



Order under Section 57 Residential Tenancies Act, 2006

Citation: Swan v Hedayati, 2023 ONLTB 61688

Date: 2023-09-08

File Number: LTB-T-006150-23

In the matter of: 746 Leslie Valley Drive
Newmarket ON L3Y7J3

Between: Michelle Swan Tenant

And

Sima Hedayati Landlord

Michelle Swan (the 'Tenant') applied for an order determining that Sima Hedayati (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on June 12, 2023.

The Tenant attended the hearing. The Landlord was represented at the hearing by Ali Golabgir.

Determinations:

1. As explained below, I find the Landlord gave a notice of termination in bad faith.
2. In order for this application to be successful, s.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.
3. On April 28, 2022 the Landlord's spouse served the Tenant an N12 notice of termination. The basis for the N12 was that the Landlord's spouse, in good faith, required the rental unit for the purposes of residential occupation.
4. There is no doubt the Tenant moved out of the rental unit because she received the notice of termination.

5. The issues to be determined are whether the Landlord's husband with a reasonable time after the Tenant vacated; and whether the Landlord served the N12 in bad faith.

The Unit was used as an AirBnB

6. The Tenant's witness Steve Cooper testified at the hearing. SC was the Tenant's neighbour, and presently resides next door to the rental unit. After the Tenant vacated the rental unit, he noticed several people coming and going from the rental unit. He noticed several different cars parked in the driveway of the rental unit.
7. SC became suspicious that the Landlord was using the former rental unit as a short term rental. He discovered the rental unit was listed on the website AirBnB for rent for \$480.00 a night.
8. I accept the evidence of SC. He testified in an honest and forthright manner. The Landlord's representative attempted to diligently cross-examine him. However, his testimony remained consistent throughout. His testimony also aligns with the posted advertisement on the AirBnB website.
9. Based on the testimony of SC, and the unit being advertised on AirBnB, I find that the Landlord's spouse did not move into the rental unit within a reasonable amount of time after the Tenant vacated.

Did the Landlord serve the N12 in bad faith?

10. Since the unit was listed for rent on AirBnB, the reverse onus provision in s.57(5) of the Act applies. This provision states:

For the purposes of an application under clause (1) (a), it is presumed, unless the contrary is proven on a balance of probabilities, that a landlord gave a notice of termination under section 48 in bad faith, if at any time during the period described in subsection (6) the landlord,

(a) advertises the rental unit for rent;

11. This provision means that, the Landlord bears the burden of proof to establish that she did not serve the notice of termination in bad faith. I find the Landlord has not met the burden.
12. The Landlord testified at the hearing. She testified that her and her husband were splitting up. That is why he needed possession of the rental unit. She had no idea that her husband was using the rental unit as a short-term rental. Once she discovered this to be the case she told her husband to stop renting the unit.
13. I have no reason to disbelieve the Landlord's testimony. However, the fact that she was unaware her husband was renting the unit on AirBnB does not allow her to escape liability because he did not move into the rental unit.

14. Section 48 of the Act is clear that a landlord who serves a notice of termination under this section must do so in good faith. Acting in good faith means a landlord who serves a notice of termination is responsible to ensure the person requiring residential occupation moves into the rental unit. Any other outcome would be contrary to the intention of the Act.
15. In this situation, it is not open for the Landlord to serve an N12 and then escape liability because she was unaware of her husband's actions. Therefore, I find the Landlord served the N12 in bad faith.

Bad Faith Remedies

16. I find the Tenant has met all three elements of the test for this application to be successful. Therefore, the Tenant is entitled to remedies under s.57(3) of the Act.
17. Section 57(3)(1) gives the Board jurisdiction to order a landlord to pay any increase in rent a former tenant with occur for a one-year period after vacating the rental unit. I accept the Tenants' uncontested evidence they pay \$709.00 more in monthly rent for smaller place. I find the Tenants are entitled to the rent differential in the amount of \$8,508.00 for the 12-month period after they vacated the rental unit.
18. Section 57(3) (1.1) of the Act authorizes the Board to pay general compensation in the amount of up to 12 months rent the Tenants last paid should it be determined the Landlords gave an N12 in bad faith.
19. The Tenant seeks \$22,001.50 under this section. I find the amount claimed to be excessive. In the Tenant's closing submission, she stated that the amount of general compensation is negotiable. This suggests the impact of moving on the Tenant is minimal. Accordingly, I find an award of \$1,000.00 for general compensation to be appropriate.
20. The Tenants seek to be reimbursed for moving expenses. The Tenant paid \$2,749.30 to hire a moving company. The Tenant also experienced other incidental costs to move smaller items. I find it appropriate to order the Landlord to pay the Tenant for the cost of the moving company as well as \$250.00 in other incidental costs, including the cost of having her mail being forwarded to her new place.
21. The Tenant paid \$53.00 to file this application and is entitled to be reimbursed that fee.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$12,560.30. This amount represents:
 - \$8,508.00 for increased rent the Tenant has incurred for the one-year period after she moved out of the rental unit.
 - \$2,999.30 for the reasonable moving, storage and other like expenses that the Tenant as a result of having to move out of the rental unit.

- \$1,000.00 for general compensation.
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by September 19, 2023.
 3. If the Landlord does not pay the Tenant the full amount owing by September 19, 2023, the Landlord will owe interest. This will be simple interest calculated from September 20, 2023, at 6.00% 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.

September 8, 2023

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Bryan Delorenzi

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.