



## Order under Section 57 Residential Tenancies Act, 2006

**Citation:** Collins v Rowe, 2024 ONLTB 60353

**Date:** 2024-08-30

**File Number:** LTB-T-078180-23

**In the matter of:** Box 10, Upper Unit/Lower South Unit, 74 Simcoe Street  
Scotland ON N0E1R0

**Between:** Abbey Collins Tenant

**And**

Peter Kim Rowe Landlord

Abbey Collins (the 'Tenant') applied for an order determining that Peter Kim Rowe (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on June 20, 2024.

The Tenant, the Tenant's Legal Representative E. Alexander, the Landlord and the Landlord's Legal Representative J. van Oordt attended the hearing. The Tenant's witness D.L. Alexander also attended the hearing.

### **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 \$1,969.00 on or before September 10, 2024.

### Preliminary issue: application of the Act

2. During the hearing, a preliminary issue was raised in respect to whether the *Residential Tenancies Act, 2006* ("the Act") applies to the rental unit.
3. Subsection 5(i) of the Act provides that the Act does not apply to "living accommodation whose occupant or occupants are required to share a bathroom or kitchen facility with the owner, the owner's spouse, child or parent or the spouse's child or parent, and where the owner, spouse, child or parent lives in the building in which the living accommodation is located".
4. The Landlord's position is that the Act does not apply to the rental unit because the Landlord lives in the residential complex and the parties had agreed the Landlord was allowed to use the Tenant's kitchen. The Landlord testified that they did not actually use the Tenant's kitchen until months after the Tenant had vacated the rental unit.

5. The Tenant's position is that the Act applies to the rental unit. The Tenant confirmed that the Landlord had never used their kitchen. The Tenant submitted into evidence the written tenancy agreement between the parties where the Landlord describes the residential complex as "shared accommodation or social housing". The document states "The tenants shall have exclusive access to the lower south unit at 74 Simcoe St. Scotland Ontario. This includes a private entrance, in suite laundry (washer and dryer of compact size), bathroom with shower, kitchen with stove, fridge and dishwasher, living room, hall with small office area, good size bedroom with closet and an additional guest room." Nothing in the document states that the Landlord can use the rental unit kitchen.
6. Having considered the evidence and the submissions of the parties' representatives, I am satisfied that the Act applies to the rental unit. While the document the Landlord developed appears to have been intended to exclude the tenancy from the application of the Act, parties cannot contract out of the Act. The parties agree the Landlord never actually used the rental unit kitchen before the Tenant moved out, so there is no substance to the Landlord's claim that the unit is exempt under subsection 5(i) of the Act because the Tenant was "required to share a bathroom or kitchen facility with the owner".
7. I am satisfied that the Act applies in respect of the rental unit.

Preliminary issue: amended application

8. The Tenant's original application was filed with the LTB on October 3, 2023. The Tenant filed a request to amend the application with the LTB on June 11, 2024. There is no dispute that the amended application was given to the Landlord and the Landlord's Legal Representative by email on June 11, 2024.
9. While two of the requested amendments were quite minor, the others involved significant changes to the remedies being sought by the Tenant. I therefore sought submissions from the parties' representatives as to whether I should exercise my discretion to grant the requests to amend the application.
10. The Tenant's Legal Representative submitted that I should grant the requests to amend the application because the Tenant's request was made as soon as the need for it was known. The Tenant's Legal Representative submitted that the original application had been prepared based on bad advice given by the Tenant's previous legal representative and that the amendment request had been submitted as soon as the new representative spotted the errors in the remedy requests. The Tenant's Legal Representative noted that denying the amendment request would prejudice the Tenant because their original application had requested a rent differential, which is not available because the Tenant purchased a home on vacating the rental unit. The amendment would convert the inappropriate remedies to appropriate ones, correcting the errors caused by the bad legal advice.
11. The Landlord's Legal Representative opposed granting the significant amendments to the remedies, but primarily on the basis that the Tenant is not entitled to any remedies because the Tenant's position improved on vacating the rental unit.

12. Having considered the submissions of the parties, I find it appropriate to exercise my discretion to grant most of the amendments to the application. I am satisfied that the Tenant's Legal Representative requested the amendments as soon as they took note of the issues and that the Landlord received the amended application with sufficient time to prepare for the hearing. I also note that the total amount of compensation being sought was reduced from the first application to the amended version.
13. The only amendment I am refusing to grant is the Tenant's request to add a new remedy seeking an order that the Landlord return their rent deposit and pay them the amount of one month's rent in compensation associated with the service of the N12.
14. The Tenant's original application did not include any mention about the Landlord's alleged failure to apply the last month's rent deposit to the last period of the tenancy, nor did it indicate that the Tenant had not been compensated as required when a landlord serves an N12 notice. I find that it would be prejudicial to the Landlord to allow the Tenant to add this additional ground at the hearing.
15. The Tenant's request to add the additional remedy of an order that the Landlord return their deposit and pay them compensation is denied because I am not satisfied it is appropriate or consistent with a fair and expeditious proceeding.
16. I am satisfied the remaining amendments requested are appropriate, do not prejudice either party and are consistent with a fair and expeditious proceeding. Accordingly, the Tenant's request to amend the application is granted, aside from the request to add a new remedy requesting an order that the Landlord repay the Tenant's rent deposit and pay compensation associated with the N12. The style of cause reflects the amendments to the rental unit address and the Landlord's name.

