



Order under Subsection 135 Residential Tenancies Act, 2006

Citation: Merkley v Peprah, 2023 ONLTB 67314

Date: 2023-10-13

File Number: LTB-T-053040-22

In the matter of: 1967 Banff Avenue
Ottawa Ontario K1V7X2

Between: Sheryl Merkley
Glen Merkley Tenant s

And

Eddie Peprah Landlord

Sheryl Merkley and Glen Merkley (the 'Tenants') applied for an order determining that Eddie Peprah (the 'Landlord') collected or retained money illegally and gave a notice of termination in bad faith.

This application was heard by videoconference on September 18, 2023.

The Landlord and the Tenants attended the hearing. The Landlord's Representative, Trevor Jacquard, and the Tenants' Representative, James Baker, attended the hearing.

Determinations:

1. For the reasons set out below, I find that the Landlord has failed to compensate the Tenant equal to one month's rent (T1 application). Therefore, the Landlord must pay the Tenants \$1,405.00.
2. For the reason set out below, I find that the Landlord did not give a notice of termination in bad faith. Therefore, the T5 applications are dismissed.

Preliminary Issues:

Time Limitation

3. The Landlord's Representative submitted that the applications should be dismissed pursuant to section 57(2) of the *Residential Tenancies Act, 2006* (the 'Act') as the applications were filed more than one year after the former tenant vacated the rental unit.
4. The Landlord's Representative relied on an April 26, 2021 email from Sheryl Merkley ("SM") advising the Landlord the Tenants were residing in a new place. The email further requested the Landlord to provide them until May 2, 2021 to have a garage sale and finish

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clearing their belongings. The Landlord responded that he could wait until May 2, 2021 to get the keys.

5. Subsequent emails between SM and the Landlord indicated that the Tenants vacated and left the keys at the unit on May 2, 2021. The Landlord acknowledged this.
6. Based on the evidence before me, I find that the Tenants vacated the rental unit on May 2, 2021. While the Tenants may have lived elsewhere by April 26, 2021, the Tenants had possession of the unit until May 2, 2021 and that keys were returned on May 2, 2021.
7. The Tenant's applications were filed on May 2, 2022. In accordance with Board Rules of Procedure 1.14: when the time for doing anything ends on a holiday as defined in these Rules the thing may be done on the next day that is not a holiday. Under Rule 1.1, a holiday is defined as any Saturday, Sunday or other day on which the LTB's offices are closed.
8. One year from May 2, 2021 would be May 1, 2022. As May 1, 2022 was a Sunday, the Tenants would have had until May 2, 2022 to file the applications. The applications were filed on May 2, 2022. As such, I find that the Tenants filed the applications within the time frame prescribed by section 57(2) of the Act.

T1 Application

9. What is in dispute between the parties is whether the Tenants vacated the rental unit as a result of a notice of termination given by the Landlord.
10. There is no dispute that a N12 or a N13 notice was not given to the Tenants. The issue before me was whether the communication between the parties amounted to a notice of termination under section 48(1) or 50(1).
11. If the communication between the parties amounted to a notice of termination under section 48(1) or 50(1), the Landlord was required to pay compensation to the Tenants. It is undisputed that no compensation was paid.

12. Subsection 37(1) of the Act states “a tenancy may be terminated only in accordance with this Act”, which means a tenancy can only be terminated by proper notice, by way of an agreement between the Tenants and the Landlord, or by way of an order issued by the Board.
13. Section 43(1) of the Act states: Where this Act permits a landlord or tenant to give a notice of termination, a proper notice shall be in a form approved by the Board and shall,
 - (a) identify the rental unit for which the notice is given;
 - (b) state the date on which the tenancy is to terminate; and
 - (c) be signed by the person giving the notice, or the person’s agent.
14. The Landlord’s Representative submitted that the applications be dismissed as the Landlord did not give the Tenants a N13 or N12 notice in accordance with the Act. There was no termination date in the correspondence and therefore no proper notice was given.
15. Section 212 of the Act provides that substantial compliance with the Act respecting the contents of forms, notices or documents is sufficient. Therefore, in some circumstances it may not be necessary for a landlord to use a Board approved version of the forms in order for a notice to be valid so long as the specific information required on the notice, such as the address, length of notice period, termination date etc., substantially complies with the statutory requirements.
16. The Tenants’ Representative submitted that communications between the Tenants and Landlord substantially complied with notice required under section 50 of the Act as the Landlord indicated the Tenants had to move out in accordance with a timeline because the rental unit was being demolished so that the Landlord can build a new property to move into.
17. An email from the Landlord to the Tenants, on October 30, 2020 states:

