

Ontario Landlord and Tenant Board

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Panel: Lynn Mitchell, Member

Decision: March 2, 2020.

File Number: TNT-20054-19

2020 LNONLTB 106

Order under Sections 57 and 135, Residential Tenancies Act, 2006 [Names of Parties are not Published]

(25 paras.)

ORDER

1 SRT and VS (the 'Tenants') applied for an order determining that LO (the 'Landlord') gave a notice of termination under section 48 of the *Residential Tenancies Act, 2006* (the 'Act') in bad faith, the Tenants vacated as a result of the notice and the Landlord did not occupy the rental unit within a reasonable time after the Tenants vacated the rental unit. The Tenants also applied for an order determining that the Landlord has collected or retained money illegally.

2 This application was heard in Newmarket on December 4, 2019.

3 The Tenants attended the hearing and the Landlord's son, ('VO'), attended the hearing on behalf of the Landlord. The Landlord did not attend the hearing.

Determinations:

4 1. I find that the Landlord failed to pay the Tenants the requisite one month's **compensation**, in advance of the termination date set out in the Landlord's **N12** notice of termination, and so retained a portion of rent illegally.

5 2. I also find that the Landlord gave a notice of termination under section 48 of the Act in bad faith, that the Tenants vacated as a result of the notice and that the Landlord did not occupy the unit within a reasonable time after the Tenants vacated the rental unit.

*Retention of **N12** Notice **Compensation***

6 3. The parties do not dispute that the Landlord provided the Tenants with an **N12** notice on April 4, 2019 with a termination date of June 15, 2019, indicating that the Landlord required the unit for her own use. It was undisputed that the rental agreement between the parties ended on June 15, 2019 and that the rent during the rental period ran from the 16th of each month to the 15th of the following month.

7 4. On its face the **N12** notice complied with the requirements of the Act in that it gave at least 60 days notice and set out a termination date which was the end of a rental term.

8 5. It was also undisputed that the Tenants vacated the unit on June 30, 2019, rather than on June 15, 2019, that no rent was paid by the Tenants on June 16, 2019 and that the Landlord did not provide the Tenants with a payment of \$2,100.00 for one-month's rent prior to June 15, 2019.

9 6. The Tenants acknowledged that they requested an extension from the June 15, 2019 termination date, to July 15, 2019, to allow the Tenants' son to complete his school year from that location. The school year ended June 30, 2019. The Tenants testified that they also told the Landlord that they would vacate in advance of the July date if they found alternate accommodation early enough to allow an earlier departure.

10 7. The Tenants indicated that, after their initial request for an extension, they notified the Landlord verbally in the first week of June that they would be vacating the unit by June 30, 2019. They then vacated by that date.

11 8. The Landlord's son, VO, testified that the Tenants requested that the tenancy be extended to July 31, 2019, rather than July 15, 2019, and that the Landlord extended her stay out of the country to that date. VO acknowledged that no compensation was paid out to the Tenants but took the position that the compensation was effected by the Landlord not charging the Tenants rent from the period June 16, 2019 forward.

12 9. I find that the that the Tenants and Landlord did not enter into a tenancy agreement for any period after June 30, 2019. I find that the Tenants did not have the right to occupy the unit following the June 30, 2019 departure date such that no rent is owing from the Tenants to the Landlord for that period. I note that VO testified that, following the departure of the Tenants, the Landlord arranged for renovations to the unit which took four months to complete. VO testified that, following the completion of the renovations, in early November, the Landlord began moving her possessions into the unit. On this basis I note that the Landlord had access to the unit as of early July 2019, a fact which supports my finding that the Tenants did not have possession of the unit after they left the unit on June 30, 2019.

13 10. The Act requires that the one month's compensation be paid to the Tenants prior to the June 15, 2019 termination date set out in the N12 notice, regardless of the date on which the Tenants vacated. So one month's compensation is due to the Tenants. However, I find that the Landlord is entitled to compensation for the two weeks that the Tenants occupied the unit following the June 15, 2019 termination date, such that the Tenants are entitled to receive 50% of the \$2,100.00 compensation which would otherwise be owing.