### The Tenant's application

17. This application is brought pursuant to subsection 57(1)(a) of 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.
18. There is no dispute between the parties about the first and second elements of this test. The Tenant was served an N12 notice of termination pursuant to section 48 of the Act on or about March 20, 2023 and the Tenant moved out as a result of the Landlord's notice. The two areas in dispute are whether the Landlord occupied the rental unit within a reasonable time after the Tenant vacated and whether the Landlord served the N12 notice in bad faith.

19. For the reasons that follow, I find that the Tenant proved all of the requirements in subsection 57(1)(a).

*The Landlord did not occupy the rental unit*

20. In the context of applications for eviction based on an N12 notice for landlord's own use, it is well settled law that temporary or part-time residency does not constitute "residential occupation" under subsection 48(1). [See for example: *Kohen v Warner*, [2018] OJ No 3307 (Ont Div Ct)]. I see no reason not to apply the same principle to the phrase "occupied the rental unit" in subsection 57(1)(a).
21. The Landlord's evidence was that they received a notice from the County of Brant on February 6, 2023 that ordered the Landlord to have all occupants of the residential complex move out by March 6, 2023; the Landlord submitted a copy of the County's Order to Comply into evidence. The Order to Comply states that, during a January 26, 2023 inspection for the Landlord's renovations, the inspection "revealed a new secondary dwelling unit in use without the benefit of a building permit being issued for the additional unit."
22. The Landlord testified that they negotiated with the County to extend the date that all occupants of the residential complex needed to move out to give the Tenant additional time to locate alternate housing.
23. The Landlord testified that they moved out of the residential complex temporarily on April 15, 2023 in accordance with the County's order. While the Landlord was not residing in the residential complex, the Landlord continued to attend and work in the complex daily. The Landlord moved back into the residential complex in August 2023, initially sleeping in the rental unit but then moving upstairs to the Landlord's original unit in September 2023. The Landlord stated that they continued to use the stove and laundry facilities in the rental unit and that they used the rental unit as an office, sleeping there occasionally. The Landlord confirmed that they are planning to install new tenants in the rental unit when the N12 notice "expires" on June 15, 2024.
24. I find that the Landlord's stated use of the rental unit does not constitute "residential occupation" as contemplated by the Act. A broad array of conduct and activities in the rental unit are consistent with "residential occupation". For example, as found in TSL-72600, using a portion of the rental unit as a home office/study may be consistent with residential occupation. However, simply sleeping in the rental unit for one month then primarily using the entire rental unit as an office while residing in another unit within the residential complex is not sufficient to constitute occupation of the rental unit.
25. In my view, residential occupation of a rental unit requires that the unit be occupied on a full-time basis by a person engaged in activities or conduct that is residential, or primarily residential, in nature. Living in the unit for one month then using a rental unit as an office while occasionally using the unit's stove or laundry facilities is, at best, part-time or temporary residency, which does not constitute residential occupation.

26. Based on the evidence before me, I find that the Landlord did not occupy the rental unit within the meaning of subsection 57(1)(a) of the Act.

*The Landlord served the N12 notice in bad faith*

27. Based on the evidence and submissions of the parties, I find that the Landlord gave the Tenant the N12 notice because the Landlord was ordered by the County of Brant to remove all occupants until necessary renovations were completed to allow occupancy of the rental unit and other residential units in the complex, not because the Landlord genuinely intended to occupy the rental unit. Accordingly, I find the Landlord served the N12 notice in bad faith.
28. As outlined above, the Landlord received an Order to Comply from the County of Brant explicitly highlighting that the Landlord had failed to identify in their original building permit that there would be a second residential unit in the complex and requiring the Landlord to remove all occupants from the complex. The Landlord's Legal Representative submitted that the Landlord served the N12 because the Landlord wanted to ensure they would not be fined \$50,000.00 by the County of Brant for a failure to comply with the Order.
29. The Landlord submitted into evidence an email they sent to the Tenant on February 15, 2023. The email states:

*Due to changes invoked by Brant, I will amend our contract to include the following provisions:*

*a) Rent for February 15-March 14<sup>th</sup> will be waived.*

*b) Rent for March 15-April 15 will be used as last month's rent.*

*c) If the reno is completed and Brant has signed off by April 14<sup>th</sup>, the occupancy can be continued under the contract by paying*  
*-the month that was missed,*  
*-paying the new last month*  
*-and paying for April 15<sup>th</sup>-May 15<sup>th</sup> and onward.*

30. Based on the Landlord's evidence, I find that the Landlord served the Tenant with a notice of termination because the Landlord was required to undertake renovations requiring a building permit and vacant possession of the rental unit. Nothing in the series of events prior to the service of the N12 notice indicated that the Landlord intended to occupy the rental unit and, as set out above, the Landlord did not occupy the rental unit on more than a temporary or part-time basis even when they had vacant possession. On a balance of probabilities, I find that the Landlord served the Tenant with the N12 notice for the purpose of gaining vacant possession, not for the purpose of residential occupation.
31. Having found that the Landlord served the N12 notice without a genuine intention to occupy the rental unit, I determine that the N12 notice was served in bad faith.

