Order under Section 57
Residential Tenancies Act, 2006

Citation: VANDERPOLS v SYED, 2023 ONLTB 72219
Date: 2023-11-07
File Number: LTB-T-050013-22

In the matter of: 10 NAUTICAL ROAD
BRANTFORD ON N3P1G6

Between: Wendy Vanderpols — Tenants
Jacob Vanderpols

And

Azeem Syed — Landlord

Wendy Vanderpols (W.V), Jacob Vanderpols (J.V) (the 'Tenants') applied for an order determining that Azeem Syed, (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on August 24, 2023. The second named Tenant, the Tenant's legal representative, K. Farrell, the first named Landlord, the Landlord's witness, H. Syed ('H.S'), and the Landlord's legal representative, W. Hart attended the hearing.

At the hearing the application was amended to only include Azeem Syed as a named Landlord. This order reflects that change.

Determinations:

PRELIMINARY ISSUE (CLOSING SUBMISSIONS):

1. At the conclusion of the hearing the legal representatives agreed to supply the Board with their closing submissions by August 31, 2023. After review of the file, I received a 27-page submission only by the Landlord's legal representative.

2. The purpose of a closing submission is to summarize the Landlord's position, point out any key pieces of evidence or authority they would like me to consider. It is not a time to introduce new evidence.

3. The submission made by the Landlord on August 31, 2023, consists of 27 pages. Pages 16 are a personal statement from the Landlord which contain some information not provided for at the original hearing, pages 7-16 is a personal statement from H.S, but also contains documentary evidence that was not supplied at the original hearing, and pages 17-21 are letters from what appear to be individuals that the Landlord did not call as witnesses at the original hearing. The Landlord and H.S attended the hearing, provided evidence, and were cross examined by the Tenants.

4. The purpose of this submission was not to re-litigate the case in written form and was definitely not to supply evidence that was not educed at the original hearing. If the Landlord wished to introduce this evidence, they had an opportunity to do so during the hearing that took place on August 24, 2023.

5. As the Tenant was not provided an opportunity to question the Landlord, the authors of those letters, or give submissions on their content, it would be inappropriate for me to allow this evidence at this time. Therefore, it will not be considered in this order.

6. The Landlord did provide a proper closing submission on pages 22 to 27, those will be considered.

T5 APPLICAION

7. As explained below, the Tenants proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenants a total of $9,634.60, which represents:

    - $269.60 for a rent abatement;
    - $1,224.00 for a rent differential;
    - $8,088.00 for general compensation; and
    - $53.00 for the costs the Tenants incurred for filing the application.

8. 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 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 Tenant vacated; and

- The Landlord served the N12 notice of termination in bad faith.

9. There is no dispute that the Landlord served the Tenants with a notice in accordance with section 48 of the Act. The Tenants vacated the rental unit in between July 1, 2021 and July 2, 2021.

Did the Tenants move out pursuant to the N12?

10. The Landlord raised a preliminary issue with respect to the second element of the test set out in section 57 of the Act, did the Tenants vacate as a result of the N12? The Landlord says that the Tenants moved out because he offered them another unit which was acceptable to them, they moved out after the termination date in the notice, and after he paid them $1,000.00. Therefore, the Landlord submits that the Tenants moved out on their own volition. To support this assertion, the Landlord relies on a text message between the Landlord and J.V. The context of this communication between the parties appears to be contemplating the amount of rent for the new unit, so that the Landlord's child could move into their rental unit. Therefore, it actually supports that the Tenants moved out pursuant to the notice.

11. I do not find that the Tenants moved out on their own volition. It is not uncommon for a tenant to not move out of a rental unit by the termination date in a notice of termination. Furthermore, part of the compensation requirements under section 48.1 of the Act, provide that a landlord may offer a tenant a unit acceptable to them to satisfy this requirement. The Landlord also filed that N12 accompanied by an L2 application to seek termination of the tenancy. I find that it is more likely than not that the unit was offered to the Tenants because of, or in connection to the Landlord serving a notice under section 48 of the Act. I also find that it is more likely than not that the Tenants moved out pursuant to receiving that notice.

