



Order under Section 57 Residential Tenancies Act, 2006

Citation: Pushparajan v Wiredu-Asante, 2023 ONLTB 65283

Date: 2023-10-04

File Number: LTB-T-067886-22

In the matter of: 1011, 4770 TUCANA COURT
MISSISSAUGA ONTARIO L5R3K8

Between: Lakshman Pushparajan Tenant
Pushparajan Sinnadurai
Kalanithy Pushparajan
Ushica Nisanth

And

Alex Wiredu-Asante Landlord
Priscilla Wiredu-Asante

Lakshman Pushparajan, Pushparajan Sinnadurai, Kalanithy Pushparajan and Ushica Nisanth (the 'Tenants') applied for an order determining that Alex Wiredu-Asante and Priscilla Wiredu-Asante (the 'Landlords') gave a notice of termination in bad faith.

This application was heard by videoconference on September 11, 2023. The Landlords and the Tenants attended the hearing.

I heard evidence from the Landlords and Laksman Pushparajan. While identified as a Tenant, Mr. Pushparajan did not live in the rental unit. His parents occupied the unit.

Determinations:

1. This application is brought under section 57 of the *Residential Tenancies Act, 2006* (the 'RTA'). To obtain a remedy, the Tenants must establish:
 - (a) the Tenants vacated the unit as a result of an N12 notice;
 - (b) the Landlords did not occupy the unit within a reasonable time after the Tenants vacated; and
 - (c) the Landlords delivered an N12 notice in bad faith—i.e. they did not genuinely intend to occupy the unit when the notice was delivered.
2. On May 14, 2021, the Tenants were given an unsigned N12. That N12 had a July 31, 2021 termination date and indicated that the Landlords intended to occupy the unit.

3. Mr. Pushparajan testified that, on May 15, 2021, he had a conversation with a real estate agent—Ravi Kana (aka Ravi Kanagaratnam)—who informed him that the Landlords intended to sell the unit and offered him a right of first refusal to purchase the unit. He agreed that the Tenants would vacate.
4. On May 19, 2021, the Tenants received a signed N12 with a July 31, 2021 termination date that indicated the Landlords intended to occupy the unit. While the Landlords signed it, the N12 was delivered by Mr. Kana. **[DOC-729453]**
5. The Tenants vacated the unit during the last week of July of 2021.
6. I find the Tenants vacated the unit as a result of the N12.
7. There is no dispute that the Landlords never occupied the unit.
8. Concerning whether the Landlords gave the N12 in bad faith, subsection 57(5) creates a presumption that an N12 was given in bad faith where, among other things, the unit was advertised for sale within one year of the tenant vacating. **[RTA. ss. 57(5) and (6)]**
9. There is no dispute that the unit was listed with Mr. Kana **[DOC-750131, Tab 8]** and sold on September 29, 2021, which means that the Landlords have the onus of establishing that they delivered an N12 notice in bad faith—i.e. they did not genuinely intend to occupy the unit when the notice was delivered.
10. According to Mr. Assante: (a) when served the N12, both he and his wife had just retired and had sold their house in Whitby; and (b) he and his wife intended to move into the rental unit because they believed that moving into the unit would assist them financially.
11. Mr. Assante testified that following the termination of the tenancy, he became aware that his mother-in-law in Ghana was seriously ill. According to Mr. Assante, his mother-in-law's illness resulted in a change of plans and, rather than move into the unit, he and his wife moved back to Ghana.
12. The Landlords filed a 'to whom it may concern' letter from a doctor in Ghana dated July 14, 2022 indicating that the Landlord's mother-in-law was hospitalized in August or September of 2021. The letter further indicates that the mother-in-law is bedridden and needs constant supervision and attention. **[DOC-1801817]**
13. Mr. Pushparajan did not directly challenge Mr. Assante's evidence concerning his mother-in-law's health, but pointed to evidence that could suggest that the Landlords were planning to sell the unit in May of 2021. None of this evidence was conclusive of the Landlords' intentions, but it was sufficient to raise concerns about what the Landlords intentions were in May of 2021.
14. Ultimately, I am not satisfied that the Landlords have overcome the presumption created by subsection 57(5) and established on the balance of probabilities—that it is more likely than not—that when the N12 was delivered in May of 2021 they genuinely intended to occupy the residential occupation as opposed to selling it.

