



Order under Section 57 Residential Tenancies Act, 2006

Citation: ALBANO v KENNEDY, 2023 ONLTB 67111

Date: 2023-10-13

File Number: LTB-T-062950-22

In the matter of: BASEMENT, 4392 BENNETT RD BURLINGTON
ON L7L1Y7

Between: SILVANA ALBANO Tenant
ELISA RISTOV

And

LINDA KENNEDY Landlord
MARG MORREN - THE MORREN GROUP - REMAX

SILVANA ALBANO and ELISA RISTOV (the 'Tenant') applied for an order determining that LINDA KENNEDY and MARG MORREN - THE MORREN GROUP - REMAX (the 'Landlord') gave a notice of termination in bad faith.

Procedural History:

This application was initially scheduled to be heard by videoconference on September 7, 2023 at 1:00 pm but was adjourned to facilitate disclosure of evidence between the parties. Following this, on September 21, 2023, the matter was adjourned again owing to the Landlord Representative's family emergency.

This application was heard by videoconference on September 28, 2023 at 1:00 pm.

The Landlord Representative Elaine Page, the Landlord, and the Tenants attended the hearing.

Preliminary Issues:

1. The Landlord Representative submitted that Elisa Ristov had no standing as a named party or tenant as she never lived in the rental unit.

2. In response Elisa Ristov submitted that she had found and rented the rental unit on her mother's behalf, and that she and her mother both signed the lease agreement as Tenants. This was supported by a copy of the lease submitted to the Board.
3. Based on this information I determined that a joint tenancy existed and was never dissolved prior to the termination of the tenancy. Therefore, Elisa Ristov has standing as a Tenant and an applicant.
4. The Tenants originally filed this application on January 13, 2021. On September 18, 2023, the Tenants filed an amended application which included a claim for general compensation in the amount of \$10,000.00 due to depression, anxiety and time spent as a result of being forced to move.
5. The Landlord Representative submitted that the amended remedy of general compensation sought by the Tenants should be disallowed because such a remedy was not contained in the *Residential Tenancies Act, 2006* ("Act") on the date the Tenants filed their application.
6. The requested remedy of general compensation is made pursuant to section 57(3)1.1. of the Act which came into force on September 1, 2021:
 - 1.1 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.
7. Section 57(8) of the Act states:
 - (8) This section, as it read immediately before subsection 9 (1) of Schedule 4 to the *Protecting Tenants and Strengthening Community Housing Act, 2020* comes into force, continues to apply with respect to an application under subsection (1) that is made before that day and has not been finally determined before that day, even if the hearing of the application is on or after that day.
8. What this provision means is that because the application was filed before section 57(3)1.1. of the Act which came into force the Tenants are precluded from seeking general compensation sought under that section.
9. The Landlord Representative then requested any submissions or remedies relating to anxiety, depression or stress be disallowed citing res judicata as they were already

addressed in the Tenants T2 Application and resolved by Board Order LTB-T-071525-22 issued on August 2, 2023.

10. In response the Tenant Elisa Ristov, speaking on behalf of her mother the Tenant Silvana Albano, submitted that the stress, anxiety, and depression had been ongoing and not limited to the time covered by Board Order and should be taken into consideration.
11. Having examined Board Order LTB-T-071525-22, it is clear that the determinations in that order only covered the period leading up to the termination of the tenancy on December 15, 2019. Therefore, I directed that I would accept submissions regarding the anxiety, depression and stress caused by moving out of the rental unit following the termination of the tenancy.

Determinations:

6. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities.
7. The rental unit consisted of a basement apartment in a two-story house which the Tenant Silvana Albano moved into on December 15, 2018. Sometime later, in the spring or summer of 2018, the Landlord served the Tenants with a N12 Notice to terminate the tenancy (N12 Notice) with a termination date of November 30, 2019. Following this the Tenants and Landlord agreed that the Tenants would vacate the property on or before December 15, 2019, which the Tenants did. A copy of the N12 was entered in evidence and the Landlord Representative didn't dispute that it was served nor that the Landlord failed to provide one month's compensation to the Tenants as required by section 48.1 of the Residential Tenancies Act, 2006 (the "Act").
8. At the time the tenancy was terminated the monthly rent was \$1,100.00 a month.
9. The Tenants filed their application on January 13, 2021 alleging the Landlord gave the N12 Notice for their own use in bad faith.

