



Order under Section 57 Residential Tenancies Act, 2006

Citation: Merrow v Gerrie, 2023 ONLTB 65292

Date: 2023-10-05

File Number: LTB-T-052867-22

In the matter of: 763 Lansdowne Avenue
Toronto Ontario M6H3Z1

Between: Krystle Merrow Tenant

And

Lynda Gerrie Landlord

Krystle Merrow (the 'Tenant') applied for an order determining that Lynda Gerrie (the 'Landlord') gave a notice of termination in bad faith.

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

Only the Tenant attended the hearing.

As of 9:46 a.m., the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Tenant's evidence.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenant \$8,753.36.

Background Facts

2. The Tenancy commenced on October 1, 2015. The Tenant shared the premises with three other occupants and paid a monthly rent of \$594.00.
3. The Tenant testified that on February 23, 2021, the Landlord served her with an N12 notice of termination with a termination date of April 30, 2021 claiming the Landlord intended to move into the rental unit and occupy it for at least one year.
4. The Tenant testified that the Landlord informed her that she needed the unit as she left her husband, was staying with her daughter, and needed the rental unit for herself.
5. After receiving the N12 notice, the Tenant testified the tenants notified the Landlord in March 2021 their intention to vacate the premises on May 1, 2021.

6. Prior to receiving the N12 notice, the Tenant had lived in the unit for six years and had no intention of moving out.
7. The Tenant vacated the unit on April 2, 2021, a month before the other occupants vacated May 1, 2021.
8. The Tenant testified that the Landlord continued to pursue an L2 application based on the N12 notice despite the Landlord reclaiming possession of the unit. The application was withdrawn at a hearing in July 2021.
9. In the fall of 2021, the Tenant testified that she drove passed the rental property and decided to look up the property. The Tenant submitted into evidence listings she found online. The property was listed for sale on May 17, 2021 and sold on June 23, 2021.

Analysis

10. 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.
11. The Landlord served the Tenant with an N12 notice of termination under s. 48 of the Act. The Tenant moved out because she received this notice.
12. The Tenant's uncontested evidence establishes that the property was listed for sale on May 17, 2021 and sold on June 23, 2021, a mere two months after the Tenant moved out.
13. Pursuant to section 57(5) of the Act, there is a presumption of bad faith in this case since the rental unit was advertised for sale within a year of the Tenant moving out.
14. The Landlord did not attend the hearing to provide any evidence to rebut the presumption of bad faith.
15. Given that the rental unit was sold a mere two months after the Tenant moved out, I find, on a balance of probabilities, that the Landlord did not move into the rental unit in a reasonable time pursuant to the N12 notice after the Tenant vacated.
16. Therefore, I find the Landlord served the notice of termination in bad faith. The Tenant has established all of the factors set out in paragraph 10 above.

Remedies

17. The Tenant testified and submitted into evidence a signed lease for April 1, 2021 for a new rental unit with a monthly rent of \$1,350.00, which is \$756.00 higher than the rent she was paying at the rental unit.
18. The Tenant testified that she paid considerably more due to the change in the rental market after 6 years. While she did share the unit with other occupants, the Tenant submitted that the space she currently occupies is comparable to her previous unit and when she searched for rental properties, the difference with a roommate would have been only \$100.00 to \$200.00 less. Considering the Tenant opted to live alone, the Landlord will be ordered to pay the Tenant's rent differential of \$656.00 a month for 12 months, for a total of \$7,872.00.
19. The Tenant claimed \$95.00 in moving expenses. The Tenant submitted into evidence a Uhaul receipt in the amount of \$41.86. While the Tenant did not provide receipts for the cost of mileage and gas used in transit, I find the balance of \$53.14 to be reasonable for the cost of mileage and gas. The Landlord will be ordered to compensate the Tenant \$95.00.
20. The Tenant claimed general compensation of \$233.36 for the cost of a street parking permit at her current unit. The Tenant submitted that the rental unit included parking and her current rental unit does not. I find that the Tenant incurred this expense as a result of the bad faith notice and the Landlord will be ordered to compensate the Tenant for this cost.
21. The Tenant also sought general compensation of \$900.00 for the cost of six months of therapy stemming from undue hardship, stress, and emotional damages as a result of the Landlord serving her the N12 notice and \$500.00 for time and effort spent researching tenant rights, speaking to advocates and legal aid, and preparing evidence.
22. The Tenant was not able to provide receipts for her therapy costs but testified that she went to therapy more often after the N12 notice was served. The Tenant submitted that the N12 notice and her having to vacate her home during the pandemic cost her a lot of money and emotional stress. The Tenant is a freelance photographer and at the time the N12 was served, she was not able to work due to restrictions. As of the hearing day, she continues to pay more than double what she paid for rent at the rental unit. I find that general compensation of \$500.00 is appropriate in the circumstances.
23. As the Tenant is successful with the application, the Landlord will be ordered to pay the costs of filing the application in the amount of \$53.00

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$8,753.36. This amount represents:
 - \$7,872.00 for increased rent the Tenant has incurred for the one-year period from April 1, 2021 to March 31, 2022.

- \$95.00 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.
 - \$733.36 for general compensation.
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by October 16, 2023.
 3. If the Landlord does not pay the Tenant the full amount owing by October 16, 2023, the Landlord will owe interest. This will be simple interest calculated from October 17, 2023 at 7.00% annually on the balance outstanding.
 4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

October 5, 2023

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Vicky Liu

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.