



Order under Section 57 Residential Tenancies Act, 2006

Citation: Labahn v Lim, 2023 ONLTB 62640

Date: 2023-09-20

File Number: LTB-T-051466-22

In the matter of: 705, 156 Portland Street
Toronto Ontario M5V0G1

Between: Philip Labahn Tenant

And

Misoon Lim Landlord
YOUNGGU KWON

Philip Labahn (the 'Tenant') applied for an order determining that Misoon Lim and YOUNGGU KWON (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on September 7, 2023 at 1:00 pm.

Only the Tenant Representative Joseph Behar attended the hearing.

As of 1:30 pm, the Landlord were 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.
2. The rental unit consist of an apartment in a multi-story residential building which the Tenant moved into in October 2020 and moved out of on November 26, 2021, after receiving a N12 Notice to Terminate the Tenancy (N12 Notice) on September 20, 2021. Emails between the Landlord and Tenant were entered in evidence, including the Landlord stating the purpose of the terms of the N12 Notice was for their own use.
3. At the time the tenancy was terminated the monthly rent was \$1,975.00 a month.

4. The Tenant filed this application on April 22, 2022, alleging the Landlord gave the N12 Notice for their own use in bad faith.

Tenant submission and evidence.

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5. The Tenant Representative submitted that as of March 21, 2022 the Landlord began to relist the rental unit. This was supported by screenshots of social media posts from the Landlord, advertising the unit as available entered in evidence.
6. The Tenant requests the following remedies:
 - a. \$5,925.00 representing three months at \$1,975.00 in rent abatement; and
 - b. \$847.50 in moving expenses supported by an invoice entered in evidence.

Analysis

7. This “bad faith” application was filed pursuant to subsection 57(1)(a) of the *Residential Tenancies Act, 2006* (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.
8. 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.
9. In this case, the undisputed evidence before me clearly demonstrates that the Landlord served the N12 Notice and that the Tenant vacated because of that N12 Notice. Therefore, I am satisfied on the balance of probabilities that the second and third part of the test contained in subsection 57(1)(a) have been proven.

10. With respect to the remaining issue of bad faith, it is clear based on the evidence before me that the Landlord re-listed the rental unit. Accordingly, there is a rebuttable presumption that the N12 Notice was served in bad faith. There is no evidence before me to rebut the presumption of bad faith.
11. 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 is what if any remedies to award the Tenant.

Remedies

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11. Given the testimony and evidence above, I find that a rent abatement of \$5,925.00 is appropriate in the circumstances as the rental unit was advertised as generating double the amount the Tenant last paid and by forcing the Tenant to move, the Landlord forced the Tenant to incur cost they otherwise would not have.
12. Similarly, I am satisfied that the \$847.50 in moving costs, as supported by the receipts entered in evidence is warranted.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$6,772.50. This amount represents:
 - \$5,925.00 in rent abatement for a period of 3 months; and
 - \$847.50 for the moving expenses that the Tenant has 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 1, 2023.
3. If the Landlord does not pay the Tenant the full amount owing by October 1, 2023, the Landlord will owe interest. This will be simple interest calculated from October 2, 2023 at 6.00% annually on the balance outstanding.

September 20, 2023

Date Issued

Kelly Delaney

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.