



Order under Section 57 Residential Tenancies Act, 2006

Citation: Badriahari v Khalili Sayad Abad, 2023 ONLTB 75618

Date: 2023-11-16

File Number: LTB-T-051147-22

In the matter of: 95 Mccann Crescent
Bradford Ontario L3Z0M5

Between: Amin Badriahari Tenant

And

Elham Khalili Sayad Abad Landlord
Amir Abbas Sagheb Erfani

Amin Badriahari (the 'Tenant') applied for an order determining that Elham Khalili Sayad Abad and Amir Abbas Sagheb Erfani (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on August 21, 2023.

The Landlord, the Landlord's representative T. Sandukhchyan, the Tenant Elham Khalili Sayad Abad and the Tenant's representative B. Dilisi attended the hearing.

Determinations:

1. The Tenant brought a T5 Application claiming the Landlord gave them an N12 notice of termination in bad faith.
2. The Tenant seeks expenses related to moving and storage in the amount of \$820.00; general compensation in the amount of \$24,000.00; and general damages in the amount of \$10,000.00.
3. Pursuant to section 57(1) of the *Residential Tenancies Act, 2006*, the Board may make an order against a landlord if, on application by a former tenant of a rental unit, the Board determines that 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 occupied the rental unit within a reasonable time after the former tenant vacated the rental unit. 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 Landlord 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 Tenants vacated.

4. For the reasons outlined below, I find on a balance of probabilities the Form N12 was served in bad faith, the Tenant vacated the rental unit as a result of the Form N12 received, and that the Landlords did not move into the rental unit within a reasonable time thereafter.
5. It is not disputed, the Landlords served the Tenant with a form N12 on October 21, 2021 with a termination date of December 20, 2021. Due to a procedural defect in the initial notice and following some discussion with the Tenant, a second form N12 was served on the Tenant on October 28, 2021, with a termination date of January 1, 2022 (the "Form N12"). The Form N12 stated the Landlords were going to move into the rental unit.
6. While the initial burden falls on the Tenant to establish that the notice of termination was served in bad faith, it is presumed, *unless the contrary is proven on a balance of probabilities*, that a landlord gave a notice of termination under s. 48 in bad faith if, within one year after the former tenant vacates the rental unit, the landlord advertises the rental unit for rent and/or enters into a tenancy agreement in respect of the rental unit with someone other than the former tenant. Here, approximately one month after the Tenant vacated the rental unit, the Landlords listed the rental unit for sale and the property was sold on March 10, 2022, with a closing date of May 2022. The Landlords did not move into the rental unit, as initially purported.
7. For the reasons that follow, I find on a balance of probabilities that the Form N12 was given in bad faith and that the Tenant vacated the rental unit as a result of this notice.
8. The timeline of events in this case is important in ascertaining the Landlords' intent. The Landlord, Elham Khalili Sayad Abad (EA) testified the Landlords' entered into an agreement to sell their family residence in the fall of 2021. The closing date for the sale of the Landlords' personal residence was January 4, 2022.
9. The Tenant vacated the rental unit on January 30, 2022. On November 25, 2021 - approximately 4 weeks after the Form N12 was served upon the Tenant and approximately 2 months prior to the Tenant vacating the rental unit - the Landlords signed a one-year residential lease, commencing January 1, 2022 (the "November Lease"). EA testified the Tenant's changing intentions regarding when they would be vacating the rental unit resulted in the Landlords entering into the November Lease so they had a place to live when their family residence was sold on January 4, 2022. The Tenant was not made aware of the November Lease, prior to vacating.
10. While the Landlords renewed the rental unit mortgage for a 5-year term in May 2021 thus suggesting the Landlords intended to keep the rental unit, when considered alongside the balance of other evidence presented, I find on a balance of probabilities the Landlords served the Form N12 in bad faith.

