



## **Order under Section 57 Residential Tenancies Act, 2006**

**Citation:** Shelton v Ghatreh-Samani, 2024 ONLTB 19603

**Date:** 2024-03-22

**File Number:** LTB-T-067920-22

**In the matter of:** 240 BANTRY AVENUE  
RICHMOND HILL ONTARIO L4B4H9

**Between:** Ian K. Shelton Tenant  
Tuba Koktay

**And**

Ahmad Ghatreh-Samani Landlord

Ian K. Shelton and Tuba Koktay (the 'Tenants') applied for an order determining that Ahmad Ghatreh-Samani (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on March 4, 2024. Both the Landlord and the Tenants attended the hearing, and both sides were represented.

I heard evidence from the Tenants, the Landlord and the Landlord's son<sup>1</sup>.

### **Determinations:**

1. This application is based on subsection 57 of the *Residential Tenancies Act, 2006* (the 'RTA'), which says, in part:

**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,**

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<sup>1</sup> The Landlord's son suffers from a disability. I do not think it is necessary for the purpose of this order to identify the son by name in this order.

- (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;*
- (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*

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*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; or*

- (c) *the landlord gave a notice of termination under section 50 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 the landlord did not demolish, convert or repair or renovate the rental unit within a reasonable time after the former tenant vacated the rental unit.*

2. This case involves a notice of termination delivered under section 48, which says, in part:

**48 (1)** *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 for a period of at least one year by,*

- (a) *the landlord;*
- (b) *the landlord's spouse;*
- (c) *a child or parent of the landlord or the landlord's spouse; or*
- (d) *a person who provides or will provide care services to the landlord, the landlord's spouse, or a child or parent of the landlord or the landlord's spouse, if the person receiving the care services resides or will reside in the building, related group of buildings, mobile home park or land lease community in which the rental unit is located.*

3. On September 14, 2020, the Landlord delivered an N12 notice under section 48 stating that his son required possession of the rental unit.

4. For a tenant to obtain a remedy under section 57 based on a notice of termination delivered under section 48—an N12 notice—the LTB must be satisfied on the balance of probabilities that:

- (a) the tenant vacated the unit as a result of the N12;
  - (b) the person identified on the N12 did not occupy the unit within a reasonable time after the tenant vacated; and
  - (c) the landlord delivered the N12 notice in bad faith.
5. On March 4, 2024, the parties agreed that the Tenants vacated the unit on November 30, 2020 as a result of the N12 notice delivered by the Landlord. As a result, the issues to be determined were whether: (a) the Landlord's son occupied the unit within a reasonable time after the Tenants vacated: and (b) the Landlord delivered the N12 notice in bad faith.

### **Son Never Occupied the Unit**

6. I am satisfied that the Landlord's son never occupied the unit.
7. Section 48 of the RTA permits a landlord to terminate a tenancy where possession of the unit is required for the purpose of residential occupation. The requirement that a person have occupied the unit within a reasonable time in paragraph 57(1)(a) must be interpreted in that context. In my view, paragraph 57(1)(a) requires the person identified on the N12 to have occupied the unit for purposes of residential occupation within a reasonable period. That means that the person must have moved into a lived—engage in activities or conduct that is residential in nature—in the unit.
8. In this case, the Landlord's son spent some time in the unit after the Tenants, but never moved into and lived in the unit. The Landlord's evidence was that after a period of trying to, for lack of a better expression, 'acclimatize' his son to living independently in the unit, it became apparent at the end of May or the beginning of June of 2021 that his son was not ready to live independently.

### **N12 was not Delivered in Bad Faith**

9. On a T5 application, the burden of establishing bad faith—or perhaps more precisely lack of good faith—typically falls on the tenant. However, subsections 57(5) and (6) of the RTA establish a rebuttable presumption of bad faith where the application is based on section 48. Those subsections say:

*57 (5) 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,*

- (a) *advertises the rental unit for rent;*
- (b) *enters into a tenancy agreement in respect of the rental unit with someone other than the former tenant;*

- (c) *advertises the rental unit, or the building that contains the rental unit, for sale;*
- (d) *demolishes the rental unit or the building containing the rental unit; or*
- (e) *takes any step to convert the rental unit, or the building containing the rental unit, to use for a purpose other than residential premises.*

(6) *The period referred to in subsection (5) is the period that,*

- (a) *begins on the day the landlord gives the notice of termination under section 48; and*
- (b) *ends one year after the former tenant vacates the rental unit.*

10. On March 4, 2024, the parties agreed that, by September of 2021, the unit had been advertised for rent<sup>2</sup>. As a result, the onus was on the Landlord to rebut the presumption—to establish on the balance of probabilities—that it was more likely than not—that the N12 notice was delivered in good faith.

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11. What the LTB must consider on an application under section 57 based on an N12 delivered under section 48 is whether: (a) the landlord genuinely intended that the person identified on the N12 would occupy the unit; and (b) the person identified on the N12 genuinely intended to occupy the unit. **[See *Feeney v. Noble*, 1994 CanLII 10538 (ON SCDC) and *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC)]**
12. It is difficult to determine a person’s subjective intent. The LTB will typically make inferences concerning the subjective intent of the person identified on the N12 based on the evidence, including the testimony of that person. **[See *Fava v. Harrison*, 2014 ONSC 3352 (CanLII)]**
13. The LTB has broad discretion in terms of the evidence it may consider in determining whether a notice of termination under section 48 was delivered in good faith. **[RTA, s. 72(3)]**
14. The fact that the person identified as wanting to occupy the rental unit did not move into or occupy the unit and that the landlord advertised the unit for rent or sale are not the sole considerations when determining the landlord’s good faith. A landlord may be able to establish that an unforeseen change in circumstances resulted in the person identified on the N12 being unable to occupy the unit. All other things being equal, this would be sufficient to rebut the presumption of bad faith arising under subsection 57(5) and (6). **[See, for example, *Al Richan v Mirza*, 2021 CanLII 141438 (ON LTB)]**
15. This is a case where the Landlord has, in my view, rebutted the presumption of bad faith and I find that the N12 notice was given in good faith.

