.

Preliminary Issue – Settlement Agreement

2. The Landlords submitted that they previously entered into a settlement with the Tenant with respect to the Tenant vacating the rental unit in accordance with the N12 Notice. The Landlords submit that they paid the Tenant a sum for moving costs, among other things, and the Tenant agreed to not take any legal action against the Landlords with respect to this tenancy.

3. The Landlords submitted a copy of the document purported to be a settlement agreement. The agreement includes an acknowledgement that the Tenant has received \$650.00 to assist with costs of moving. The agreement also states the following:

“Christine Brisson will not take any legal actions for any other money in regards to the tenant agreement made about the property 50 Woodhouse in Simcoe, and she acknowledges she is satisfied with the above mentioned settlement made with Rana Khader in regards to end of tenancy of the property.”

4. The agreement was signed by the Landlord, Rana Khader, and the Tenant on April 2, 2022. It was undisputed that at the time the agreement was signed, that the Tenant believed that the Landlords intended to move into the rental unit. In fact, it was MJ’s testimony that the Landlords’ decision to not move into the rental unit was not made until a month after this agreement was signed.
5. In all of the circumstances, I do not find the alleged settlement agreement to be sufficiently clear for me to draw the conclusion that the parties had contemplated the good faith intention of the Landlords’ N12 Notice and reached a settlement on that issue. As a result, I do not accept that there is a settlement agreement which prevents the Tenant from pursuing this application.

N12 Notice of Termination

6. The Tenant resided in the rental unit for 12 years. At the time the Tenant vacated the rental unit, she was paying a monthly rent in the amount of \$1,300.00.
7. The Landlords served an N12 Notice on the Tenant which stated that the Landlords in good faith, required possession of the rental unit for themselves, for the purpose of residential occupation for a period of at least one year. The N12 Notice stated a termination date of March 31, 2022.
8. It was undisputed that the Tenant vacated the rental unit on April 2, 2022 because the Landlords gave the Tenant a notice of termination claiming the Landlords required possession of the rental unit.
9. It was also undisputed that the Landlords did not move into the rental unit but listed the rental unit for sale before ultimately re-renting the unit in or around November 2022.
10. Pursuant to section 57(1) of the *Residential Tenancies Act, 2006*, (the ‘Act’), the Board may make an order against a landlord if, on application by a former tenant of a rental unit, 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 ... 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.

11. Subsection 57(1) (a) of the Act establishes a three-part test. In order to be successful in their T5 application, the Tenant must establish all three of the requirements of subsection 57(1)(a) on a balance of probabilities:

First, that the Landlords gave a notice of termination under section 48 of the Act (the N12 notice) in bad faith;

Second, that the Tenant vacated the rental unit as a result of the N12 notice or Board order based on the N12 notice;

Third, that the person named in the N12 notice did not move into the rental unit within a reasonable time after the Tenant vacated.

12. On an application to the Board, the person who alleges a particular event occurred has the burden of proof to establish that it is more likely than not that their version of events is true. In this application, the burden typically falls on the Tenant to establish that the notice of termination was served in bad faith.

13. However, the fact that the rental unit was rented to a new tenant within one year of the Tenant vacating creates a rebuttable presumption that the Landlords served the N12 notice in bad faith. In other words, in this case, the burden falls on the Landlords to establish that they served the N12 in good faith.

Rebuttable Presumption of Bad Faith

14. Subsections 57(5) and 57(6) establish a rebuttable presumption of bad faith on the following ground:

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;

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 tenant vacates the rental unit.

15. The rebuttable presumption is engaged as it is undisputed that the Landlords advertised the rental unit for rent and entered into a tenancy agreement in respect of the rental unit with someone other than the former tenant less than a year after the Tenant vacated.
16. The Landlords dispute that the N12 Notice was served in bad faith as MJ testified that they intended to move into the rental unit but there was a change in circumstances that lead to the rental unit being first listed for sale and then advertised for rent thereafter.
17. MJ testified that after the Tenant vacated the rental unit, their daughter begun to feel anxious about moving and changing schools as she has been with her group of friends in her current area since Grade 6. He testified that at the time the Tenant vacated the rental unit, their daughter was in Grade 11 attending a local high school and that the rental unit is 45 minutes away from their current residence.
18. MJ and his wife made the decision to wait until their daughter finished high school to move into the rental unit due to the anxiety she was experiencing and to not require her to change schools. The Landlords did not call their daughter as a witness or otherwise submit evidence of the medical issue they assert she was experiencing due to an impending move to another City.
19. Based on the evidence presented, I am not satisfied that the Landlords have proven on a balance of probabilities that the Landlords intended to move into the rental unit for at least one year.
20. MJ testified that he had his wife did not make the decision not to move into the rental unit until approximately one month after the Tenant had vacated. However, the Landlords submit evidence showing that they had begun to take steps to prepare to move in, such as confirmation of movers being booked or a notice to vacate given to their current landlord.
21. For all these reasons, and in light of the reverse onus that applies, I find that the Landlords served the notice of termination in bad faith and the Tenant's application must be granted.

The Remedies

22. The next issue before me is the quantum of remedies to award the Tenant. The remedies the Tenant is requesting in the application are out-of-pocket expenses for moving and storage, and the difference in rent between the Tenant's old rental unit and her new rental unit for one year from the date she vacated the rental unit.
23. The Tenant provided a copy of her U-Haul receipt totalling \$303.66. I find this expense to be reasonable. Therefore, the Landlords must pay the Tenant \$303.66 for the reasonable out-of-pocket moving expenses that the Tenant has incurred as a result of the Landlord serving a notice of termination in bad faith.

24. The Tenant also testified that she moved into a new rental unit with a higher rent of \$1,800.00. The Landlords must pay the difference in rent between the Tenant's old rental unit and her new rental unit for a period of one year from the date she vacated, in the amount of \$6,000.00.

25. It was undisputed that the Landlords previously paid the Tenant \$650.00 for costs of moving. Therefore, I find it reasonable in the circumstances to deduct this amount from the total amount the Landlords must pay the Tenant.

It is ordered that:

1. The total amount the Landlords shall pay the Tenant is **\$5,706.66**. This amount represents:
 - \$5,350.00 for increased rent the Tenant has incurred for the one-year period from April 2, 2022 to April 2, 2023, less the \$650.00 already paid to the Tenant.
 - \$303.66 for the reasonable moving, storage and other like expenses that the Tenant 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 Tenant the full amount owing by December 18, 2023.
3. If the Landlords do not pay the Tenant the full amount owing by December 18, 2023, the Landlords will owe interest. This will be simple interest calculated from December 19, 2023 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.

December 7, 2023

Date Issued

Candace Aboussafy

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.