15. When he was cross-examined, Mr. Pushparajan was not challenged on his assertion that Mr. Kanan had told him, on May 15, 2021, that the unit was being sold.
16. The Landlords did not produce the listing agreement with Mr. Kana or call Mr. Kana to provide evidence to refute Mr. Pushparajan's assertion and I believe that it is appropriate to make an adverse inference against the Landlords based on their failure to call Mr. Kana.
17. Having found that the Landlord delivered the N12 in bad faith, I must determine the remedy to which the Tenants are entitled. Subsection 57(3) says that the LTB can make the following orders:
 1. An order that the landlord pay a specified sum to the former tenant for all or any portion of any increased rent that the former tenant has incurred or will incur for a one-year period after vacating the rental unit.
 2. 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.
 3. An order that the landlord pay a specified sum to the former tenant for reasonable out-of-pocket moving, storage and other like expenses that the former tenant has incurred or will incur.
 4. An order for an abatement of rent.
 5. An order that the landlord pay to the Board an administrative fine not exceeding the greater of \$10,000 and the monetary jurisdiction of the Small Claims Court.
 6. Any other order that the Board considers appropriate.
18. The Tenants asked for: (a) a rent abatement of \$822.16; (b) a 'rent differential' amount of \$1,304.04; (c) out-of-pocket expenses of \$72.59; (d) 'general' compensation of \$22,095.96; and (e) an order that the Landlord pay an administrative fine.

Rent Abatement—\$0

19. The Tenants assert that they did not have full enjoyment of the unit after the N12 was delivered because they were extremely stressed. In my view, the fact that the Tenants suffered stress may be grounds for an award of 'general' compensation but not an abatement.

Rent Differential—\$1,304.04

20. The Tenants moved into their new accommodations on June 14, 2022. The Tenants paid monthly rent of \$1,841.33 for the unit. Mr. Pushparajan's evidence on cross-examination was that his parents moved into a condo that was smaller than the unit. The rent at their new rental accommodations is \$1,950.00. **[DOC-750131, Tab 5]** I find that the Tenants are entitled to a rent differential claim of \$1,304.04.

Moving Expenses—\$72.59

21. The Tenants filed a \$72.59 receipt for a U-Haul rental. [DOC-750131, Tab 6]

'General' Compensation—\$0

22. On the T5, the Tenants claimed they suffered stress finding alternative accommodations after living in the unit for ten years. Mr. Pushparajan's parents did not, however, attend to provide evidence and Mr. Pushparajan testified that: (a) he considered the N12 a 'blessing in disguise' and wanted to get his parents out of the unit; and (b) finding new accommodations was inconvenient, but his parents wanted to leave the unit in any event. I do not see any basis for an award of 'general' compensation based on the evidence of Mr. Pushparajan.

Administrative Fine---\$0

23. In this case, I see no basis for imposing an administrative fine. An administrative fine is a remedy to be used by the LTB to encourage compliance with the RTA and to deter landlords from engaging in similar activity in the future. This remedy is not normally imposed unless a landlord has shown a blatant disregard for the RTA and other remedies will not provide adequate deterrence and compliance.

It is ordered that:

1. The total amount the Landlords shall pay the Tenants is \$1,429.63. This amount represents:
 - (a) \$1,304.04 for increased rent the Tenants have incurred for one year;
 - (b) \$72.59 for the reasonable moving expenses; and
 - (c) \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by October 15, 2023.
3. If the Landlords do not pay the Tenant the full amount owing by October 15, 2023, the Landlords will owe interest. This will be simple interest calculated from October 16, 2023 at 7.00% annually on the balance outstanding.

October 4, 2023**Date Issued**

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

E. Patrick Shea

Vice Chair, Landlord and Tenant Board

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