... My family is getting bigger and there is the need to demolish and construct 1967 Banff Ave after winter and giving you several months notice about our family decision to move back to 1967 Banff Ave as our future home. We are making plans with the city and ways to get all the permit that is involved...
18. A text message from the Landlord to the Tenants, on November 11, 2020 states:

Hi, I sent you email about my family planning to demolish & reconstruct 1967 Banff Ave around March/April 2021 and to move there once is done due to our family expansion and wondering if you read it? Thanks
19. A text message from the Tenants to the Landlord, on November 12, 2020 states:

Good evening, we have read the email. Not a great time to be relocating – with a pandemic and crazy markers but understand. We will aim for April.

20. An email from the SM to the Landlord, on April 1, 2021 states:

As per your email... please be advised that we will be moving out effective April 30, therefore, please consider April to be our last month's rent, accordingly, we will not be sending you rent today.

21. Based on the evidence before me, I find the Landlord intended to and did provide the Tenants with a notice of termination intended to terminate the tenancy due to the demolition of the rental unit. This communicate constitutes the essential elements of a notice of termination served under section 50(1)(a) of the Act:

50 (1) A landlord may give notice of termination of a tenancy if the landlord requires possession of the rental unit in order to,

(a) demolish it

22. I also find the Tenants subsequently vacated the rental unit as a direct result of the Landlord's notice of termination.

23. While there was no specific termination date on the Landlord's text message to the Tenants, the Landlord indicated a time frame of March/April 2021 and contemplating that, the Tenants agreed to vacate April 30, 2021. While there was no rental unit identified, there was no doubt which rental unit the parties were communicating about. I find the lack of signature irrelative as the email and message came from the Landlord's personal email and phone number. The Landlord did not deny sending the email and message himself.

24. In TET-63263-15(Re), 2015 CanLII 75856 (ON LTB), the Board held it had jurisdiction to consider a tenant's application filed under s. 57(1)(b) of the Act alleging a notice of termination had been served in bad faith where a landlord wrote the tenant they were going to sell the rental unit, the tenant had to move out on or before a set date, and the tenant did so despite the fact there was no agreement of purchase and sale. The Member there held that where there is an invalid notice, "a landlord should not be able to escape the consequences of giving a bad faith notice just because he or she gave a notice of termination that turns out to be invalid."

25. I accept the above reasoning and find similar reasoning is applicable here. A landlord should not be permitted to serve a notice of termination claiming it is due to demolition and request the tenant to vacate the rental unit because of this reason, and at the same time not be required to pay the mandated one month's compensation on the ground their notice of termination was invalid.

26. Based on the above circumstances, I find the Landlord gave the Tenants what amounts to a notice of termination under section 50 of the Act.

27. Section 52(2) requires the Landlord to pay compensation equal to one month's rent if: (1) a notice of termination for demolition is given to the tenant on or after July 2020; (2) the residential complex contains fewer than five units; and (3) the demolition was not ordered to be carried out under the authority of any other Act.
28. All of these criteria are met here. Therefore, the Landlord will be ordered to pay the Tenants one month's rent in the amount of \$1,352.00 pursuant to section 52(2) of the Act.
29. I do not find that the Landlord gave the Tenants what amounts to a notice of termination under section 48 of the Act. While the Landlord indicated that he was moving into the unit after rental unit was demolished and rebuilt, there was no intention of when that would be. The Tenants, first and foremost, vacated due to the demolition the Landlord stated would occur in March/April 2021.

