



Order under Section 57
Residential Tenancies Act, 2006

File Number: LTB-T-074920-22
(HOT-12945-22)

In the matter of: 5, 55 Madonna Drive
Hamilton ON L9B0H2

Between: Melissa Andrade Tenants
Ray Di Gregorio

And

Paul Adeyemi Landlord

Your file has been moved to the Landlord and Tenant Board's new case management system, the Tribunals Ontario Portal. Your new file number is LTB-T-074920-22.

Melissa Andrade, Ray Di Gregorio (the 'Tenant') applied for an order determining that Paul Adeyemi the 'Landlord'), gave a notice of termination in bad faith.

This application was heard by videoconference on July 13, 2022.

The Tenant, Melisa Andrade and the Landlord attended the hearing. The Tenant was represented by Joseph Kazubek. The Landlord was represented by Jordan Nieuwhof.

Determinations:

1. The Tenant's application is dismissed for the reasons explained below.
2. This application is brought pursuant to section 57 of the *Residential Tenancies Act, 2006* (the 'Act') which states:

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,

(b) the landlord gave a notice of termination under section 49 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 49 (1) (a), (b), (c) or (d) or 49 (2) (a), (b), (c) or (d) occupied the rental unit within a reasonable time after the former tenant vacated the rental unit;

3. What this provision means is that in order to succeed on this application the Tenants must lead sufficient evidence to establish it is more likely than not that:
 - (1) The Tenants got a notice of termination under s. 49;
 - (2) They moved out of the rental unit as a result of the Landlord's notice;
 - (3) The notice was given in bad faith meaning the Purchaser had no intention of moving into the rental unit; and
 - (4) The Purchaser did not in fact move into the rental unit within a reasonable time after the Tenants vacated.
4. The Tenant testified that she received a text message from the Landlord on July 11, 2021 where the Landlord indicated his desire to sell the property. The Tenant submitted that she moved because she was under the impression that the property was going to be sold sometime in the future.
5. The text message sent on July 11, 2021 at 1:14 p.m. was entered into evidence. The message says the following:

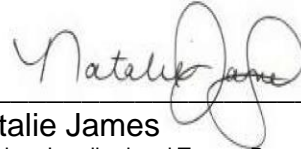
“Hey Melissa, was hoping we could chat. It’s regarding your rental unit. Looking at the income P/L in the last couple years, I don’t think we will be able to carry it any further. It is best we sell the unit. I’ll be completing the proper notice forms but thought you deserve to know asap because I know this will be a huge change for you as well”.
6. The Tenant also testified that on July 11, 2021 the Landlord told her in a phone conversation that she was given 60 days, the Landlord does not dispute that they had a conversation, but that no dates or timelines were discussed.
7. The Landlord did not serve an N12 Notice of Termination to the Tenant.
8. The Landlord testified that there was a friendship between the parties, and he wanted to be open about the potential of selling, but that he had not finalized his plans or listed the property for sale.
9. On July 19, 2021 the Tenant sent a text message indicating that she had listed him as a reference on rental applications. The following day she followed up with a message indicating that she had found a new rental unit and would be moving September 1, 2021.
10. The parties signed an N11 on July 28, 2021 with a termination date of August 31, 2021.
11. While the Landlord and Tenant dispute the intention of the text message on July 11, 2021, I find that the contents of that message do not amount to substantial compliance with an N12 Notice of Termination. The Landlord was clear that he would be serving a notice subsequent to that e-mail. In any event, the Tenant moved out pursuant to an N11 agreement to terminate the tenancy. Therefore I find that there was no N12 notice served to the Tenants and the Tenant’s application must be dismissed.

It is ordered that:

1. The Tenant's application is dismissed.

December 23, 2022

Date Issued



Natalie James

Member, Landlord and Tenant Board

Head Office
777 Bay Street, 12th Floor
Toronto Ontario M5G2E5

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