



**Order under Section
Residential Tenancies Act, 2006**

Citation: Ahmed Elbeheiry v Tian Yu, 2023 ONLTB 39831

Date: 2023-05-30

File Number: LTB-T-002954-23

In the matter of: 27 Maralisa St
Ottawa ON K2G6S9

Between: Ahmed Elbeheiry Tenant

And

Tian Yu Landlord

Ahmed Elbeheiry (the 'Tenant') applied for an order determining that Tian Yu (the 'Landlord') substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household (T2 Application). The Tenant also applied for an order determining that the Landlord gave a notice of termination in bad faith (the T5 application).

These applications were heard by videoconference on May 16, 2023 at 09:00 am.

Tenant Representative Reem Chansedine, the Tenant and the Landlord attended the hearing.

Preliminary Issue:

1. At the outset of the hearing the Tenant Representative requested that I consider the Tenant's T5 Application even though the Landlord had not given the Tenants an N12 Notice of Termination under section 48 of the *Residential Tenancies Act, 2006* (the "Act").
2. At the hearing I stated that since no N12 Notice of Termination was given to the Tenant, I would not consider the Tenant's T5 Application. However, notwithstanding this oral ruling I did permit the parties to provide evidence and submissions on the T5 application. Subsequently, and as explained below, through testimony and evidence introduced through the course of the hearing, I am now satisfied that the essential elements of an N12 Notice to Terminate were provided to the Tenant. Therefore, the Board has the jurisdiction to consider the Tenant's T5 Application under section 57(1) of the Act.

Determinations:

3. The Tenant moved into the rental property on November 01, 2018 with his family and vacated on July 01, 2022.
4. The lawful rent was \$2,150.00 prior to the Tenant moving out.

Tenant's Testimony and Evidence

5. The Tenant testified that in March 2022 the Landlord called him and informed him that he would be requiring the rental property for his own use, stating that his parents intended to move in once they immigrated from China. In the months that followed the Landlord would regularly text him inquiring as to when he could regain possession. In response he offered to pay more rent but the Landlord refused, again stating he needs the house for his parents. This was supported by several text messages entered in evidence, including one message dated May 28, 2022 in which the Landlord states that he needs the house for parents as soon as the end of June 2022.
6. On April 27, 2022, the Tenant and the Landlord signed a N11 Agreement to terminate the tenancy on June 30, 2022. The Landlord agreed to compensate the Tenant two months rent and cover the moving costs. A copy of the N11 agreement, dated, with the handwritten annotations stipulating the two months rent in compensation and reimbursement for moving costs was entered into evidence.
7. The Tenant testified that the Landlord's parents never moved into the rental unit, and in fact sold the unit on July 22, 2022 after he vacated. The Tenant had seen for sale signs on the property. This was supported by a copy of listing in his submissions, although not introduced. He also testified that throughout the tenancy the Landlord would regularly increase the rent above the annual provincial guidelines and that he only wanted to profit from the unit.
8. He further testified the Landlord had initially provided him with a fraudulent cheque for the two months compensation, and that cheque caused him to go into a negative balance with his bank. A copy of the cheque with the name of an individual other than the Landlord was entered in evidence. After this, the Landlord e-transferred him the two months compensation.
9. It was also his testimony that the Landlord never compensated him the moving costs as agreed, stating that when he provided the Landlord the receipt, entered in evidence, the Landlord claimed that he and his family damaged the property. It was his position that the Landlord had conducted a walk through prior to him returning the keys and there was no damaged as claimed.
10. It was the Tenant's submission that he and his family never wanted to leave the rental unit. The Landlord actively and persistently harassed him through text a phone to move out as soon as possible, repeatedly stating it was for his parents and it was only due to him not knowing his rights that he complied.
11. The remedies sought by the Tenant, as per their T2 and T5 Applications are as follows:
 - a. \$520.00 difference in rent for a 12 month period;
 - b. \$1,975.00 in moving costs that the Landlord was required to pay per their N11 agreement;

- c. General compensation \$16,000.00 (T2 Application)

The Landlord's Testimony and evidence

12. The Landlord testified that throughout the tenancy the Tenant had caused him problems, regularly paying the rent late or not at all. As such he wanted to terminate the tenancy and that he used the guise of his parents moving into the house in order to force the Tenant to move out.
13. He didn't dispute the terms of the N11 agreement or that he presented it to the Tenant despite knowing he had no intent of his parents moving in, admitting it was the easiest option to regain possession and only told the Tenant that lie after he had signed the N11 Agreement. This is supported by a written statement he submitted to the Board but was not introduced in evidence.
14. He also admitted to withholding the moving costs, submitting in evidence several pictures of the rental property that depicted varying damaged from broken door handles, missing lamp shades, debris and general uncleanliness. It was his position that he was entitled to retain the moving costs to offset the repairs and cleaning. He also testified to having sold the property after regaining possession and that his parents never intended to move into the property. The Landlord acknowledged that he actively gamed the system.

