



Order under Section 57 Residential Tenancies Act, 2006

Citation: Brittany v Okafor, 2023 ONLTB 53057

Date: 2023-07-28

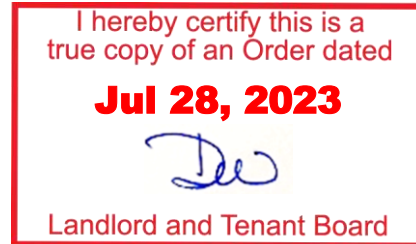
File Number: LTB-T-007509-23

In the matter of: 2, 344 Charlton Avenue West
Hamilton Ontario L8P2E7

Between: Shawn Brittany
Zita De Snoo

And

Nnamdi George Okafor



Tenant

Landlord

2023 ONLTB 53057 (CanLI)

Shawn Brittany and Zita De Snoo (the 'Tenant') applied for an order determining that Nnamdi George Okafor (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on July 13, 2023.

The first named Tenant, the Tenants' legal representative Cindy Coon and witness for the Tenants Alison Farmer and the Landlord attended the hearing.

The first named Tenant confirmed he has authorization to speak on behalf of the second named Tenant.

Determinations:

1. As explained below, the Tenants did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.
2. The rental unit is the middle unit of a triplex.
3. The tenancy began around November 2017.
4. The tenants moved out around December 3, 2021
5. The Tenant's filed a T5 application September 29, 2022.

6. The Tenants assert the Landlord gave an N12 notice to terminate the tenancy in bad faith and the Landlord did not move into the rental unit.
7. 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.
8. There is no dispute that the Landlord served the Tenants with a notice of termination under s.48 of the Act nor that the Tenants moved out because they received this notice.
9. The central factual dispute is that the Landlord served the notice of termination in bad faith.

Presumption of Bad Faith

10. There is no dispute that the Landlord served the Tenants with an N12 notice of termination on or around August 24, 2021 with a termination date of October 31, 2021. The N12 notices states that the Landlord intends to move into the rental unit and occupy it for at least one year. There is no dispute that the Landlord did not proceed with filing the L2 application with the Board.
11. The Tenants submit that the Landlord did not move into the rental unit, that frequent drive by visits indicate the unit is dark with no signs of anyone living there, no car in driveway, curtains always drawn, an accumulation of mail and notices from the City of Hamilton affixed to the property in various spots.
12. The Tenants' witness testified that she is often home and does not believe that the Landlord moved into the rental unit as it appears to be vacant and no signs of coming and going by the Landlord. She cites many of the same details as above.
13. The Tenants did not lead any evidence that the Landlord did not intend to move into the rental unit.
14. I would observe at this point that the reverse onus provision in subsection 57(5) of the Act applies to this situation. 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;

(b) enters into a tenancy agreement in respect of the rental unit with someone other than the former tenant;

(c) advertises the rental unit, or the building that contains the rental unit, for sale;

15. It was the testimony and evidence of the Landlord that he served the Tenants with the N12 notice as he had received similar notice from his landlord and had to move out. However, he said his landlord withdrew the application but he decided to pursue his N12 notice as he had lost his job and moving into this rental unit was more affordable.
16. The Landlord testified that he has not listed the unit nor the residential complex for sale nor for rent and has not rented the unit to any other tenants.
17. The Landlord testified that he moved into the rental unit around January 8, 2022 and acknowledged that he does not stay at the rental unit on a regular basis. He said that his job requires significant and extended travel and he finds it practical to stay at this girlfriend's home and/or his parents' home in the Toronto area.
18. On the date of the hearing, the Tenant participated from Dallas where he was staying with his family. Although he did not have access to physical documentation, he did provide evidence by way of bank details and the Landlord's name and address for this rental unit was identified. He said that he has also transferred his insurance and other services to reflect this unit as his residence. The Landlord acknowledged that his drivers' licence shows the address of his parents' property.
19. Based on the facts presented at the hearing and on a balance of probabilities, I find that the Landlord successfully rebutted the presumption under s.57(5) of the Act.
20. I further find that, based on the evidence before me, the Landlord served the N12 notice in good faith because he moved into the unit and although he does not stay at the rental unit with any consistency, he has not entered into a new tenancy agreement nor has listed the unit for rent for the complex for sale nor has the Landlord commenced any renovations.
21. Accordingly, the Tenant's applications must be dismissed.
22. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The Tenants' application is dismissed.



July 28, 2023
Date Issued

Dana Wren
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.