Bad Faith N12 Notice

14 11. VO acknowledged that there had been some delay between the departure of the Tenants and the occupation of the unit by the Landlord, who is VO's mother. VO testified that the delay was attributable to the need for renovation work to be done on the unit before the Landlord could occupy the unit. These renovations cost roughly \$50,000.00 and took 4 months to complete.

15 12. The Tenants alleged that as of the end of November 2019 the Landlord had not moved into the unit. The Tenants referred to certain photos which they had taken of the inside of the unit through a window of the unit. I am concerned about whether the Tenants had the right to take the photos in the circumstances and so have not considered them in my determinations.

16 13. The Tenants testified that a neighbour had told them, shortly before the hearing of this matter on December 4, 2019, that no one was yet living in the unit.

17 14. VO testified that the Landlord began moving into the unit in November 2019 and that the Landlord has since moved into the unit. I note that the Landlord and the Landlord's son, VO, were well aware that the Tenants were taking the position, in their application, that the Landlord had failed to move into the unit as of the date the application was filed. However VO presented no evidence to support the allegation that the Landlord has moved into the unit. The Landlord did not appear for the hearing as she was out of the country. No photographs, invoices of moving expenses or other documentation was presented to show the presence of furniture or other indicia of the Landlord's occupation. I find that the Landlord has failed to establish that it is more likely than not that the Landlord took occupation of the unit in November 2019.

18 15. Further the Landlord presented no evidence to establish that a delay of at least 4 months from the date the Tenants vacated to the date of occupation was reasonable. I find that the Landlord has failed to establish that the Landlord took occupation of the unit within a reasonable time after the Tenants vacated the unit.

19 16. I find that the Landlord gave the **N12** notice in bad faith, that the Tenants vacated as a result of that notice and that the Landlord failed to occupy the unit within a reasonable time following the departure of the Tenants.

20 17. The Tenants claimed \$540.00 for out of pocket costs of moving and they claimed for the increased rent that they have incurred and will incur for one year following their departure from the unit.

21 18. The Tenants provided no invoices or other evidence to support their claim for moving expenses. I find that the Tenants have failed to establish the quantum for these costs and so are not entitled, in the circumstances, to recovery of these costs.

22 19. The Tenants testified that they are paying \$2,500.00 per month for their new accommodation, being \$400.00 more than the rental rate for the unit.

23 20. There was some dispute about whether the Tenants' new accommodation was better than the accommodation offered in the unit. VO testified that the Tenants' new place is a larger house with a larger lot than the unit. He testified that the new place is a single, detached two-storey house and is roughly 50% larger than the unit which the Tenants vacated. The Tenants did not dispute this observation but testified that the living space available to them in the new unit is about the same as in the unit they vacated, as they do not have the use of the basement in the new unit.

24 21. I find that it is more likely that not that a portion of the new rent is attributable to an increase in size of the new unit and the fact that the new unit is detached. I find that the Tenants are entitled to one-third of the increased rent for the new unit for one year, such that the Landlord must pay the Tenants \$1,600.00 for the rent differential.

25 It is ordered that:

1. The Landlord shall pay to the Tenants the sum of \$2,650.00, consisting of \$1,050.00 as one-half of the one-month **compensation** owing further to the **N12** notice and \$1,600.00 for the difference in rent for the new unit.
2. The Landlord shall also pay to the Tenants \$50.00 for the cost of filing the application.
3. The total amount the Landlord owes the Tenants is \$2,700.00. The Landlord shall pay the Tenants the full amount owing by March 12, 2020.
4. If the Landlord does not pay the Tenants the full amount owing by March 12, 2020 the Tenant will owe interest. This will be simple interest calculated from March 13, 2020 at 3.00% annually on the outstanding balance.

March 2, 2020

Date Issued

Lynn Mitchell
Member, Landlord and Tenant Board