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<sup>2</sup> The Landlord’s evidence was that he began to advertise the unit in June or August of 2021.

16. I am satisfied that when the N12 notice was delivered, the Landlord genuinely intended that his son would, within a reasonable time, move into and occupy the unit for at least one year. I am also satisfied that the son genuinely intended to move into and occupy the unit.
17. The Landlord's son has a disability and requires a degree of assistance with day-to-day tasks. The Landlord testified that he delivered the N12 notice because he believed his son had made sufficient progress and that he was capable of living independently in the unit. The Landlord's son testified that he thought he was ready to live on his own and wanted to move into the unit.
18. The Tenants argued that the Landlord was unreasonable and did not undertake sufficient 'due diligence' to determine whether his son was capable of living independently before delivering the N12. The Landlord did not dispute that he did not obtain a third-party assessment as to whether his son was capable of living independently and based his assessment of his son's ability to live independently on his understanding of the progress that his son had made.
19. While it might have been best had the Landlord more carefully considered whether his son was capable of living on his own, it does not, in my view, constitute a lack of good faith—or bad faith—for the Landlord to have not obtained a third-party assessment as to whether his son was capable of living independently or even to have acted unreasonably in believing his son had reached the stage where he could live independently<sup>3</sup>.
20. A landlord acts in good faith in delivering an N12 notice where there is a genuine intent to move into and occupy the unit. In *Feeney v. Noble* [1994 CanLII 10538 (ON SC)], the Divisional Court found that whether a landlord's intention in retaking possession of a unit under what is now section 48 was reasonable is not the test that the LTB is to apply to determine good faith.
21. In this case, I am satisfied that the Landlord genuinely intended to retake possession of the unit for purpose of residential occupation by his son and his son genuinely intended to occupy the unit. The fact that the Landlord's assessment of his son's ability to live independently turned out to be wrong is unfortunate at many levels but it does not mean that the Landlord acted in bad faith when the N12 notice was delivered.
22. In *Fava v. Harrison* [2014 ONSC 3352 (CanLII)], the Divisional Court found that the LTB can consider a landlord's conduct and motives to infer whether the landlord acted in good faith in delivering the relevant notice of termination.
23. In this case, there is nothing in the motives or conduct of the Landlord that leads me to conclude that the Landlord acted in bad faith or with ulterior motives when he delivered the

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<sup>3</sup> I am not finding that the Landlord acted unreasonably. He saw the progress that his son had made through the eyes of a parent and was perhaps more influenced than he should have been by the hope that his son had reached the point that he would be able to live independently.

N12, or at any time after that. I find that the Landlord genuinely believed that his son was capable of living on his own until it became apparent in late May or early June of 2021 that he was not, in fact, at that stage in life. I also find the Landlord's son believed that living independently was possible until it became apparent that he had not (yet at least) reached that stage.

24. I have considered the fact that after the Tenants vacated the Landlord undertook a renovation of the unit and created a separate unit in the basement. I accept the Landlord's evidence that this was done to ensure that the Landlord would be able to financially 'carry' the unit while his son lived upstairs—that he needed additional income to ensure that he was able to support his son without the benefit of the rent the Tenants were paying for the unit. I do not think that results in the N12 notice having been delivered in bad faith.
25. The Tenants argued that the Landlord was required to offer the unit back to them when it became apparent that his son would not be able to occupy it. When I asked the Tenants whether there was statutory or case law authority to support that proposition, they could not point me to any such authority.
26. In *Elkins v. Van Wissen* [2023 ONCA 789 (CanLII)], the Court of Appeal found that in considering whether a notice of termination was given in bad faith, the LTB should not limit its analysis to the time the N12 was delivered. While *Elkins* involved a notice of termination given under section 49 of the RTA, I think that the case also applies where notice is given under section 48 and the LTB should not restrict its consideration of a landlord's good faith to the point in time when the landlord delivered the relevant notice of termination. The LTB

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may, depending on the circumstances, find that a landlord acted in bad faith where the circumstances that caused the landlord to deliver the N12 notice changed before the tenant vacated or found alternate accommodations and the landlord did not offer to allow the tenant to remain in or reoccupy the unit.

27. In this case, the Landlord did not become aware that his son would be unable to occupy the unit until after the Tenants had secured alternative accommodations. In those circumstances, I do not think that the Landlord acted in bad faith in not offering to allow the Tenants to reoccupy the unit.
28. In conclusion, I appreciate the Tenants' frustration at being forced to vacate their long-time home in circumstances where, in retrospect, it might not have been necessary for them to vacate. However, in my view, the Landlord delivered the N12 notice in good faith—the Landlord genuinely wanted to retake possession of the unit for purposes of residential occupation by his son and his son genuinely intended to occupy the unit. In those circumstances, no remedy is available to the Tenants and this application must, as a result, be dismissed.

**It is ordered that:**

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**E. Patrick Shea**  
Vice Chair, Landlord and Tenant Board

1. The application is dismissed.

**March 22, 2024**

**Date Issued**

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.