



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

Citation: Cassels v Wu, 2024 ONLTB 24882

Date: 2024-04-10

File Number: LTB-T-019035-23

In the matter of: 90 JOSEPH CRES Barrie
ON L4N0Y2

Between: Jacqueline Cassels Tenants
Keithsha Jack

And

Xuhong Wu Landlords
Rongkai Chen

Jacqueline Cassels and Keithsha Jack (the 'Tenants') applied for an order determining that Xuhong Wu and Rongkai Chen (the 'Landlords') gave a notice of termination in bad faith.

This application was heard by videoconference on March 18, 2024. The Tenant Jacqueline Cassels, the Tenant's legal representative Kelly Draycott, the Landlords and the Landlord's legal representative Rong Wei Yu attended the hearing.

Preliminary:

1. The application is amended to remove Nata Bekurishvili as a Tenant to the application and to include Keithsha Jack as a Tenant and/or applicant.

Determinations:

1. As explained below, the Tenant's application is dismissed because it was filed pursuant to subsection 57(1)(b) of the *Residential Tenancies Act, 2006* ('the Act') which is not applicable to the facts of this case.

2. Subsection 57(1)(b) of the Act requires the Tenants to prove each of the following on a balance of probabilities:

- The Landlord gave the Tenant an N12 notice of termination under section 49 of the Act;
- The Tenant vacated the rental unit as a result of the N12 notice of termination;
- No person referred to in subsection 49(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.

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3. The facts in this case are not in dispute and are as follows:

- On August 18, 2021 the Landlords sent the Tenants a text message advising that their mortgage was coming up for renewal in June 2022 and as such, the Landlords were considering selling the property.
- From August 25, 2021 to September 13, 2021 the Landlords and the Tenants discussed via text message the possibility of the Tenants purchasing the rental unit, however, the Tenants were unable to afford the purchase.
- On April 9, 2022 the Tenants served to the Landlords a N9 notice of termination with a termination date of May 31, 2022. The Tenants vacated the rental unit per the notice
- From August 25, 2021 to May 31, 2022 the Landlords did not list the rental unit for sale nor did the Landlords demand that the Tenants vacate the rental unit or serve the Tenants a notice of termination for purchasers own use.
- After the Tenants vacated the rental unit, the Landlords listed the rental unit for sale on July 16, 2022. The Landlords were unsuccessful in selling the property.
- On August 5, 2022 the Landlords advertised the rental unit for lease and the rental unit was subsequently re-rented at a increased rent.

4. In this case the Landlords did not serve the Tenants with an N12 notice of termination under section 49 of the Act nor did the Landlords serve any written notice to the Tenants advising that they had to vacate the rental unit because of an agreement of purchase and sale. The Landlords simply sent the Tenants a text message indicating that they were considering selling the property the following summer and the Tenants chose to vacate on their own accord.

5. Nothing in the Act requires a tenant to move out of the rental unit because the landlord is selling the property. If a landlord has signed a purchase and sale agreement with a specific purchaser and the purchaser requires the rental unit for their residential use, then a landlord can serve an N12 notice of termination pursuant to section 49 of the Act.
6. Subsection 57(1)(b) of the Act expressly states that it only applies when a landlord served a notice of termination under section 49 of the Act. However, the Board has found that a tenant who does not receive an official notice of termination, but rather gets some other form of communication (like an email or letter) which resembles a notice under section 49 of the Act would be covered by the section 57 of the Act. Elements that might make an informal communication resemble a notice under section 49 of the Act include a termination date, that the landlord has entered into an agreement of purchase and sale, and information about who intends to move in.
7. In this case the Tenants did not receive an N12 notice of termination, any information that a specific purchaser was moving in, a termination date, or any other communication that resembles a notice under section 49 of the Act. The Landlords simply said that they were considering selling the property. What any potential buyer would do with the property was **File Number: LTB-T-019035-23**

unknown to parties. Additionally, one of the elements of the test under section 57(1)(b) is that no person referred to in section 49 of the Act moved in. The Landlord never indicated that a specific person would be moving in so it would be impossible to apply a test which requires determining if that person moved in.

8. For those reasons I find that section 57(1)(b) of the Act does not apply in this case. As such the Tenant's application must be dismissed.

It is ordered that:

1. The Tenant's application is dismissed.

April 10, 2024

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Fabio Quattrociocchi
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.

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