



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

**Citation:** Worden v Lu, 2024 ONLTB 13169

**Date:** 2024-02-26

**File Number:** LTB-T-033002-23

**In the matter of:** A, 926 KINGSTON RD  
TORONTO ON M4E1S5

**Between:** Loretta Worden

Tenant

**And**

Ngoc tu anh Lu Landlord

Loretta Worden (the 'Tenant') applied for an order determining that Ngoc tu anh Lu (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on February 1, 2024.

The Tenant, the Landlord and Landlord's Legal Representative, Stephen Wai, attended the hearing. Also in attendance were witnesses for the Landlord, Richard London, and Andrew Beaver.

### **Determinations:**

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the landlord must pay the Tenant a total of \$12,048.00 which represents rent differential for one year and the Tenant's cost to file the application.

### *The Law*

2. This application is brought pursuant to subsection 57(1)(a) of the *Residential Tenancies Act, 2006* (the '*Act*') which requires the Tenant to prove each of the following on a balance of probabilities:
  - The Landlord 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 Landlord served the N12 notice of termination in bad faith.
3. There is no dispute that the Landlord served the Tenant with a notice of termination ('notice') under section 48 of the Act. The notice was served on February 14, 2022, with a termination date of May 31, 2022. It is also undisputed that the Tenant moved out in accordance with this notice on May 31, 2022. It was further undisputed that within the one-year period after the Tenant vacated, the Landlord advertised the unit for rent. The central factual dispute is whether the Landlord served the notice of termination in bad faith.
4. I would observe at this point that the reverse onus provision in subsection 57(5) of the Act applies to this situation. This provision states:

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;

...

5. The period described in subsection (6) begins on the day the landlord gives the notice of termination and ends one year after the former tenant vacates the rental unit.
6. In this case, the presumption of bad faith is triggered because during the one-year period after the Tenant moved out of the rental unit, the Landlord listed the rental unit for rent. There is a minor dispute between the parties on the exact date this happened. The Tenant saw the advertisements in approximately the middle of April 2023 and the Landlord testified she posted the advertisement at the end of April 2023. Given that the Tenant vacated on May 31, 2022, there is no dispute that the advertisement was placed within the period prescribed in subsection 57(6). Therefore, burden of proof shifts to the Landlord to establish on a balance of probabilities that she served the notice of termination in good faith.

#### *The Tenant's Evidence*

7. The Tenant testified that she believes the Landlord's intention when serving the N12 notice was to renovate the unit and rent it out at a much higher rate. The Tenant testified that the rental unit is located above a retail store and while driving by in approximately mid-April 2023, she saw a large red "For Rent" sign on the door leading to the rental unit. The Tenant further testified that she saw advertisements on "Sigma.ca", "Strata.ca" and "Zolo" listing the rental unit for \$2,650.00. The Tenant stated she was paying \$1,300.00 per month when she vacated. The Tenant testified that photos of the rental unit in the listing advertisements show that it was completely renovated.

*The Landlord's Evidence*

8. The Landlord testified that prior to serving the N12 she lived with her Aunt and Uncle in North York who helped take care of her young children while the Landlord worked. The Landlord testified that her husband was not in Canada until COVID started and when he returned, they wanted more privacy and to live together with their children in the rental unit.
9. The Landlord testified that after the Tenant vacated, she took some time to clean the unit and gradually moved in during the month of July 2022. The Landlord stated she owns a restaurant and works long hours so it took some time to both prepare the unit and move her belongings. The Landlord stated she was completely moved in by August 2022.
10. The Landlord testified she also wanted to update the rental unit by completing some renovations and that the renovations took place from approximately July 2022 to October 2022. The Landlord testified that during renovations she still resided in the rental unit but would move her belongings to the areas not being worked on. The Landlord also testified that her restaurant was open from 11:30 AM and that she often worked until midnight so during the day she was not bothered by the work being done in the unit.
11. The Landlord was questioned regarding the change of utilities to her name. The Landlord testified that she did change the utilities to her name but that she failed to produce copies of the bills. The Landlord further testified that the bills were going to the store which was below the rental unit and because the store did not open until later in the morning when the Landlord was already at work, she changed the billing address for the utilities so they would come to her restaurant.
12. The Landlord then stated that she could submit a copy of her utility bills now for the Board's consideration. This evidence was sent to the Tenant prior to taking the Tenant's submissions on the admittance of the Landlord's late disclosure. The Tenant consented to the submission and accordingly, I allowed the Landlord to submit these documents as evidence.
13. The Landlord testified that in March 2023, her mortgage rates increased significantly and she could not afford to continue staying in the rental unit. The Landlord testified that she listed the unit for rent around the end of April 2023. The Landlord stated that with the assistance of a leasing agent she was able to find a tenant and that she and her family moved out of the rental unit in August 2023.
14. The Landlord testified that since leaving the rental unit she and her family are living in the basement of her restaurant which used to be an office.
15. The Landlord submitted written statements from two contractors who were hired to complete work on the rental unit. The Landlord also submitted a written statement from a person who claims to have dropped the Landlord's children off at the rental unit from swimming twice weekly from July to November 2022.

