



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

**Citation:** Johnston v Kore, 2024 ONLTB 824

**Date:** 2024-01-22

**File Number:** LTB-T-070255-22

**In the matter of:** Basement, 57 Fennings  
Toronto Ontario M6J3B9

**Between:** William Johnston Tenant

**And**

Irma Kore Landlords  
Robert Kore  
Patricia Kore

William Johnston (the 'Tenant') applied for an order determining that Irma Kore, Robert Kore and Patricia Kore (the 'Landlords') gave a notice of termination in bad faith.

This application was heard by videoconference on October 16, 2023.

The Landlords, the Landlords' legal representative, Michael Ciobaratu, and the Tenant attended the hearing.

**Determinations:**

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlords must pay the Tenant \$53.00, the costs of this application
2. Subsection 57(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') requires the Tenant to prove each of the following on a balance of probabilities:
  - The Landlords gave the Tenant an N12 notice of termination under section 48 of the Act;
  - The Tenant vacated the rental unit as a result of the N12 notice of termination;
  - No person referred to in subsection 48(1) of the Act occupied the rental unit within a reasonable time after the Tenant vacated; and
  - The Landlords served the N12 notice of termination in bad faith.

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**Landlords gave N12 for own use in bad faith**

3. The Tenant received an N12 notice to vacate the rental unit on June 1, 2019, requiring that he vacate the rental unit no later than July 31, 2019. The reason for the N12 was the Landlords' intention to have the Landlords' daughter occupy the rental unit. The Landlords' evidence was that the daughter's occupation of the rental unit
4. The Tenant testified that he vacated the rental unit on July 31, 2019 as a result of the N12.
5. The Tenant provided documentary evidence demonstrating that the rental unit was advertised for rent on September 3, 2019, and that the house containing the rental unit was advertised for sale in October, 2019, and was in fact sold.
6. The Tenant was also able to demonstrate that the house had been advertised for sale and shown to prospective buyers in the month prior to the issuance of the N12 and in the period following its issuance. It is clear from the evidence of both the Landlords and the Tenant that the Landlords' had shared their intention to sell the property openly.
7. The daughter never did move into the rental unit.
8. The Landlords' evidence was to the effect that circumstances changed materially after the issuance of the N12 notice for the Landlords' daughter's residential occupation of the rental unit.
9. Advertisement for sale of the house is not necessarily inconsistent with the N12 notice. A sale could proceed with the daughter's occupation of the rental unit. However, subsection 57(5)(c) creates a presumption of bad faith in circumstances where the Landlords advertise the building that contains the rental unit for sale within a year of the termination date specified in the notice of termination. This was the case here. The Landlords then have the burden of proof, on the balance of probabilities, to displace that presumption of bad faith.
10. Landlords testified that the daughter was intended to move into the house because she had lost her job. This circumstance arose after the notice of termination had been issued. They also indicated that their financial situation required that they sell the house.
11. The issuance of an N12 is not intended to create options for the Landlords. It must evidence a firm, unequivocal intention to occupy the rental unit or have it occupied by one of the persons stipulated in the Notice. The transparency of the Landlords with respect to their intention to pursue a sale of the property does not displace their obligation to issue the N12 notice in good faith, which means that they had a firm and unequivocal intention to have their daughter occupy the rental unit according to the notice.
12. I find that on the balance of probabilities the Landlords issued the notice of termination in bad faith.

13. The Tenant did not experience an increase in rent in his new accommodation in the year following his leaving the rental unit, although he testified that his new residence was, in his view, somewhat less commodious.
14. In his application the restitution remedy the Tenant seeks is a “rent abatement” for the year prior to the date he vacated the rental unit amounting to all of the rent he paid during that period amounting to \$12,000.00.
15. He also asks the Board to impose a fine on the Landlords.
16. Section 57(3) of the Act stipulates that in these circumstances the Tenant’s remedy is limited to the rent differential following the termination of the tenancy. An abatement of rent for the year prior to the termination is appropriate only where the process leading up to the issuance of the eviction notice was of such a nature that the Tenant’s enjoyment of the rental unit was materially compromised. In this case there was no evidence supporting such a remedy.
17. The Tenant testified that the rent he had to pay in his new accommodation for the year following the termination of the tenancy was identical to that which he paid for the rental unit. The Tenant did not provide convincing evidence that his new accommodation was materially less commodious. Therefore, no rent differential will be ordered.
18. The Tenant also seeks to have the Board issue a fine against the Landlords. A fine is an appropriate remedy where the Board finds that the Landlords have engaged in behaviour that is genuinely reprehensible and requires deterrence. I do not make such a finding in this case. While I find that the Landlords issued the N12 in bad faith, according to the requirements of the Act, the circumstances surrounding its issuance do not support the imposition of a fine.

### Remedies

19. Filing fee only

### **It is ordered that:**

1. The total amount the Landlords shall pay the Tenant is \$53.00. This amount represents:
  - \$53.00 for the cost of filing the application.
2. The Landlords shall pay the Tenant the full amount owing by January 26, 2024.
3. If the Landlords do not pay the Tenant the full amount owing by January 26, 2024, the Landlords will owe interest. This will be simple interest calculated from January 27, 2024 at 7.00% annually on the balance outstanding.

4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

**January 22, 2024**

**Date Issued**

15 Grosvenor Street, Ground Floor  
Toronto ON M7A 2G6

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**Paul Sommerville**

Member, Landlords and Tenant Board

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