Bad Faith

12. In consideration of whether the Landlord served the notice in good faith they rely on *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No 2792, which was decided in the context of a landlord attempting to regain possession of the rental unit and revisited the issue of the good faith intention of the landlord. This is an application considers the period after the Landlord has recovered possession. Therefore, *Salter* can be distinguished from the facts of this case, and so I do not find it particularly relevant to my determinations.

13. There was no dispute that the Landlord's child did not move into the rental unit and that the Landlord advertised the rental unit for rent in September 2021, entered into a tenancy agreement in respect of the rental unit with someone other than the former tenant.

14. Section 57(5) of the Act provides that in circumstances such as this there is a rebuttable presumption that the N12 notice was served in bad faith:

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;

15. For the following reasons, based on the evidence and testimony before me, I do not find that the Landlord has met the burden of establishing that the N12 notice was served in good faith.

16. The Landlord testified that the N12 notice was served because the Landlord's child was in school at the time and required their own space to study and to shorten their commute to campus. The Landlord's child started school September 2020 and the notice of termination was served December 2020. H.S testified that she found out in September 2021, that the second year of school would be online as well. The Landlord submits that it was this change in circumstances that led them to re-rent the rental unit.

17. At the time the notice was served, the Landlord's child was attending school remotely so realistically there was no commute to shorten. Given that the Landlord's child was already attending class remotely it could be reasonable to anticipate that the studies would continue in the same fashion. H.S also stated that there was no advance notice given by the school that would indicate that classes would resume in person. It is difficult for me to consider a change in circumstance when at the time the notice was served, H.S was attending school remotely. H.S received no advance notice from her university to indicate that classes were resuming in person in the fall. The assumption may have been made prematurely regarding this by the Landlord, but in this case that is different than a change in circumstance.

18. The Landlord also stated that during the time the unit was vacant (July 2021 to August 2021) the unit needed renovations given the length in time of the previous tenancy. I canvased H.S regarding her involvement with respect to the renovation undertaken by the Landlord. It appeared based on her testimony that she had very little involvement with the renovation. This in my opinion, undermines the genuine intention to move into the rental unit. I say this because if there was a genuine intention for H.S to move in, there would be more involvement with respect to the renovation. Picking the paint colours, choosing finishings, etc- would be all part of H.S making this space her new home.

19. H.S also testified that she had no intention on occupying the whole residential unit herself, rather just one of the bedrooms. She anticipated on maybe having a friend with her, but that plan was not fully contemplated by the Landlord or H.S. However, another point that undermines H.S' intention to move in and shorten her commute is that even though classes resumed in person for her third year, she still lived at home with the Landlord.

20. The Tenants paid $1,348.00 to the Landlord during their tenancy. The Landlord received $2,500.00 from the new Tenant; this would appear to be a significantly higher rent. Based

on the evidence educed at the hearing and the testimony of the parties, I am not satisfied that the Landlord gave the Tenants a notice in good faith. I find it is more likely than not that the Landlord's child did not have a genuine intention to move in and that there was no change in circumstances. The Tenants proved all of the requirements in subsection 57(1)(a) of the Act.

REMEDIES:

21. The Tenants in their application request the following remedies:

    - Rent abatement totalling $16,176.00, which equates to 100% of the rent for a period of 12 months;
    - Rent differential, totaling $1,450.00;
    - Moving expenses, totalling $500.00;
    - General compensation, totalling $17,100.00; and
    - A fine to the Board;

    Rent Abatement

22. A rent abatement is a contractual remedy geared towards the premise that if a tenant is paying 100% of the rent for a bundle of goods and services but is not receiving the full benefit of those goods or services, that they should be abated the difference for what they are not receiving but paying for.

23. As a result of the N12 notice, undoubtably the Tenants loss some reasonable enjoyment of the rental unit. I do not find that a 100% rent abatement to be appropriate in the circumstances. In order for the Tenants to be successful in receiving 100% abatement, they would need to prove that essentially living in the rental unit would be near impossible, which is not the case here.