T5 Application – N12

30. The Tenants filed a T5 application alleging the Landlord gave a N12 Notice in bad faith. As per my above determinations, I do not find that the Landlord gave the Tenants what amounts to a notice of termination under section 48 of the Act. As such, this T5 application is dismissed.

T5 Application – N13

31. This application is brought pursuant to subsection 57(1)(c) of the Act. For the Tenants to be successful in this bad faith application, the Tenants were required to prove the following three parts of the test set out in subsection 57(1)(c) if the Act:
- (a) The Landlord gave them a notice of termination under section 50 (i.e. an N13 Notice) in bad faith;
 - (b) The Tenants vacated the rental unit as a result of the notice or as a result of an application to or order made by the Board based on the notice; and
 - (c) The Landlord did not demolish, convert or repair or renovate the rental unit within a reasonable time after the Tenants vacated the rental unit.
32. It is undisputed that the rental unit was demolished in June 2022 and the Landlord currently resides in the new built.
33. The Tenants submitted that the Landlord did not demolish the rental unit within a reasonable time. From the time the Tenants received notice in October 2020, it took over a year for the demolition to occur. After the Tenants vacated and before the demolition, the Landlord, in bad faith, re-rented the unit.

34. The Landlord testified that his intentions was to commence demolition as soon as possible. However, there were multiple delays due to his application for permits to demolish and to build. When the Landlord gave the Tenants notice in October 2020, he applied for the demolition permit but was unaware that one must apply for a permit to build first and then the permit to demolish. COVID and the City's processes were also contributing factors in the delays. The Landlord paid for a survey before the Tenants vacated and posted notice to demolish signs advising neighbours of his intention to demolish the rental unit. A hearing for a minor variance application was held in March 2021 and again on July 2021 when the application to build was approved. The demolition permit was issued on May 31, 2022.
35. The Landlord testified that he had no intention to re-rent the unit pending the approvals of the permits; however, due to constant break-ins of an unoccupied unit and to mitigate losses, the unit was re-rented on a short-term basis. The rent was higher than what the Tenants paid as the rent was all inclusive.
36. Based on the evidence before me, I do not find that the Landlord served a notice of termination under section 50 (i.e. an N13 Notice) in bad faith. I find, based on the balance of probabilities, the Landlord had a genuine intention to demolish the rental unit at the time of serving the notice and ultimately did demolish and rebuild. I accept that the Landlord intended to demolish the rental unit as soon as the Tenants vacated based on the steps he had taken to pursue demolition while the Tenants were still living in the rental unit. While demolishing the unit took longer than the Landlord expected, the delays, in my view, are not a result of the Landlord's conduct.
37. While the Tenants submitted that the Landlord knew or ought to have known the demolition would have taken a longer time than indicated by the Landlord's notice, the Tenants had the opportunity to avail themselves of a self-help remedy by remaining in the rental unit and waiting for the Landlord to serve them with a proper notice of termination accompanied by documentation of permits and possibly file an application with the Board. Instead, the Tenants agreed to move out in response to the Landlord's notice.
38. As the Tenants did not prove the elements of the test in subsection 57(1)(c), the application must be dismissed.
39. The Tenants' and the Landlord's Legal Representative both requested compensation from the opposing party of \$750.00 in legal costs. Pursuant to Rule 23.3 of the Board's Rules of Procedure, an order for party costs will usually only be awarded when one party engages in unreasonable conduct which causes undue delay or expense. I am not satisfied either party has established that the opposing party engaged in this kind of conduct. The request for compensation of costs in relation to this application is therefore denied.

It is ordered that:

1. The total amount the Landlord shall pay the Tenants is \$1,405.00. This amount represents:

- \$1,352.00 for the compensation owing. ○
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenants the full amount owing by October 24, 2023.
 3. If the Landlord does not pay the Tenants the full amount owing by October 24, 2023, the Landlord will owe interest. This will be simple interest calculated from October 25, 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.

October 13, 2023

Date Issued

Vicky Liu

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.