32. As I have found that all of the requirements in subsection 57(1)(a) were proven based on the evidence before me, I turn to the question of the appropriate remedies.

### Remedies

33. The Tenant's amended application sought the following remedies:

- Moving and storage expenses of \$1,921.00;
- General compensation of \$9,900.00;
- The return of the Tenant's last month's rent deposit and the one month's rent compensation amount required when landlords serve tenants with N12 notices; and
- Landlord to pay a \$2,000.00 administrative fine to the LTB.

34. As discussed, I determined as a preliminary issue that the Tenant's request to add a remedy seeking the Landlord return their rent deposit and pay compensation associated with the N12 notice was denied.

### *Moving expenses*

35. The Tenant submitted into evidence an invoice dated April 28, 2023 for moving services; the invoice total including taxes is \$1,921.00.

36. As I am satisfied that the Tenant vacated the rental unit based on the service of the N12 notice, I find the Tenant is entitled to their actual and reasonable moving costs incurred of \$1,921.00.

### *General Compensation*

37. The Tenant testified that their employment requires that they reside within 8 kilometers of the fire house, so they were extremely limited in where they could live. The Tenant stated that they were unable to find an alternative unit for rent within the necessary timeframe, so they were forced to buy a house before they were ready to do so, having not yet saved enough of a downpayment to reduce the mortgage rate. The Tenant's Legal Representative submitted that the Tenant is entitled to \$9,900.00 in general compensation to offset the additional expense that the Tenant would not have incurred had they been given the additional time in the rental unit to save for the downpayment.

38. The Landlord's Legal Representative submitted that the Tenant is not entitled to general compensation because the purpose of general compensation is to ensure that Tenants are not forced into a worse position by Landlords attempting to profit off abusing the system. The Landlord's Legal Representative submitted that the Tenant is in a better position following the termination of the tenancy, having bought a home and starting to build equity in their property while still living close to work with access to the same services and facilities.

39. Based on the evidence and submissions of the parties, I do not find it appropriate to grant general compensation in this case. The only submissions introduced by the Tenant and the Tenant's Legal Representative related to their position that the Tenant would have had

a reduced mortgage rate if the Tenant had occupied the rental unit for a longer period. However, the evidence before me demonstrates that the County of Brant required that the residential complex be vacated in April 2023 and that occupancy was allowed to resume in August 2023. Clearly, the Tenant would have been required to live elsewhere for 3-4 months whether or not the Landlord had served the notice in bad faith.

40. Given the Tenant's evidence that they had to buy a house because there were no rental units available at the time, I find that the Tenant would have purchased a house irrespective of whether the Landlord served the N12 notice. The Tenant did not offer evidence with respect to other impacts that would justify an award of general compensation. Accordingly, I have no basis upon which to award general compensation.
41. The Tenant's request for general compensation is denied.

#### *Administrative Fine*

42. The Tenant's Legal Representative submitted that the Landlord's refusal to negotiate with the Tenant and the Landlord's conduct justifies an administrative fine in the circumstances.
43. The Landlord's Legal Representative submitted that an administrative fine is not appropriate because the Landlord was trying to act in good faith but was mistaken and acted on bad advice from previous representatives.
44. Pursuant to the Board's non-binding Interpretation Guideline 16:

An administrative fine is a remedy to be used by the Board to encourage compliance with the *Residential Tenancies Act, 2006* (the "RTA"), and to deter landlords from engaging in similar activity in the future. This remedy is not normally imposed unless a landlord has shown a blatant disregard for the RTA and other remedies will not provide adequate deterrence and compliance. Administrative fines and rent abatements serve different purposes. Unlike a fine, a rent abatement is intended to compensate a tenant for a contravention of a tenant's rights or a breach of the landlord's obligations.

45. I do not find that this is an appropriate case for an administrative fine. In my view, the Landlord did not demonstrate a blatant disregard for the Act, but rather a lack of comprehension which is adequately addressed through the remedy awarded.
46. The Tenant's request for an administrative fine is denied.

#### *Filing costs*

47. Finally, the Tenant incurred costs of \$48.00 for filing the application and is entitled to reimbursement for those costs.

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

1. The total amount the Landlord shall pay the Tenant is \$1,969.00. This amount represents:

- \$1,921.00 for the reasonable moving, storage and other like expenses that the Tenant has incurred as a result of having to move out of the rental unit.
  - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by September 10, 2024.
  3. If the Landlord does not pay the Tenant the full amount owing by September 10, 2024, the Landlord will owe interest. This will be simple interest calculated from September 11, 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.

**August 30, 2024**

**Date Issued**

15 Grosvenor Street, Ground Floor  
Toronto ON M7A 2G6

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Tiffany Ticky

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.