16. The statements submitted by the Landlord is hearsay evidence and while hearsay evidence is admissible at the Board, it is generally given less weight than credible oral testimony that is subject to cross-examination. The Landlord's legal representative stated he could reach two of the individuals who gave written statements to attend the hearing but the third was travelling and could not be reached.
17. Andrew Beaver (A.B.) testified that he did renovation work to the rental unit from July 2022 to October 2022. A.B. testified that "the whole place was gutted". A.B. testified that before the renovations started he believed the Landlord was living there and that she moved back into the unit in October when the work was completed. A.B. testified that there were some personal belongings in the rental unit such as a dresser and bed and some "bare necessity items" in the fridge while he worked on the rental unit. A.B. testified that the Landlord's mail was coming to the rental unit the entire time he worked there.
18. Richard London (R.L.) testified that he attended at the unit for approximately 2 to 3 months to complete some painting and to fix things not done properly in the rental unit. R.L. testified his work on the rental unit started in the spring of 2023 though he could not remember the exact date. R.L. testified that he often saw the Landlord at the rental unit in the afternoon as he was finishing up.
19. As stated, the author of the final statement, Alicja Gromadzka,(A.G.) was not present to testify and could not be cross-examined. I did consider this statement given that hearsay is allowable at the Board; however, I give it very little weight. In A.G.'s statement she indicates "the drop off address [for the children] was the following, 926 Kingston Rd, Toronto, ON." The statement does not provide insight as to whether A.G. went inside the rental unit to observe that the family lived there or if she simply dropped the children off to their mother at the sidewalk. For this reason, the statement is not particularly compelling or helpful.

### *Analysis*

20. For the following reasons, based on the evidence and testimony before me, I do not find that the Landlord has met the burden of establishing that the N12 notice was served in good faith.
21. Much of the Landlord's testimony was focused on whether she moved into the rental unit as proof of her good faith that she both intended to live in the rental unit and that she did actually live in the rental unit until August 2023 which was 1 year and 2 months after the Tenant vacated. However, I found many inconsistencies in the testimony and evidence presented which undermines the Landlord's credibility.
22. The Landlord testified she worked long hours and because of this it took her some time to clean the unit and move in gradually and that she was "fully" moved in by August 2022. However, this is in contrast to the witness A.G.'s testimony who testified that the unit was "completely gutted" and no one was living in the rental unit while the renovations were being done. A.G. stated that the Landlord did not move back until October 2022.

