



Order under Section 57
Residential Tenancies Act, 2006

File Number: TNT-24618-20

In the matter of: 1204, 100 UPPER MADISON AVENUE
TORONTO ON M2N6M4

Between: Susan Koprich Tenant

and

Li Chong Landlord

Susan Koprich (the 'Tenant') applied for an order determining Li Chong (the Landlord) gave a N12 notice of termination in bad faith.

This application was heard via video/teleconference on August 5, 2021.

The Tenant, the Tenant's Legal Representative Christine Nastas, and the Landlord's Legal Representative Peter Guzina attended the hearing.

As of 9:35 a.m., the Landlord was not present to give testimony. The Landlord's daughters Danielle Li Chong (DC) and Carole Leung (CL) was in attendance to give witness testimony on behalf of the Landlord.

Determinations:

1. In this application, the Tenant alleges that she moved out of the rental unit because the Landlord gave the Tenant an N12 Notice of Termination on the premise that the Landlord required possession of the rental unit for the Landlord's own use. The termination date in the N12 notice was March 31, 2019.
2. The Tenant testified that after being served with the N12, she began looking for alternate accommodation and moved out of the rental unit on February 3, 2019.
3. The N12 notice given to the Tenant falls under section 48(1) of the *Residential Tenancies Act, 2006* (Act) that the Landlord required possession of the rental unit for the Landlord's own use.
4. Subsection 48(1) of the *Residential Tenancies Act 2006* ('the Act') which states:
"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 by
 - (a) the landlord
 - (b) the landlord's spouse, or
 - (c) a child or parent of the landlord or the landlord's spouse. [Emphasis]

5. A copy of the N12 form notice given to the Tenant was submitted with the application setting out that the Landlord (me) and a grandson of the Landlord intends to move into the rental unit and occupy it for at least one year.
6. The name set out in the N12 notice given, singularly names LP Chong as the Landlord and despite the reference in the notice to grandson, a grandchild is not defined and does not fall under the intended meaning of the Act as an immediate family member of the Landlord as set out pursuant to section 48 of the Act.
7. The Tenant asserts that the Landlord gave the Tenant a N12 notice of termination in bad faith because after the Tenant vacated the rental unit, the named Landlord never moved into the rental unit, only the grandson occupied the unit.
8. Pursuant to section 57(1) of the Residential Tenancies Act, 2006 (the 'Act'), the Board may make an order against a landlord 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 ... and the person referred to in clause 48 (1) (a), (b), (c) or (d) has not occupied the rental unit within a reasonable time after the former tenant vacated the rental unit.
9. On an application to the Board, the person who alleges a particular event occurred has the burden of proof to establish that it is more likely than not that their version of events is true. In this application, the burden typically falls on the Tenant to establish that the notice of termination was served in bad faith.

Presumption of Bad Faith

10. Subsections 58(5) and 58(6) establish a rebuttable presumption of bad faith on the following ground:
11. 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 or purchaser,
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. [Emphasis Added]
12. As of the date of the hearing it was uncontested that the named Landlord referred to in the N12 notice given has not moved into the rental unit and the primary house he owns in Sarnia, Ontario has not been sold and the Landlord and his spouse continue to occupy and reside in Sarnia.
13. The Landlord's daughter (CL) testified and purported that the rental unit (in a condominium unit in a multi-unit residential complex) was purchased by the Landlord in August 1998 as a Family Beneficiary Trust and over time many members of the Landlord's family members have occupied the unit to attend University and for other purposes.

