

Order under Section 57
Residential Tenancies Act, 2006

File Number: TET-12755-20

In the matter of: 222 FERGUS CRES
NEPEAN ON K2J3L7

Between: Kelsee Barnett Issac Tenants
Shari Barnett

and

Yogesh Kalyani Landlord

Kelsee Barnett Issac and Shari Barnett (the 'Tenants') applied for an order determining that Yogesh Kalyani (the 'Landlord') gave a notice of termination in bad faith.

This application was heard in Passcode: 995 0200 7831# on October 26, 2021.

The Tenants and the Landlord attended the hearing.

Determinations:

1. The parties did not dispute each others' allegations as to the following facts:
 - a) In 2020 the parties had discussions about the Landlord's intention to put the unit, which is a house, up for sale;
 - b) The Landlord did not serve any N12 notice of termination;
 - c) The Tenants vacated the house on July 31, 2020 on the understanding that the Landlord was trying to sell the house and that if he did so they may have little time to find new accommodation;
 - d) The Landlord tried to sell the house privately. The first version of a sale agreement was executed in early August, shortly after the Tenants had vacated the house;
 - e) The anticipated sale fell through; and
 - f) The Landlord subsequently listed the house for lease and rented it out for a higher rent rate than that which the Tenants had been paying.

2. The Tenants brought their application under section 57 of the *Residential Tenancies Act, 2006* (the 'Act'), which provides that the Board may grant certain specified remedies if, on application by a former tenant, the Board determines that the landlord gave a notice of termination under section 49 (which provides for the Landlord serving an N12 notice to a tenant saying that a purchaser intends to take occupation of the unit for the purchaser's own use) in bad faith and the former tenant vacated the rental unit as a result of that notice.
3. There is no question that the Landlord did not serve the Tenants with an N12 notice of termination further to section 49 of the Act.
4. I considered, however, whether the communications between the Landlord and Tenants in advance of their vacating the unit might be analogized to the provision of an N12 notice further to section 49 of the Act. I find that they cannot for the following reasons:
 - a) At the time the Tenants vacated the unit the Landlord had not entered into an agreement of purchase and sale. He could not have been in any position at that time, and certainly not 60 days in advance of that time, to serve any N12 notice of termination under section 49 of the Act;
 - b) I find that it was the Landlord's intent to sell the house at the time the Tenants vacated but neither the sale nor the expression of any intent by the purchaser to occupy the unit had yet crystallized; and
 - c) At the time the Tenants vacated, there was not yet any basis for any service by the Landlord of an N12 notice. He did not, and could not have, served any such notice at that point.
5. I find that no formal or substantive notice of termination under section 49 of the Act was served, or could have been served, at the time the Tenants vacated, Accordingly, I am without jurisdiction to grant the requested remedies set out in the Tenants' application further to section 57 of the Act.
6. I find that the Tenants' application must be dismissed.

It is ordered that:

1. The Tenants' application is dismissed.



November 3, 2021
Date Issued

Lynn Mitchell

Member, Landlord and Tenant Board

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