24. The N12 was served to the Tenants December 2020 and the Tenants vacated July 2, 2021 (approximately 7 months). In May 2021, the Landlord offered the Tenants the other rental unit. Therefore, it would be reasonable that the Tenants packing and preparing for the move occurred sometime in May 2021 to July 2021. I find that the anticipated stress of a move as well as packing and preparing contributes to a loss of enjoyment and therefore the Tenants are entitled to an abatement. I find an abatement of 10% to be fair in the circumstances for the months of May and June of 2021. 10% of $1,348.00 is $134.80 for two months, equals $269.60. An order for this amount will issue.

    Rent Differential

25. The Tenants were renting a semi-detached house from the Landlord and the Tenants had access to the entire house. The rental unit was 3 bedrooms, 1 bathroom and was equipped with 2 kitchens (one in the basement), and access to the backyard.

26. The new rental unit was the main level of a duplex. It also had 3 bedrooms, 1 bathroom, 1 kitchen, same level laundry, and backyard access.

27. In considering a rent abatement, the Board must consider whether the rental units are comparable, not exact. I find that the two rental units are comparable. Therefore, the Tenants are entitled to their request for a rent differential.

28. As already stated, the Tenants paid to the Landlord $1,348.00 at their old unit and $1,450.00 at the new rental unit. The Tenants are entitled to rent differential for a 12-month period. They are entitled to $1,224.00.

Moving Costs

29. There is no dispute that the Landlord already compensated the Tenants $1,000.00 for moving costs. As the Tenants have already been compensated for such, this claim is dismissed.

General Compensation

30. The Board's authority to order general compensation is found at section 57(3)(1.1), which states:

> An order that the landlord pay a specified sum to the former tenant as general compensation in an amount not exceeding the equivalent of 12 months of the last rent charged to the former tenant. An order under this paragraph may be made regardless of whether the former tenant has incurred any actual expenses or whether an order is made under paragraph 2 [Emphasis added].

31. The Tenants moved into the rental unit sometime in 2011 and vacated in 2021, therefore the tenancy was approximately 10 years. W.V lost her sight while living in the rental unit and during the hearing explained that during her tenancy, she got accustomed to the rental unit and the neighbourhood and so even though she was blind she was able to do things without the help of the other Tenant. She could go to the local convenience store and move around the rental unit more conveniently.

32. W.V was a particularly vulnerable individual and therefore it made this long-standing tenancy particularly valuable and or important to this individual. She had long standing roots in this community, she was able to be more mobile and have more utility in her day to day life given her disability. This was ultimately severely diminished by the move. The female Tenant also testified that she was unable to get supports to assist her in the new rental unit, however those supports were suspended due to the COVID-19 pandemic and so I find that to be no fault of the Landlord.

33. For the above-mentioned reasons and the fact that two long-term tenants were severely impacted by this notice I find that general compensation equivalent to 6 months worth of the rent to be fair in the circumstances. $1,348.00x6=$8,088.00

Administrative Fine

34. The Board's Guideline 16 suggests that the purpose of a fine is to encourage compliance with the Act and to deter landlords from engaging in similar activities in the future. It goes on to say, "this remedy is most appropriate in cases where the landlord has shown a blatant disregard for the Act and other remedies will not provide adequate deterrence and compliance."

35. I find that the actions of the Landlord in this case do demonstrate a blatant disregard for the Act. However, I find that the remedies already awarded should provide adequate deterrence from engaging in similar acts. As such, no fine shall be ordered.

36. This order contains all of the reasons intended to be given, no further reasons shall issue.

It is ordered that:

1. The total amount the Landlord shall pay the Tenants is $9,634.60. This amount represents:

    - $269.60 for a rent abatement.
    - $1,224.00 for increased rent the Tenants have incurred for the one-year period from July 1, 2021 to June 30, 2022.
    - $8,088.00 as general compensation as a result of the Landlord's breach.
    - $53.00 for the cost of filing the application.

2. The Landlord shall pay the Tenants the full amount owing by November 18, 2023.

3. If the Landlord does not pay the Tenants the full amount owing by November 18, 2023, the Landlord will owe interest. This will be simple interest calculated from November 19, 2023 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.

November 7, 2023
Date Issued

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Curtis Begg
Member, Landlord and Tenant Board

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