Tenants' testimony and evidence

10. The Tenant Elisa Ristov testified that she suspected that the Landlord was acting in bad faith upon receipt of an email, entered in evidence, from Marg Wilson, the Landlord's realtor on December 22, 2018 in which she stated the Landlord's intent to sell the rental property. The Landlord was cc'd on this email. Accordingly, after her mother moved out of the rental unit, she kept an eye on the property and discovered that in January 2019 the Landlord had listed the rental property for sale. This was supported by a copy of the property listing and sale history entered in evidence.

11. In particular, the listing and sale history showed that property was listed for sale on January 31, 2020, February 22, 2020, March 13, 2020, and May 22, 2020 with it finally being sold on June 8, 2020.
12. The Tenant Silvana Albano testified that being forced to move coupled by the length of time it has taken to achieve a resolution caused her significant stress and depression as she had hoped to remain in the property for an extended period. In support of this Elisa Ristov entered a letter dated September 13, 2023, from a Dr. J.E. Strome who stated that as recent as September 13, 2023 the Tenant Silvana Alban was suffering from mental health issues related to housing for over 4 years.
13. On cross examination, Elisa Ristov and Silvana Albano both denied being aware of the Landlord moving into the rental property.
14. The remedies requested by the Tenants are as follows:
 - a. Difference in rent for a period of 12 months at \$99.00 a month for a total of \$1,188.00. This was supported by a copy of the new lease agreement showing the new rent to be \$1,199.00 entered in evidence;
 - b. Difference in cost for internet for a period of 12 months at \$44.82 for a total of \$537.84. This was supported by a copy of both the new and old leases entered in evidence as internet was included with the rent in the old lease. Copies of the internet bills were also entered in support;
 - c. \$750.00 to cover the moving costs. This was supported by a copy of the moving receipt entered in evidence; and
 - d. \$10,000.00 in general compensation for mental health issues including depression, anxiety and stress.

Landlord testimony and evidence

15. The Landlord Representative submitted that they wouldn't be contesting the serving the N12 or the listing of the rental property for sale citing there was a change in circumstances which led to the Landlord listening and eventually selling the property.
16. The Landlord testified that the original plan was for her to move into the basement apartment and her daughter Kelly, to move into the main and upper floor with her family. However, this changed in fall 2019 when Kelly's employment plans did not proceed as expected which led to her putting the house up for sale. She testified that she had moved into the property as of December 22, 2019, and had resided there until the end of October 2020 when the sale closed. Airline receipts, along with credit card statements

showing purchases in the area of the rental unit for the period of January 2020 till October 2020 were entered in evidence to support this.

17. The Landlord also testified that she had intended to remain in the property for a year to complete maintenance and the decision to list the property in January 2020 was largely due to the advice of her realtor who, given the emerging Covid pandemic, estimated it could take a year to sell the property. She further testified to having refused an offer due to the closing date being too soon and would have refused any further such offers as she still wanted to complete maintenance to the property and reconcile her belongings that remained in the house.
18. On cross examination the Landlord testified to not being aware of the requirement to pay compensation nor that to list the property within a year of taking possession was a breach of the Act. She further testified that she never had a tenant prior to the Tenants moving in, stating she only ever had roommates.
19. The Landlord Representative then submitted that there was no bad faith on part of the Landlord. It was her position that a change in circumstances coupled with the Landlord being elderly and being taken advantage of by her real estate agent and the uncertainty of the Covid pandemic led to the Landlord listening the property for sale, a sale that wasn't completed until October 29, 2020 a mere 30 days prior to the 12 month limit according to the Act.