23. During her testimony, the Landlord stated that she resided in the rental unit while renovations were being done and that she moved her belongings around to accommodate the work. The Landlord failed to mention that the entire unit was fully taken apart or “gutted” as it was referred to by A.G.
24. Prior to submitting copies of her utility bills, the Landlord testified that she used her restaurant as a billing address for her accounts because her mail was going to the store below the rental unit and collecting her mail was difficult due to the hours she worked. However, this is in contrast with A.G.’s testimony that during the renovations the Landlord’s mail was coming to the rental unit the entire time he worked there. Furthermore, when the Landlord was permitted to submit her utility bills later in the hearing, they showed that the billing address was the rental unit address further contradicting the Landlord’s testimony.
25. Upon review of the utility bills, I note that the bill date for the Enbridge gas statement is December 15, 2022, and the billing period on the account is stated as May 30, 2022, to November 18, 2022. Under the section “how much gas did I use” the reading shows 0m3 indicating there was no gas usage. Though certainly not wholly determinative considering the rental unit was under complete renovation for the months of July to October 2022, I do find it concerning that there would be zero gas used from October 2022 to the end of the billing period if the Landlord and her family had indeed been living in the rental unit as she stated.
26. I note similar concerns with the single Toronto Hydro bill submitted by the Landlord. The billing address is the rental unit and the date for the bill is January 9, 2023. The meter reading period on the bill is December 1, 2022, to January 3, 2023. The previous meter reading was 130600 and the current reading was 130619 or 19 kWh (kilowatt-hours) used for a period of 33 days. Even a single person conserving electricity aggressively would use far more than this amount of hydro. Therefore, I find it is more likely that no one was occupying the rental unit during this time.
27. Section 48 of the Act permits a landlord to 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 (emphasis added). Both of the Landlord’s witnesses testified that they saw the Landlord in the rental unit while they were completing work and that they observed some belongings in the rental unit such as a dresser and a bed. However, simply seeing the Landlord in the rental unit and observing a few odd pieces of furniture does not satisfy me that the Landlord, her husband, and their two young children lived in the rental unit for the purpose of residential occupation.
28. As I have found that the Landlord did not in fact move into the rental unit after the Tenant vacated as the Landlord claims, I must determine why the Landlord in fact sought to terminate this tenancy. The facts suggest that it is more likely a financial decision made by the Landlord. The Tenant was paying \$1,300.00 per month after living in the rental unit for 6 years. After the Tenant vacated, the Landlord completely renovated the rental unit then re-rented the unit at a higher rent of \$2,650.00 per month, as indicated by the Landlord’s rental advertisements.

29. Therefore, I find on a balance of probabilities that not only did the Landlord not occupy the rental unit after the Tenant vacated but that it was never the Landlord's intention to occupy the rental unit and that the N12 notice of termination was served in bad faith.

Remedies

30. The only remedy the Tenant sought in her application was a rent differential totaling \$12,000.00.

31. The Tenant's former unit contained 2 bedrooms and 1 bathroom. The former rental unit did not have laundry facilities and the Tenant had to walk across the street to use a laundromat. The former unit also did not include utilities.

32. The Tenant's new rental unit is the main floor of a bungalow style home. The Tenant's new landlord lives in a separately contained unit in the basement of the house. The new rental unit has 3 bedrooms and 1 bathroom. The Tenant stated that despite the extra bedroom, her former unit and her new unit are approximately the same size in square footage. The Tenant's new unit has in-suite laundry. The utilities are also not included.

33. In considering a rent abatement, the Board must consider whether the rental units are comparable, although they need not be exact. I accept the Tenant's testimony that her old and new units are comparable in size. I have also turned my mind to the additional benefit that having in-suite laundry facilities would have for the Tenant. Though certainly more convenient for the Tenant, I find that financially the Tenant likely still pays a comparable amount to do her laundry given that she pays utilities on top of her rent.

34. The Tenant submitted a copy of her new lease agreement showing her new rent is \$2,300.00. There was no dispute that the Tenant's rent at the old unit was \$1,300.00. Therefore, I find that the Landlord must pay the Tenant \$12,000.00 for the increased rent that the Tenant has incurred for a one-year period after the Tenant moved out of the rental unit.

35. This order contains all of the reasons for the decision within it and no further reasons will be issued.

**It is ordered that:**

1. The total amount the Landlord shall pay the Tenant is \$12,048.00. This amount represents:
  - \$12,000.00 for increased rent the Tenant has incurred for the one-year period from June 1, 2022 to May 31, 2023.
  - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by August 31, 2024.

3. If the Landlord does not pay the Tenant the full amount owing by August 31, 2024, the Landlord will owe interest. This will be simple interest calculated from September 1, 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.

**June 7, 2024**

**Date Issued**

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Melissa Anjema

Member, Landlord and Tenant Board

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.