



## Order under Section 57 Residential Tenancies Act, 2006

**Citation:** Schwarze v Liu, 2024 ONLTB 2164

**Date:** 2024-07-10

**File Number:** LTB-T-044964-23

**In the matter of:** 8 John Weddell Avenue  
East Gwillimbury ON L9N0P4

**Between:** Frank Schwarze Tenant

**And**

Jun Liu Landlords  
Hui Wang

Frank Schwarze (the 'Tenant') applied for an order determining that Jun Liu and Hui Wang (the 'Landlords') gave a notice of termination in bad faith.

This application was heard by videoconference on November 27, 2023.

The Landlords and the Tenant attended the hearing.

### Determinations:

1. This application is brought pursuant to s. 57(1)(a) of the Residential Tenancies Act, 2006 (the 'Act') which reads as follows:

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,

(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;

2. 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 Tenant got a notice of termination under s. 48.

(2) He moved out of the rental unit as a result of the Landlord's notice.

(3) The notice was given in bad faith meaning the Landlords had no intention of moving into the rental unit; and

(4) The Landlords did not in fact move into the rental unit within a reasonable time after the Tenant vacated.

### **Did the Landlords give a notice of termination in bad faith?**

3. 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:
  - a. The Landlords gave the Tenant an N12 notice of termination under section 48 of the Act.
  - b. The Tenant vacated the rental unit as a result of the N12 notice of termination.
  - c. No person referred to in subsection 48(1) of the Act occupied the rental unit within a reasonable time after the Tenant vacated; and
  - d. The Landlords served the N12 notice of termination in bad faith.
4. Based on the evidence presented at the hearing, I find on a balance of probabilities that the Tenant proved all of the requirements in subsection 57(1)(a).
5. I also find that the Landlords advertised and then sold the property after the Tenant vacated.
6. Therefore Subsection 57(5) of the Act clearly states:

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

### **Remedies**

7. In the Tenant's evidence they state that they may have to pay \$1200.00 more per month for the same accommodation. Therefore, I find that the Landlords must pay the Tenant \$14,400.00 for the increased rent that the Tenant has incurred or will incur for a one-year period after the Tenant moved out of the rental unit.

8. I find that the Landlords must pay the Tenant \$600.00 for the reasonable out-of-pocket moving, storage and other like expenses that the Tenant has incurred or will incur as a result of having to move out of the rental unit.
9. The Tenant has stated that he was never paid compensation of \$2150.00 and \$300.00 for the return of a key fob Therefore, I find that the Landlords must pay the Tenant \$2,450.00 for general compensation.

**It is ordered that:**

1. The total amount the Landlord shall pay the Tenant is \$17,503.00 This amount represents:
  - \$14400.00 for increased rent the Tenant had to pay for the one-year period from January 1, 2022, to December 31, 2022
  - \$600.00 for the reasonable moving, storage and other like expenses that the Tenant had incurred as a result of having to move out of the rental unit.
  - \$2,450.00 for general compensation.
  - \$53.00 for the cost of filing the application.
2. The Landlords shall pay the Tenant the full amount owing by July 21, 2024.
3. If the Landlords do not pay the Tenant the full amount owing by July 21, 2024, the Landlords will owe interest. This will be simple interest calculated from July 22, 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.

**July 10, 2024**  
**Date Issued**

15 Grosvenor Street, Ground Floor  
Toronto ON M7A 2G6

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Bill Kukulewich  
Member, Landlord and Tenant Board

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