Analysis

Bad Faith

9. The T5 application was filed by the Tenant under section 57(1)(a) of the Act which requires a former tenant to prove that it is more likely than not that:
 - (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.

10. Section 48(1)(c) of the Act states:

48 (1) A landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by,

- (c) a child or parent of the landlord or the landlord's spouse

11. It's undisputed that the Landlord did not serve a N12 Notice to Terminate the Tenancy. That said, I am satisfied, based on the above evidence and testimony, that the essential elements of such a notice, specifically, that the Landlord required vacant possession of

the rental unit for his parents use, were communicated to the Tenant by the Landlord via text messages in in May 2022 and via a phone call from the Landlord in March 2022. In making this finding I have had regard to section 202 of the Act which requires the Board to ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants.

12. Although submitted but not entered in evidence, the Landlord's written statement asserts that he didn't communicate his admittedly false claim that he needed the unit for his parents until after the Tenant signed the N11 agreement. I do not accept this. Given the Landlord freely testified that his parents never intended to move in and that on my own questioning he admitted to circumventing the system, I do not find the Landlord to be a credible witness. I accept the Tenant's testimony that he began searching for a new rental property and then signed the N11 agreement under the belief that the Landlord's parents were moving into the rental unit.
13. I further accept that the Tenant vacated the rental unit as a result of the Landlord's communication that contained the essential elements of an N12 Notice. While the Tenant signed an N11 Agreement to terminate the tenancy, I find that he only did so because the Landlord told him he needed vacant possession.
14. The Landlord did not dispute the Tenant's evidence that the rental unit was listed for sale less than a month after the Tenant vacated. Therefore, pursuant to section 48(5) of the Act there is presumption that the N12 Notice was served in bad faith
15. I do not find that the Landlord has rebutted the presumption of bad faith. At no time did the Landlord shy away from the fact that he deceived the Tenant. Instead, on my own questioning admitted to using the deception to gain possession of the rental unit, and once he had possession, to sell it within the same month of gaining possession.
16. Accordingly, I find that the Tenant has proven all three parts of the test under section 57(1)(a) of the Act, meaning the T5 application is successful. I am satisfied that the Tenant has proven that the Landlord gave notice under s.48 in bad faith, that the Tenant vacated the rental unit as a result of that notice and that persons the Landlord indicated would occupy the rental unit, namely his parents, did not do so in a reasonable time.

Remedies

17. I am satisfied that the Tenant incurred \$1,975.00 in moving costs when he vacated the rental unit on July 1, 2022 as supported by the receipt entered in evidence. I find that this was a reasonable out-of-pocket moving expense and should be awarded pursuant to section 57(3)1.1 of the Act. The Landlord's unproven allegation that the Tenant caused damage is not a ground for denying the Tenant this remedy. If the Landlord believed that the Tenant should have been required to pay compensation for damages, he should have filed his own application at the Board

18. I am also satisfied that the Landlord should pay the \$520.00 difference in rent for the 12 month period from 1 July 2022 to 1 July 2023 pursuant to section 57(3)1 of the Act. The total amount owing is \$6,240.00. I base this on the new lease that the Tenant submitted that confirming he had signed a new lease commencing July 1, 2022 for \$2,670.00 a month.

Substantial Interference and Harassment

19. Sections 22 and 23 of the Act states:

22 A landlord shall not at any time during a tenant's occupancy of a rental unit and before the day on which an order evicting the tenant is executed substantially interfere with the reasonable enjoyment of the rental unit or the residential complex in which it is located for all usual purposes by a tenant or members of his or her household.

23 A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.

20. The alleged substantial interference and harassment in this case rises from the Landlord's bad faith notice and subsequent communications to hasten the Tenant to vacate. Given that I have determined that the Tenant is entitled to full requested remedy under the T5 application and that the underlying facts are the same, it is not necessary for me to address this part of the application other than the requested remedy of \$16,000.00 in general compensation in the Tenant's T2 application.
21. Having reviewed the Landlord's text messages, I do agree they were persistent in asserting the Landlord's desire to regain possession but at no time were they threatening in nature. The Tenant actively participated in the negotiations over the date he and his family would move out. Accordingly, for this reason I cannot find that the texts constituted harassment or award the requested remedy of \$16,000.00 in compensation.

It is ordered that:

1. The Landlord shall pay to the Tenant \$1,095.00 representing the moving costs the Tenant incurred.
2. The Landlord shall also pay to the Tenant \$10,800 representing the rent differential for a period of 12 months.
3. If the Landlord does not pay to the Tenant the total amount owing of \$11,895 on or before June 10, 2023, he shall begin to owe interest. This will be simple interest calculated at 6% annually commencing on June 11, 2023.

May 30, 2023
Date Issued

Kelly Delaney
Member, Landlord and Tenant Board

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

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