11. After the Tenant vacated the rental unit on January 30, 2022, EA testified the Landlords reached out to their new landlord in order to end the November Lease early. EA testified this request was refused, thus causing the Landlords financial distress. According to EA, the Landlords thus decided to sell the rental unit in late February/early March 2022 due to the financial pressure of being forced to “stay in” their \$3500/month November Lease and pay the mortgage at the rental unit.
12. I do not find the Landlords’ reason for not moving in the rental unit believable. While not determinative, there was no correspondence produced in support of the alleged discussion between EA and her new landlord. The Landlords also sold their family residence in January 2022 and undertook renovations at the rental unit almost immediately after the Tenant vacated the rental unit, presumably at some financial cost (although EA indicated that her spouse did most of the work). Furthermore, notwithstanding the fact the Landlord had entered into the November Lease, the Landlord did not advise the Tenant of the possibility they could remain in the rental unit for a longer period of time and thus, offset some of the financial burden. The decision to sell the rental unit at the “*end of February/beginning of March (2022)*” was also only one month after the Tenant vacated the rental unit. The Landlords also did not provide any convincing evidence of alternative attempts to offset the purported financial burden, such as by seeking a shorter lease term, or finding a sublet...etc., thus making their purported change in circumstances less believable.
13. I also find on a balance of probabilities that the Tenant vacated the Rental Unit as a result of the Form N12. It is not disputed the Tenant purchased a property and moved into this property when the Tenant vacated the rental unit on January 30, 2022. The Tenant testified he entered into an agreement of purchase and sale for the property after being given the Form N12. The Landlord countered there was a mutual intention to end the tenancy, because both the Tenant and Landlords entered into purchase and sale transactions for their respective properties. Upon hearing the evidence, I find the Tenant’s evidence more believable that he had been “passively” looking to purchase a property but ultimately entered into a purchase agreement after being given the Form N12. It is simply not believable the Landlord would serve a Form N12 and pay the Tenant the required compensation, if the Landlords believed the Tenant had purchased a property and was going to be ending the lease regardless.
14. As such, for the reasons noted, I find on a balance of probabilities the Form N12 was served in bad faith, the Tenant vacated the rental unit as a result of the Form N12 received, and that the Landlord did not move into the rental unit within a reasonable time thereafter.

Remedies

15. The next issue to be determined is remedies. The Tenant seeks expenses related to moving and storage in the amount of \$820.00; general compensation in the amount of \$24,000.00; and general damages in the amount of \$10,000.00.
16. The Tenant produced a receipt for moving expenses in the amount of \$450.00, for which the Tenant should be reimbursed as it is directly attributable to the eviction.

17. The Tenant also seeks \$24,000.00 in general compensation and \$10,000.00 in general damages. In this regard, the Tenant indicated he was forced to move earlier than he originally intended, and states, he was forced to live in the newly purchased property while renovations were undertaken. In this regard, the Tenant testified he was forced to “live in a room” for some time after move-in because the home was in “terrible condition”. While I am satisfied the Tenant suffered unnecessary inconvenience as a result of the forced relocation from their home and neighbourhood, the overall impact/hardship of the relocation upon the Tenant lacked particulars. The Tenant did not produce any documentation or photographs that speak to the condition of the newly purchased property and purported unfavourable living conditions the Tenant was forced to live in. Moreover, while the Tenant indicated he was in the process of selling one of his properties in Windsor, Ontario and was only “passively” looking for a property to purchase with the Form N12 was served, very little evidence was given as to impact, if any, the eviction had on either the Tenant’s sale of the Windsor property, or the purchase decision. I find an award of \$1,500.00 for general compensation is warranted in the circumstances.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$2,003.00. This amount represents:
 - \$1,500.00 for general compensation;
 - \$450.00 for the reasonable moving, storage and other like expenses that the Tenant has incurred as a result of having to move out of the rental unit; and,
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by November 27, 2023.
3. If the Landlord does not pay the Tenant the full amount owing by November 27, 2023, the Landlord will owe interest. This will be simple interest calculated from November 28, 2023 at 7.00% annually on the balance outstanding.

November 16, 2023

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Peter Nicholson

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.