



Order under Section 30 of the Residential Tenancies Act, 2006

Citation: Katlyn Parker v Steven Gallagher, 2023 ONLTB 33742

Date: 2023-05-23

File Number: LTB-T-048983-22

In the matter of: 7, 169 Elm Ridge Drive
Kitchener Ontario N2N1L7

Between: Katlyn Parker Tenants
Ryan Parker

And

Steven Gallagher Landlord

Emma Parker, Katlyn Parker, Lilah Parker, and Ryan Parker (the 'Tenant') applied for an order determining that Steven Gallagher (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on April 20, 2023. The Tenant, Katlyn Parker, and the Landlord attended the hearing. The Landlord's witness and father, E. Gallagher (EG), was also present at the hearing.

Lilah Parker and Emma Parker are removed as parties to the application.

Determinations:

Tenants' Evidence

1. The Tenant testified that in July 2021 they received a Notice to End your Tenancy Because the Landlord, a Purchaser, or a Family Member Requires the Rental Unit (N12) from the Landlord with a termination date of September 30, 2021. The Landlord indicated in the notice that his father intends to move into the unit and occupy it or at least one year.
2. The Tenants, who moved into the unit on May 1, 2015, vacated the unit on August 31, 2021. They later discovered that the unit was placed on sale in March 2022 and subsequently sold in May 2022.
3. The Tenant requested an order for the Landlord to pay the difference in rent for a year, an amount which totaled \$12,564.36 because while the rent for the rental unit was \$1,252.97, they currently pay \$2,300.00 monthly. Both units contain three bedrooms and while the listing for the new unit showed it was between 1,100 to 1,500 sq. ft., the rental unit is described as between 1,100 to 1,199 sq. ft. in listings. The Landlord argued that the unit has also been described as 954 sq. ft.



- The Tenant also requested moving and storage costs of \$2,053.43 and an order for the Landlord to pay a fine to the Board.

Landlord's Evidence

- The Landlord testified that he had no intention of selling the rental unit when his father, EG, moved in because EG was expected to reside in the unit for up to 2 years. EG usually spends half his time in Canada and the other half in Thailand. For the past 10 years, EG has resided in China for 5 years and the last five in Thailand but is in Canada from 2 to 4 months a year between May and August.
- Following the death of EG's mother on May 26, 2021, he returned to Canada on June 18, 2021 and although he usually resided at his mothers', a family conflict caused him to move into an Airbnb in August 2021. This conflict led the Landlord to serve the Tenants with the notice of termination.
- The Landlord provided receipts showing EG resided in an Airbnb from August 1, 2021 to September 2, 2021 although he claimed EG stayed in the Airbnb until September 15, 2021. EG moved into the rental unit on September 15, 2021 and stayed there for eight months.
- EG inherited vacant land from his mother which he originally planned to sell but decided to join the Landlord to construct properties on the land. The Landlord presented a land parcel document showing land transferred from EG to both their names in June 2022.
- The rental unit was listed for sale in March 2022 due to the significant change in the property market which meant that the rental unit had increased 30% in value. Also EG's mother's estate was settled in February 2022 and EG was no longer required to be in the country as anything else could be done remotely. He returned to Thailand in June 2022.
- EG testified that he intended to reside in the unit for a year but moved out prior because he had plans with the Landlord to sell the unit and the settling of his mother's estate did not require him to remain in the country.

Analysis

- This application is brought pursuant to section 57 (1) of the Residential Tenancies Act, 2006 (the Act) which provides:

Former tenant's application where notice given in bad faith

57 (1) 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.

- There is no dispute that the Tenants in this case moved out of the rental unit because the Landlord gave them a notice of termination claiming that his father required possession of



the rental unit for a period of at least one year. According to the Landlord, his father moved into the unit on September 15, 2021 but due to unforeseen circumstances, the rental unit was placed on sale in March 2022, less than a year later and sold in May 2022.

13. On the issue of bad faith, section 57(5) of the Act provides that there is a presumption of bad faith if the Landlord advertises the rental unit, or places the building that contains the rental unit, for sale. Here, the rental unit was sold less than a year after the Tenants moved out.
14. Given the legal presumption, the Landlord must demonstrate that the N12 was served in good faith. The Landlord gave the notice of termination stating that his father intended to reside in the unit for at least one year even though he knew that in the last 10 years, EG had not resided in the country for more than four months at most. The claim that EG was required to stay in the country for at least two years to settle his mother's estate is unconvincing given the possibilities of getting things done remotely and of course, EG's living arrangements in the last 10 years. No evidence was provided to substantiate the claim that the estate was expected to close in two years.
15. Based on all the evidence, I am satisfied that the Landlord served the notice of termination in bad faith. I find on a balance of probabilities that the Landlord, knowing EG could not possibly reside in the country for a period of one year, set in motion a plan to evict the Tenants who had resided in the unit for over six years, and listed the unit for sale in March 2022.
16. Having succeeded in proving the notice was given in bad faith, the Tenants, pursuant to section 57(3) (4) of the Act are entitled to the difference (\$1,047.03) between the rent for the rental unit (\$1,252.97) and the rent for the current unit (\$2,300.00) for a period of twelve months in the total amount of \$12,564.36. I am satisfied from the evidence that the rental unit and the current unit are comparable three-bedroom homes.
17. On the issue of moving and storage costs, the Tenant requested \$2,053.43, but a review of the invoices shows it includes utility bills. The Landlord will be ordered to pay \$106.70 for a U-Haul rental on August 31, 2021; \$43.90 for boxes purchased on July 28, 2021; \$163.85 incurred for waste removal services on August 26, 2021; and \$847.50 for moving services on August 30, 2021 for a total of \$1,161.95
18. The Tenants requested that the Landlord be ordered to pay an administrative fine to the Board. This request will not be granted as it is hoped that the Landlord will not repeat this conduct in the future.

It is ordered that:

1. The Landlord shall pay to the Tenants \$12,564.36. This amount represents the increased rent that the Tenants incurred for the period from September 2021 to August 2022.
2. The Landlord shall also pay to the Tenants \$1,161.95, for the reasonable out-of-pocket expenses that the Tenants incurred for moving and storage costs.
3. The Landlords shall also pay to the Tenants \$53.00 for the cost of filing the application.



4. The total amount the Landlords owe the Tenants is \$13,779.31.
5. If the Landlord does not pay the Tenants the full amount owing by June 3, 2023, the Landlord will owe interest. This will be simple interest calculated from June 4, 2023 at 6.00% annually on the outstanding balance.

May 23, 2023
Date Issued

Jitewa Edu
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.