



## Order under Section 57 Residential Tenancies Act, 2006

Citation: Hart v Nutter, 2024 ONLTB 62359

Date: 2024-08-26

File Number: LTB-T-096912-23

**In the matter of:** 368 Ellis St W  
Windsor ON N8X1B2

**Between:** Erica Hart Tenant

**And**

Victor Nutter Landlords  
Aneta Geokjian

2024 ONLTB 62359 (CanLII)

Erica Hart (the 'Tenant') applied for an order determining that Victor Nutter and Aneta Geokjian (the 'Landlords') gave a notice of termination in bad faith.

This application was heard by videoconference on July 17, 2024.

The Landlords 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.

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

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.
3. The parties agreed that the Landlord gave the Tenant an N12 notice of termination under section 48 of the Act because they required vacant possession for their son, Avery Nutter ("A.N."), who intended on residing in the rental unit for a period of at least one year.

4. The parties also agreed that the Tenant vacated the rental unit on February 2, 2023, as a result of the N12 notice.
5. The parties further agree that the Landlords' son, A.N., did not move into the rental unit after the Tenant vacated.

**The Landlord served the N12 notice of termination in bad faith**

6. The issue to be determined in this application is whether or not the Landlords served the Tenant with the N12 notice in bad faith.
7. The Tenant testified that she vacated the rental unit in February 2023 and that she saw the house up for sale in August 2023. The Landlords did not dispute that the house went up for sale in August 2023.
8. The Landlord testified that they listed the house for sale in August 2023, but it did not sell until January 5, 2024.
9. The Landlords testified that the reason they served the N12 notice was because their son was going to be moving to Windsor Ontario, the same city the rental unit is located, for work. They sought possession of the unit in February 2023 for this reason. However, the work opportunity for A.N. fell through in the spring of 2023, after the Tenant had already vacated. The Landlord produced an email from A.N. that supports the Landlords reason for listing the property for sale.
10. The Tenant said she was not aware of A.N.'s work situation and that she brought the application forward because she noted the rental unit listed for sale less than a year after she vacated the rental unit. The Tenant is seeking remedies for having to move out of the rental unit.

*Legal Analysis*

11. On an application to the Board, the person who alleges a particular event occurred has the burden of proof to establish that it is more likely than not that their version of events is true. In this application, the burden typically falls on the Tenant to establish that the notice of termination was served in bad faith.
12. However, the fact that the rental unit was listed for sale by the Landlords creates a rebuttable presumption that the Landlords served the N12 notice in bad faith. In other words, in this case, the burden falls on the Landlords to establish whether or not the rebuttable presumption applies.

Rebuttable Presumption of Bad Faith

13. Subsections 57(5) and 57(6) establish a rebuttable presumption of bad faith on the following ground:

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,

- (c) advertises the rental unit, or the building that contains the rental unit, for sale...
- (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.
- 14. The Tenant takes the position that the rebuttable presumption is engaged, as it is undisputed that the rental unit was advertised for sale, and sold on January 5, 2024, less than a year after they vacated.
- 15. The Landlords testified that there was a change of circumstances which should be considered by the Board which rebuts the presumption of bad faith.
- 16. Having heard the evidence of both parties, I find that on a balance of probabilities, the Landlords served the N12 notice in bad faith. The Landlords listed the rental unit for sale less than a year after the Tenant vacated. I put little weight on the email submitted by the Landlords because it is an email from their son, A.N., briefly explaining that he lost the work opportunity, the sole reason he was moving to Windsor. I would have reasonably expected the Landlords to call A.N. forward as a witness at the hearing and provide the Tenant the opportunity to cross examine him in order to determine his good faith intentions of wanting to reside in the rental unit. From the Landlord's own evidence, it would appear that A.N.'s job may not have been confirmed or settled at the time that the N12 notice was served on the Tenant as it had not yet begun for some time after the Tenant had vacated the rental unit.

### Remedies

- 17. The Tenant requested a rent differential in the amount of \$8,400.00. The Tenant was residing in the rental unit with her two sons and was paying a monthly rent of \$1,300.00.
- 18. The Tenant provided evidence that when she moved into her new rental unit she had to pay \$1,980.00 per month in rent for a similar-new rental unit. On the basis of the evidence before me, I find that the units were comparable and the Tenant had to pay an additional \$580.00 per month in rent due to the Landlord's bad faith notice of termination. The Tenant is claiming the difference in rent for a 12- month period ( $\$1,980.00 - \$1,400.00 = \$580.00 \times 12 = \$6,960.00$ ).

19. Therefore, I find that the Landlords must pay the Tenant \$6,960.00 for the increased rent that the Tenant has incurred for a one-year period after the Tenant moved out of the rental unit.

**It is ordered that:**

1. The total amount the Landlords shall pay the Tenant is \$7,008.00. This amount represents:
  - \$6,960.00 for increased rent the Tenant has incurred for the one-year period from **February 2023** to **January 2024**.
  - \$48.00 for the cost of filing the application.
2. The Landlords shall pay the Tenant the full amount owing by October 1, 2024.
3. If the Landlords do not pay the Tenant the full amount owing by October 1, 2024, the Landlords will owe interest. This will be simple interest calculated from October 2, 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.

**September 4, 2024**  
**Date Issued**

15 Grosvenor Street, Ground Floor  
Toronto ON M7A 2G6

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Vishal Nanda  
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.