



Order under Section 57 Residential Tenancies Act, 2006

Citation: Conway v Hannafin-Sine, 2023 ONLTB 78537

Date: 2023-12-05

File Number: LTB-T-052604-22

In the matter of: C, 25 Mill Street
Frankford Ontario K0K2C0

Between: Timothy Conway Tenant

And

Amber Hannafin-Sine Landlord

Timothy Conway (the 'Tenant') applied for an order determining that Amber Hannafin-Sine (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on September 5, 2023.

The Landlord's Legal Representative Lorrie McCullough, the Landlord, Landlord's witness Stephen Adams, and the Tenant attended the hearing.

Determinations:

1. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.
2. It is undisputed that the Tenant was served with an N12 notice to end tenancy ("N12 notice") on April 22, 2021 stating that the Landlord's son was moving in. The termination date was July 31, 2021.
3. The Tenant did not vacate the rental unit, a hearing was held on August 31, 2021, and the tenancy was terminated effective December 31, 2021.
4. The Tenant stated that he vacated the rental unit in November but requested that the Landlord not enter until the end of December. The Tenant filed this application with the

Board on May 24, 2022. The Tenant is seeking an order for one year of rent in compensation for what he believes was a bad faith eviction.

5. It is undisputed that the Landlord's son did not move into the rental unit or that the Landlord re-rented the unit for June 1, 2022.

Tenant's evidence

6. The Tenant submitted that the Landlord did not terminate the tenancy in good faith as her son did not move into the rental unit after the Tenant vacated, the rental unit was left empty, and the Landlord re-rented the unit 6 months after the Tenant vacated.
7. He testified that it is his belief from social media research that the Landlord buys, renovates, and flips properties.
8. He also stated that there were other rental units available in the rental complex that her son could have occupied rather than the Landlord displacing the Tenant's family. He testified that he, his partner, and two children had expected to move into County Housing after vacating the rental unit, but that this did not occur and they moved into an RV.

Landlord's evidence

9. The Landlord argued that she did not evict the Tenants in bad faith. She stated that her oldest son and his two brothers resided in the family home with her, but that he was looking to begin an independent life.
10. The Landlord submitted that prior to the August 2021 hearing, her son had applied for a post-secondary program at Cambrian College in Sudbury, which was an online program due to the Covid-19 pandemic. He was informed on October 14, 2021 (after the date of the hearing) that he had been placed on a waitlist for the program. This email confirmation was entered into evidence.
11. After the Tenant vacated the rental unit and the Landlord took possession in January 2022, the Landlord stated that many items had been left behind in the rental unit which she needed to clear out, and electrical work was required for safety reasons.
12. The Landlord's witness Stephen Adams, an electrician, testified that he did electrical work in the rental unit in January of 2022. This work included removal of an exhaust fan in a closet area, reattaching baseboard heaters, replacing damaged electrical outlets, repairing loose wiring, and checking for damage to electrical systems due to overloading. He testified that the rental unit was "in rough shape."

13. The Landlord stated that when she served the N12 notice, she had intended that her son would move in after the July 31, 2021 termination date. Because the Tenant did not vacate the unit, he was unable to do so before the end of 2021. On January 27, 2022 while the repairs and renovations were still ongoing, the Landlord's son was accepted to Cambrian College, which was moving to in-person classes. Confirmation of this acceptance was entered into evidence.
14. The Landlord testified that she was "hesitant" to re-rent the unit, but eventually did so for June 1, 2022 because her son was not returning from Sudbury.
15. She also stated that she works as a decorator to help others fix up their homes for sale, but that she did not intend to, nor did she, sell the rental unit and anticipated that her children would one day inherit it.
16. The parties were directed to provide written closing submissions.
17. The Tenant's closing submissions consisted of a re-submission of evidence and additional evidence not disclosed or provided at the hearing. As the Landlord's Legal Representative submitted in response, it would be procedurally unfair to do so as the Landlord had no opportunity to cross-examine the Tenant on this evidence. I agree with this submission and will not consider fresh evidence.
18. The Landlord's closing submissions referenced case law for consideration.

Analysis

19. 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.
20. It is undisputed that the first three elements of the test were met.

Bad faith

21. 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 type of application, the burden typically falls on the tenant to establish that the notice of termination was served in bad faith.

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

For the purposes of an application under clause (1)(a) and (c), 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 rent; ...

57(6) 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.

23. The rebuttable presumption of a bad faith termination is engaged, as it was undisputed that the rental unit was advertised for rent 6 months after the Tenant vacated. The burden shifts to the Landlord to establish, on a balance of probabilities, that the N12 notice was not given in bad faith.

24. The Tenant argued that the Landlord could have chosen another rental unit for her son. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is genuine intention to occupy the premises and not the reasonableness of the Landlord's proposal. This principle was upheld in *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC) where the Court held that the "good faith" requirement simply means that the Landlord sincerely intends to occupy the rental unit. The Landlord may also have additional motives for selecting a particular rental unit, but this does not affect the good faith of the Landlord's notice."

25. I find that the Landlord's testimony was consistent and supported by documentary evidence when she explained the circumstances surrounding the change in circumstances regarding her son's College application. It is evident that at the time of the hearing on August 31, 2021, they were unaware that he would not be accepted for the online program beginning in September and that he could not move into the rental unit because it was occupied until December 31, 2021.

26. Her evidence that the rental unit required cleaning and electrical repair was corroborated by the evidence of her witness, the electrician who performed the repairs in January 2022. She also provided documentary evidence that her son did not receive confirmation of his acceptance to the now in-person program in Sudbury until late January and she could therefore not have known at the time that the N12 notice was served, at the time of the hearing, or at the time the Tenant vacated the rental unit that her son would not be moving into the unit.

27. I find that the Landlord met the burden of proof on a balance of probabilities that the N12 notice was not served in bad faith. I find that at the time the N12 notice was served there was a genuine intention for her son to occupy the unit, and it was a change of circumstances which could not have been foreseen that meant the Landlord's son did not occupy the unit.

It is ordered that:

1. The Tenant's application is dismissed.

December 5, 2023

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Margo den Haan

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.