Analysis

20. This "bad faith" application was filed pursuant to subsection 57(1)(a) of the Act which requires the Tenant to prove each of the following on a balance of probabilities:
 - (1) The landlord gave a notice of termination under section 48 of the Act (i.e. for landlord's own use) in bad faith;
 - (2) The tenant vacated the rental unit as a result of the notice; and
 - (3) The person listed in the N12 Notice did not occupy the rental unit within a reasonable time after the former tenant vacated the rental unit.
21. In this case the Landlord did not dispute that they served the N12 Notice and that the Tenant vacated because of that N12 Notice.
22. As to the third part of the test, it was Landlord's testimony that they did move into the rental unit as of December 22, 2019. In support of this they provided credit card receipts that denoted the purchase of airline tickets and activity in the area surrounding the rental unit congruent to the dates the Landlord testified too. In response, as part of her final

submissions, Elisa Ristov submitted that the mere existence of the receipts didn't substantially establish that the Landlord moved into the rental unit, postulating someone else could have used her credit card. In this regard I must disagree and am satisfied on the balance of probabilities that the Landlord did move into the rental unit as she testified. However, the Landlord, by her own admission, did not live in the rental unit for at least one year as required when a landlord terminates a tenancy by means of an N12 notice served under section 48 of the Act.

23. With respect to the remaining issue of bad faith, sections 57(5) and 57(6) of the Act creates a rebuttable presumption that an N12 was served in bad faith if a landlord takes steps to re-rent or sell the rental unit within one year of the tenant vacating.
24. The Landlord didn't deny listing the rental unit for sale less than one year after the Tenant vacated. Accordingly, there is a rebuttable presumption that the N12 Notice was served in bad faith. I find that the Landlord has not rebutted this presumption. What they attempted to argue is that there was a significant change in circumstances that led to them being misled into listing the rental unit for sale. I don't accept this explanation for several reasons.
25. First, the change in circumstances, namely the Landlord's daughter not being able to move into the rental unit occurred, according to the Landlord's own testimony, in the fall of 2019, prior to the termination date and more importantly prior to when the Tenants moved out on December 15, 2019.
26. Secondly, it is clear by the listing pattern, entered in evidence, that each time the listing was taken down it was relisted that the selling price was reduced. This does not speak of an individual willing or wanting to wait. On the contrary I am satisfied on the balance of probabilities that this was done to hasten the sale.
27. Finally, I don't accept the Landlord Representative's submission that the Landlord being elderly, the Covid pandemic and the sale of the rental unit occurring a month prior to the limitation somehow mitigates the effect or severity of the Landlord's breach. For one, the Landlord could have easily had their daughter present to testify to the change of circumstance. Second, the Landlord clearly had the wherewithal to retain legal counsel for the matter before me, accordingly, I don't believe she is as naive as the Landlord Representative, or she claims. As to the realtor taking advantage of her that is an issue she can address to the realtor and not at the expense of her former Tenants.
28. Therefore, the Tenant has proven all three parts of the test contained in subsection 57(1)(a) of the Act and what is left for me to determine the remedies to award the Tenant.

Remedies

29. Given the testimony and evidence above, I find that a rent differential of \$1,188.00 is appropriate in the circumstances. Specifically, there was no dispute as to what the monthly rent was prior to when the Tenants moved out of the rental property, and I accept the Tenant's evidence as to their current rent. Further, given the presumption of bad faith and the fact the rental unit was advertised within 45 days of possession, I am satisfied that the 12 months of rent differential requested is reasonable.
30. Similarly, I am satisfied that the \$537.84 difference in internet is also reasonable given the circumstances and the evidence submitted in support.
31. Finally, I am satisfied that \$750.00 in moving costs incurred are also reasonable and supported by the evidence submitted.
32. As to the remaining remedies sought, namely general compensation, as determined above, the Tenants filed their application prior to when the Act was changed to allow for this claim. Furthermore, the evidence submitted in support of this claim spoke of mental health issues spanning a four-year period, and the Tenants led no evidence to support the issues were a direct result of being forced to move.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$2,475.47. This amount represents:
 - \$1,800.00 for increased rent the Tenants have incurred for the one-year period from December 15, 2019 to December 15, 2020.
 - \$537.84 for the difference in cost for internet for the one-year period from December 15, 2019 to December 15, 2020.
 - \$750.00 for the reasonable moving, storage and other like expenses that the Tenants have incurred as a result of having to move out of the rental unit.
2. The Landlord shall pay the Tenant the full amount owing by October 24, 2023.
3. If the Landlord does not pay the Tenant the full amount owing by October 24, 2023, the Landlord will owe interest. This will be simple interest calculated from October 25, 2023 at 6.00% annually on the balance outstanding.

October 13, 2023
Date Issued

Kelly Delaney
Member, Landlord and Tenant Board

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