



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

**Citation:** Mcglone v Sothinathan, 2024 ONLTB 19607

**Date:** 2024-03-22

**File Number:** LTB-T-000869-23

**In the matter of:** 135 SANDERSON DRIVE  
GUELPH ON N1H7K1

**Between:** Christopher Mcglone Tenant

**And**

Ranganathan Sothinathan Landlord

Christopher Mcglone (the 'Tenant') applied for an order determining that Ranganathan Sothinathan (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on March 4, 2024. The Landlord and the Tenant attended the hearing.

### **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,*

- (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 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,*

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*convert or repair or renovate the rental unit within a reasonable time after the former tenant vacated the rental unit.*

*(2) No application may be made under subsection (1) more than one year after the former tenant vacated the rental unit.*

2. This case involves a notice of termination delivered under section 48 of the RTA, 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. The Landlord delivered an N12 notice with an April 30, 2022 termination date. The N12 indicated that the Landlord, his spouse and their child intended to move into the unit. The Tenants vacated the unit on May 1, 2022.
4. For a tenant to obtain a remedy under section 57 based on a notice of termination delivered under section 48—an N12—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 the unit; **and**
  - (c) the landlord delivered the N12 notice in bad faith.
5. There is no dispute that the Tenants vacated the unit as a result of the N12. I am, however, unable to find that the Tenants have established on the balance of probabilities—that it is more likely than not—the Landlord and his family did not occupy the unit within a reasonable time after the Tenants vacated. That means I do not need to consider whether the Landlord acted in good faith when he delivered the N12.
6. The Tenants filed witness statements from five neighbours. The essence of these statements is: (a) the unit was empty for a time; and (b) several young people then moved into the unit. **[DOC-1434236, DOC-1434225, DOC-1434208, DOC-1434179 and DOC-**

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**1434150]** The Tenants did not call these neighbours to give verbal evidence and I am not prepared to give much weight to the neighbours' (untested) statements. In my view, it would be unfair to accept these written statements without the Landlord having an opportunity to challenge the neighbours' evidence.

7. Mr. Shelton testified that he attended the unit on August 29, 2022, and encountered what he described as college students living there.
8. Based on the witness statements—which I give very little weight—and Mr. Shelton's testimony, the Tenants asked me to infer, essentially, that the Landlord and his family never occupied the unit and instead rented it to students. I am unable to make that inference.
9. The fact that college students might be living in the unit instead of the Landlord and his family was not put to the Landlord by the Tenants. Nor did the Landlord address the assertion that there were college students living in the house when he testified.
10. The Landlord testified: (a) he moved into the unit on May 7, 2022; and (b) he worked long hours and because of that: (i) he moved into the unit at night; and (ii) keeps to himself, and does not interact with the neighbours. I also heard evidence from a friend of the Landlord, Elavalakanar Kanakaratham, who testified: (a) the Landlord and his family moved into the unit a week after the Tenants vacated; and (b) he has visited the Landlord at the unit many times. The Landlord filed: (a) hydro bills for the unit from May of 2022 in the Landlord's name; (b) a copy of the Landlord's driver's licence showing his address as the unit.

E. Patrick Shea  
Vice Chair, Landlord and Tenant Board

11. The Landlord also filed a witness statement from a cousin dated September 7, 2023 in which the

cousin indicated he moved into the unit with the Landlord in May of 2022 and currently lives there. **[DOC-2862874, Tab 5]** The Landlord's cousin was not in attendance on March 4, 2024 to give verbal evidence and I have given the cousin's (untested) statement no weight.

12. Considering all of the evidence, I am certainly left with some doubt as to whether the Landlord and his family moved into the unit, but the burden was on the Tenants to establish that it was more likely than not that the Landlord and his family did not move into the unit and I do not think that they met that burden. As a result, the application must be dismissed.

**It is ordered that:**

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.