



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

**Citation:** Anderson V Tse, 2024 ONLTB 9377

**Date:** 2024-02-20

**File Number:** LTB-T-063521-22

**In the matter of:** 126 EAST 18TH STREET HAMILTON  
ON L9A4P1

**Between:** Marilyn Anderson Tenants  
Robert Childs

**And**

Ka Kuen Tse Landlord

Marilyn Anderson and Robert Childs (the 'Tenants') applied for an order determining that Ka Kuen Tse (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on November 29, 2023.

Only the Tenants and their representative, Joseph Kazubek, attended the hearing.

As of 1:32 p.m., the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Tenants' evidence.

**Determinations:**

1. As explained below, the Tenants proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenants \$12,288.53.

**Landlord gave N12 for own use in bad faith.**

2. The Tenants moved into the rental unit in September 2016 and the monthly rent was 1,519.00. The Tenants moved out of the rental unit on October 31, 2021.

3. The Tenants was provided an N12 notice of termination on August 9, 2021, with a termination date of October 31, 2021, stating that the Landlord required vacant possession of the rental unit so that they could move into the rental unit and occupy it for a period of at least on year. The Tenants tried to negotiate with the Landlord to stay but that did not work out. The Tenants moved out to live in upper level of a house a kilometre away from the rental unit and the Tenants' new rent was \$2,150.00.
4. The Tenants states the rental unit was empty for a whole year. From November 2021 to November 2022, the Tenants did not see anyone occupy the property. He stated his previous neighbours keep an eye out and they have not seen the Landlord at the Property since the Tenants moved out. The Tenants also testified that two years after they moved out the property was sold on September 29, 2023. The Tenants believes that the reason the Landlord gave them the notice of termination was to take back possession of the rental unit to renovate the property and sell it. Since the Tenantss still live close by, they would visit the property three times a week and the only activity the Tenants saw was renovation taking place and never saw the Landlord or their family at the property.

#### *Analysis*

5. Subsection 57(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') requires the Tenants to prove each of the following on a balance of probabilities:
  - The Landlord gave the Tenants an N12 notice of termination under section 48 of the Act;
  - The Tenants 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 Tenants vacated; and
  - The Landlord served the N12 notice of termination in bad faith.
6. The Landlord served the Tenants with an N12 notice of termination under s. 48 of the Act. The Tenants moved out because they received this notice.
7. The Tenants' uncontested evidence establishes that the property was sold to a new owner on September 29, 2023.
8. Given the Tenants' uncontested evidence that the rental unit was not occupied after they moved out, before the unit was sold in September 2023, I find, on a balance of probabilities, that the Landlord did not occupy the rental unit within a reasonable time after the Tenants vacated.
9. Similarly, since the Landlord failed to occupy the rental unit after the Tenants moved out and then proceeded to sell the unit, I find that the Landlord served the N12 notice of termination in bad faith. The Landlord did not attend the hearing to provide any evidence to

explain the sequence of events. The Tenants has established all of the elements of the legal test in section 57(1)(a) on a balance of probabilities.

10. On the Tenants' uncontested evidence before the Board, I find that the Landlord served the Tenants an N12 notice, the Tenants moved out of the rental unit as a result of the N12 notice and the Landlord never occupied the rental unit after the Tenants moved out.

### Remedies

#### *Rent differential.*

11. The Tenants testified they moved into a new rental unit with a monthly rent of \$2,150.00, which is \$560.00 higher than the rent she was paying at the rental unit. The Tenants submitted that the space they currently occupy is comparable to the rental unit. The Landlord will be ordered to pay the Tenants' rent differential of \$560.00 a month for 12 months, for a total of \$6,720.00.

#### *Rent Abatement*

12. An abatement of rent is contractual remedy based on the principle that rent is charged in exchange for a bundle of goods and services and if a Tenants is not receiving those goods and services then that rent should be abated in a sum proportional to the difference between what is being charged and what is being received.
13. There was no evidence before me to suggest the Tenants's use of the rental unit was diminished or hindered by the Landlord while they were residing there. For these reasons, the request for abatement is denied.

#### *Moving and Storage expenses*

14. The Tenants claimed \$5,515.53 in moving and storage expenses. The Tenants had to pay the movers \$20.00 an hour for 4 movers to assist and paid \$830.00. The Tenants rented a storage unit to store belongings when the Tenants received the N12 Notice as in the city of Hamilton he stated that during the month of September there is a lot of student renters and it is hard to find storage units and he needed to start to prepare to move, once the move happened he could not take all his belongings as he was moving from a bigger unit to an upper-level unit. The Tenants testified he rented the storage unit for 13 months from September 2021 to September 2022 in for a total cost of \$4,137.32 and moving boxes and supplies for a total of \$548.21. The Tenants submitted into evidence a Canada post receipt in the amount of \$98.08 for mail forwarding. The Tenants submitted into evidence a U-Haul receipt for moving equipment for the moving van and boxes. The Landlord will be ordered to compensate the Tenants \$5,515.53

15. As the Tenants is successful with the application, the Landlord will be ordered to pay the costs of filing the application in the amount of \$53.00.

**It is ordered that:**

1. The total amount the Landlord shall pay the Tenants is \$12,288.53 This amount represents:
  - \$6,720.00 for increased rent the Tenants incurred for the one-year period after they vacated the rental unit on October 31, 2021.
  - \$5,515.53 for the reasonable moving, storage and other like expenses that the Tenants has incurred as a result of having to move out of the rental unit.
  - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenants the full amount owing by March 2, 2024.
3. If the Landlord does not pay the Tenants the full amount owing by March 2, 2024, the Landlord will owe interest. This will be simple interest calculated from March 3, 2024, at 7.00% annually on the balance outstanding.
4. The Tenants has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

**February 20, 2024**

**Date Issued**

15 Grosvenor Street, Ground Floor  
Toronto ON M7A 2G6

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Vinuri Sivalingam

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.