14. I have no reason to not believe the witness that the motivation and intent of the Landlord for purchasing the property was to be a secondary residence for the benefit of the family of the Landlord as a whole, however, the N12 notice given falls under section 48 of the Act is not styled as being given by a Family Beneficiary Trust entity which in itself would raise other judiciary issues outside the RTA.
15. A copy of the Residential Tenancy Agreement the Tenant entered into dated March 27, 2008, and while the document was signed by the Landlord's daughter under Landlord, it clearly names the Landlord as LP Chong.
16. Although the Landlord's children may be considered a landlord for the purposes of certain aspects of the Residential Tenancies Act, this does not change the fact that the notice given simply names LP Chong as the Landlord that intends to move into the rental unit and occupy it for at least one year.
17. The Landlord's daughter (CL) further testified that the Landlord did not move into the rental unit because substantial renovations were immediately required to accommodate the Landlord and his spouse who are quite elderly, and that a number of the Landlord's belongings have been placed into the unit, and the Landlord has frequently been to the unit since.
18. The evidence and testimony given as to why the Landlord had not occupied the rental unit within a reasonable time after the former Tenant vacated the unit, was that the unit required extensive renovations before the Landlord could take possession and personally occupy the rental unit. If that was to be the case and factual reason, then a proper notice given would have been a N13 form notice.
19. Based on the totality of the testimonies given, and the documentary evidence submitted by the parties, on a balance of probabilities, I was not satisfied at the time the notice was given it was the Landlord's genuine intention to move into the rental unit, and at all times it was for use by the grandchild and or continued use by other family members of the Landlord.
20. I find that the Tenant moved out of the rental unit in accordance with the notice given, and that the named Landlord has not moved into the rental unit within a reasonable period of time, and the notice was given at the time for other reasons in bad faith.
21. The Tenant is seeking monetary remedies relating to increased in rent, out-of-pocket expenses, and other compensation.
22. I was not completely satisfied with the Tenants' claims and calculations for the monetary remedies she was seeking.
23. Firstly, the Tenant moved out of the rental unit on February 3, 2019 and the termination date set-out in the notice was March 31, 2021. The Tenant was entitled to vacate the unit earlier upon giving the Landlord 10 days advance notice. No early notice was effectively given to the Landlord.

24. Secondly, I was not satisfied that the rental unit the Tenant relocated to was reasonably comparable to the subject rental unit. The claim was a rent differential of \$1,371.22. I can appreciate that rent in the downtown core in the City of Toronto can be at a premium on a short notice. I award a \$500.00 per month differential under the circumstances as being reasonable for a rental unit for residential occupation.
25. Thirdly, the Tenant under moving and storage expenses was claiming \$6,350.00, partly calculated for compensation paid to workers/employees to move business furnishings and equipment and for loss of earnings for her during the transition period. I award \$1,350.00, what I have determined to be a reasonable moving expense the Tenant would have incurred for the residential belongings.
26. The Tenant was also seeking an order to regain possession of the rental unit, that in my opinion would only be ordered under an application for an illegal eviction.
27. The order contains all the reasons for the decisions within the order. No other reasons will be issued.

It is ordered that:

1. The former Landlord shall pay to the Tenant \$6,000.00. This amount represents part of the increased rent that the Tenant has incurred.
2. The former Landlord shall pay to the Tenant \$1,350.00, for the reasonable out-of-pocket expenses that the Tenant has incurred or will incur for moving expenses.
3. The former Landlord shall also pay \$50.00 the Tenants cost for the application fee.
4. The former Landlord shall pay the Tenant the full amount owing by November 30, 2021.
5. If the former Landlord does not pay the Tenant the full amount owing by November 30, 2021, they will owe interest. This will be simple interest calculated from December 1, 2021 at 2.00% annually on the outstanding balance.
6. If the former Landlord does not pay the Tenant the full amount owing by November 30, 2021, the Tenant has the right, at any time, to collect only from the former landlord the full amount owing or any balance outstanding under this order.



November 22, 2021
Date Issued

Randy Aulbrook
Member, Landlord and Tenant Board

Toronto North-RO
47 Sheppard Avenue East, Suite 700, 7th Floor
Toronto ON M2N5X5

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

1. Under the Act, there can be multiple Landlords as set out in section 2(1) of the Act.
2. The definition of “a landlord” in section 2(1) reads as follows:

“a landlord” includes,

(a) the owner of a rental unit or any other person who permits occupancy of a rental unit, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit,

(b) the heirs, assigns, personal representatives and successors in title of a person referred to in clause (a), and

(c) a person, other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent;