



Order under Section 57 Residential Tenancies Act, 2006

Citation: ZHESTKOV v SYED, 2023 ONLTB 57327

Date: 2023-08-18

File Number: LTB-T-068879-22

In the matter of: 27 LENTHALL AVENUE
SCARBOROUGH ON M1B2C7

Between: MICHAEL ZHESTKOV Tenant

And

SHUJA SYED Landlord

MICHAEL ZHESTKOV (the 'Tenant') applied for an order determining that SHUJA SYED (the 'Landlord') gave a notice of termination in bad faith.

This T5 application was heard by videoconference

- a) initially on October 19, 2021 and adjourned due to lack of time to complete
- b) June 30, 2022 and adjourned upon request of the Tenant representative who required to attend to a personal matter
- c) and completed December 6, 2022

The Landlord, self-represented, and the Tenant, represented by Jeff Shabes, a licensed Paralegal, attended the hearing.

Determinations:

1. A This is a T5 tenant-initiated application alleging that the Landlord served a N12 Notice to End your Tenancy Because the Landlord, a Purchaser, or a Family Member Requires the Rental Unit, (the "Notice"), in bad faith.
2. For the reasons as set out below I will be granting the Tenant's application.
3. This application is brought pursuant to s. 57(1)(a) of the *Residential Tenancies Act, 2006*(the 'Act') which states;

"The Board may make an order described in subsection (3) if, on application by a former tenant of a rental unit, the Board determines that,

(a) the landlord gave a notice of termination under section 48 in bad faith, the former tenant vacated the rental unit as a result of the notice or as a result of an application to or order made by the Board based on the notice, and no person referred to in clause 48 (1) (a), (b), (c) or (d) occupied the rental unit within a reasonable time after the former tenant vacated the rental unit;”

4. What this provision means is that in order to succeed on this application the Tenant must lead sufficient evidence to establish it is more likely than not that:
 - (1) The Tenant got a notice of termination under s. 48;
 - (2) The Tenant moved out of the rental unit as a result of the Landlord’s notice;
 - (3) The notice was given in bad faith meaning the Landlord had no intention of moving into the rental unit; and
 - (4) The Landlord did not in fact move into the rental unit within a reasonable time after the Tenant vacated.

Tenant’s Submission

5. The Tenant representative submitted that the Landlord served the Tenant with the N12 Notice effective September 30, 2020. The Notice indicated that the Landlord required the rental unit for his son.
6. As a result of the Notice the Tenant vacated the rental unit as stipulated on the notice.
7. The monthly rent was \$2,200.00
8. The Tenant representative submitted that 1 week after he moved out the Tenant learned that it was not the Landlord’s son but someone else that had moved into the rental unit.
9. The Tenant representative submitted that the Tenant searched the internet and located a real estate listing for the rental unit.
10. The Tenant representative submitted 2 real estate listing for the rental as follows;
 - i) 27 Lenthall Ave. Toronto ON – monthly \$2,100.00
 - ii) 27 Lenthall Ave. Toronto On Lwr – monthly rent \$1,400.00
11. The Tenant representative submitted that the move had caused the Tenant had health concerns and that this situation had caused him great stress. Medical documentation was submitted that the Tenant was admitted to hospital February 24-28, 2020 and again December 7-14, 2020.

12. The Tenant submitted that he was unable to find anything equal to what he was renting from the Landlord and had to rent a 1 bedroom unit that was close to his work.
13. The Tenant's representative submitted a copy of a lease that the Tenant signed on September 23, 2020. The basic rent is \$1,700.00 per month and includes a locker and a parking spot.

Landlord's submission

14. The Landlord submitted that his son was to move into the rental unit however the situation has changed and his son did not move into the rental unit.
15. The Landlord did not contest that he was the real estate agent that advertised the rental property.
16. The Landlord explained that he understood the rules, that he had compensated the Tenant the required 1 month's rent and had filed all the required documents.
17. The Landlord submitted that after his son had changed his mind the rental unit was re-rented and that the new tenants moved in December 2020.

Analysis

18. Based on the evidence received from both the Landlord and the Tenant, I find that the Tenant vacated the rental unit pursuant to the "notice" provided by the Landlord. The Landlord's desire was to have his family occupy the rental unit.
19. Based on the Landlord's submission the Tenant vacated the rental unit on September 30, 2020.
20. The Tenant's evidence supports that the Landlord listed the rental premises right after he vacated the rental unit.
21. With respect to the issue of good faith, s. 57(5) of the Act states 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 the landlord advertises the unit for sale or lease within one year of the date the tenant vacates. In this case, I find that the Landlord listed the unit for rent shortly after the Tenant vacated September 30, 2020, which is less than one year after the Tenants vacated and for a substantial increased rate.
22. The Landlord did not present any evidence that his son was going to move-into the rental unit and had changed his mind.
23. The evidence indicates that the rental unit was for \$1,200 for month more than the previous tenant.

24. As the Tenants have established all of the required elements of the test contained in s. 57(1)(a) of the Act, I find that that the Landlords served the Tenants the N12 in bad faith. The Tenants are therefore entitled to remedies under s.57(3) of the Act.

Remedies

25. The Tenant sought the following remedies in their application;

- I. Remedy 1: - Rent abatement of \$26,000.00
- II. Remedy 2: - The Landlord to pay a fine to the LTB
- III. Remedy 3: - The Landlord to pay for Tenant's expense
- IV. Remedy 5: - LTB to order other remedies

Remedy 1 – Rent abatement

26. The Tenant moved into another unit that cannot be exactly compared. The new unit is a 1 bedroom, with parking and a storage locker. The loss of space required the Tenant to obtain and pay for additional storage space.
27. The rent for the new rental unit is \$1,700.00
28. Although not a direct comparable I am awarding the Tenant \$850.00 per month for the rent differential between the former rental unit and the new unit. The old unit had 3 bedrooms and the Tenant had sublet the lower portion of the rental unit for \$1,000.00. effectively costing him \$1,200.00 a month for the former unit. The Tenant had also downsized by 2 bedroom and had lost the use of storage space.

Remedy 2 – Fine to the LTB

29. A fine is appropriate where the other remedies awarded will not be sufficient to deter the offending conduct. In this case I believe that the other remedies awarded will not serve to deter future offending conduct. Based on submissions by the Tenant, namely the real estate listing, the Landlord appeared to seek profit at the expense of the Tenant. I find that Landlords' conduct to be disruptive to and without regard to the Tenant. The Landlords must pay a fine to the LTB of \$10,000.00.

Remedy 3 – Tenant's expenses

30. The Tenant was required to obtain addition storage for 1 year after moving out. Receipts were submitted to the Board supporting that the Tenant paid \$1,306.57, \$1,281.57 and \$1,281.57 totaling \$3,869.71

31. The Tenant paid for a mail forwarding service for 1 year – \$96.00 was claimed. A receipt was not provided however this seems reasonable and I will be awarding \$96.00 to the Tenant for this service.
32. The Tenant claimed \$1,186.50 for moving expenses – a receipt was submitted. I will be awarding the Tenant the sum of \$1,186.50 for moving expenses.
33. The Tenant claimed a new condo fee of \$50.00. As this matter was not discussed at the hearing, I will decline to make a ruling or award for this item.

Remedy 5

34. The Tenant requested other remedies. I will be awarding the Tenant an additional \$1,000.00 for the partial payment of the filing fee and legal expenses incurred.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$16,352.21. This amount represents:
 - \$10,200.00 for increased rent the Tenant has for the one-year period from October 1, 2020 to September 30, 2021.
 - \$1,186.50 for the reasonable moving, storage and other like expenses that the Tenant has as a result of having to move out of the rental unit.
 - \$3,869.71 for the costs incurred obtaining additional storage space as a result of having to move out of the rental unit
 - \$96.00 for the cost of redirecting mail for one year as result of having to move out of the rental unit
 - \$1,000.00 for the cost of filing the application and legal fees
2. The Landlord shall pay the Tenant the full amount owing by August 29, 2023.
3. If the Landlord does not pay the Tenant the full amount owing by August 29, 2023, the Landlord will owe interest. This will be simple interest calculated from August 30, 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.
5. The Landlord shall pay to the Landlord and Tenant Board an administrative fine in the amount of \$10,000.00 by August 29, 2023.

August 18, 2023

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Peter Pavlovic

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.

Payment of the fine must be made to the LTB by the deadline set out above. The fine can be paid by certified cheque, bank draft or money order made payable to the Minister of Finance. If paying in person, the debt can also be paid by cash, credit card or debit card.