



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

**Citation:** SIMONE v KANG, 2024 ONLTB 6482

**Date:** 2024-01-25

**File Number:** LTB-T-072797-22

2024 ONLTB 6482 (CanLII)

**In the matter of:** 4029 HIGHWAY 6  
PUSLINCH ON N0B2J0

**Between:** FRANCESCO SIMONE Tenants  
LINDSEY STEVENS

**And**

KASHMIR KANG Landlord

FRANCESCO SIMONE and LINDSEY STEVENS (the 'Tenants') applied for an order determining that KASHMIR KANG (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on November 14, 2023.

Only the Tenants attended the hearing.

As of 9:33 a.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.

2. The rental unit is a 4 bedroom house on 2 acres of land. The Tenants described it as an “old farm house”. They moved in on September 1, 2019, and their monthly rent when they moved out was \$1,600.00.
3. The Tenants said that they moved into the rental unit with a different Landlord. They said that when the rental unit was sold to the Landlord in 2020, they were assured that they would not have to move out.
4. The Tenants said that the Landlord first emailed them in July 2021, to move out of the rental unit. They said that they told the Landlord that he was required to send them an N12 notice of termination. Therefore, they said the Landlord served them an N12 notice of termination stating that the Landlord required use of the rental unit for his child, and the termination date was August 31, 2021.
5. The Tenants said that they moved out on or before August 31, 2021.
6. The Tenants said that it was difficult to find anything comparable for their budget. They said that they looked everywhere in Halton. The Tenant, L. Stevens (LS) said that she works from home, but her husband, the Tenant F. Simone (FS) does construction work in the area, so he wished to remain in the area.
7. The Tenants said that they ultimately found a small townhouse with 2 ½ bedrooms in Acton. They said that it is semi-detached, and it has only a small backyard. The rent for the Tenants’ new rental unit is \$250.00 more per month at \$1,850.00.
8. The Tenants said that they do not believe that the Landlord’s son moved into the rental unit for the reasons that follow.
9. The Tenants said that the Landlord lived about 2 doors away from their rental unit, and he runs a dump truck company. They said that they were aware the Landlord had plans to renovate the front of their unit because he wanted to run his dump trucks through the property. However, the Tenants said that the Landlord had problems with City Bylaw because of zoning restrictions.
10. The Tenants said that the Landlord’s son did not move into the rental unit after they moved out.
11. The Tenants submitted into evidence a number of photographs of the property on various dates. The photographs showed that the property was boarded up on October 5, 2021, and on April 27, 2022. The Tenants submitted texts from a former neighbour dated September 17, 2021, in which they state “There is a random person moving things into the house, but it isn’t Kang...” The Tenants said that they and the neighbours know what the Landlord’s son looks like because they are familiar with the Landlord and his family. The Tenants had further reports from neighbours that it appeared as though the Landlord was

continuing to try to get his road through the grounds of the rental unit constructed. The Tenants submitted into evidence texts from former neighbours from as late as July 2022, in which they report that no one lives at the rental unit.

12. The Tenants said that they believe the Landlord wanted to use the rental unit to construct his desired road, but it did not work out. They said that they drove past the rental unit just before the hearing day, and it appeared as though the Landlord was now renovating the property to re-rent it.
13. The Tenants request the difference in rent between their old property and their new property for \$250.00 per month times 12 months. They also request storage costs of \$169.95 per month because they had large equipment at the other unit that they needed to store when they moved into a smaller unit, such as a riding mower, tools and building material. They said that they no longer have land or space to store things at their new place. They also request \$268.00 for moving costs incurred for gas and help with moving.

Reasons and Analysis:

14. With respect to a T5 application, 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 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. Indications that the N12 notice was served in bad faith are advertising the unit for rent, or entering into a tenancy agreement in respect of the rental unit with someone other than the former tenant, demolishing the rental unit, or taking steps to convert the rental unit into something other than residential premises.
15. Therefore, the above provision sets out a three-part test which the Tenants must satisfy in order to be successful in this application, namely:
  - (a) First: the Landlord served an N12;
  - (b) Second, the Tenants moved out of the unit as a result of the N12;
  - (c) Third: that the Landlord (or family members) did not move into the rental unit within a reasonable time after the Tenants vacated the unit.
16. In this case, the Tenants moved out of the rental unit as a result of an N12 notice of termination served by the Landlord.

17. The Tenants gave uncontested evidence that the Landlord's son did not move into the rental unit within a reasonable time after the Tenants vacated the rental unit. The Tenants moved out on or before August 31, 2021. They had photographic evidence of a boarded up house in October 2021, as well as in April 2022. They had texts from neighbours that no one was living in the house in July 2022. The Tenants also had texts from neighbours about the Landlord's unsuccessful attempts to build his road.
18. I do not find that recent observations of renovation at the property prove that the Landlord's son did not move in to the rental unit. It is possible he was going to move in around the hearing date, but that would be over 2 years after the Tenants moved out, and therefore not within a reasonable time. In any case, I find that the other evidence of a boarded up house, or an empty house, provided via photographs and texts, prove on a balance of probabilities, that the Landlord's son did not move into the rental unit within a reasonable time after the Tenants vacated the rental unit.
19. There were no conclusive indications of the N12 having been served in bad faith as described above in paragraph 14. However, the Tenants were aware that the Landlord repeatedly sought to use their land and property to build a through road for his dump truck business. They also had photographic evidence that the Landlord had attempted to do this after they vacated the rental unit.
20. The test stated above is rebuttable by the Landlord. However, the Landlord did not attend the hearing to rebut the presumption of an N12 notice of termination served in bad faith. He did not attend the hearing to present any evidence that his son moved into the rental unit within a reasonable time after the Tenants moved out, in order to contradict the photographic and text evidence of the Tenants.
21. Consequently, I find, on a balance of probabilities, that the Tenants proved that the Landlord served the Tenants with an N12 Notice of Termination in bad faith.

Remedies:

22. It is before me to determine to what remedies the Tenants are entitled.
23. The Tenants found it difficult to find a comparable unit in the same area. The Tenant FS needed to remain in the general area in order to carry out his work. The Tenants ultimately found a small unit with less land and higher rent. The Tenants' new unit is arguably worse than the rental unit, and they are paying more for it. Consequently, I find that the Tenants are entitled to the differential in rent. At the hearing the Tenants claimed the differential was \$250.00 per month, however, in their application they claimed \$200.00 per month differential. I do not have the authority to grant the Tenants more than they requested in

their application. They are therefore entitled to \$200.00 per month for 12 months, or \$2,400.00 for the differential in rent.

24. The Tenants were only able to find a much smaller unit with less land, and consequently they were obliged to store equipment that they had at their previous unit. I find that they are entitled to the resulting out-of-pocket cost they have incurred to store their large equipment. This is an amount of \$169.95 per month times 12 months, or \$2,039.40.
25. The Tenants did not provide receipts for their \$268.00 moving costs. However, I find that the \$268.00 they claim is a reasonable amount for gas and moving help.

**It is ordered that:**

1. The total amount the Landlord shall pay the Tenants is \$4,760.40. This amount represents:
  - \$\$2,400 for increased rent the Tenants have incurred for the one-year period from after they vacated the rental unit.
  - \$2,307.40 for the reasonable moving, storage and other like expenses that the Tenants have 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 February 5, 2024.
3. If the Landlord does not pay the Tenants the full amount owing by February 5, 2024, the Landlord will owe interest. This will be simple interest calculated from February 6, 2024 at 7.00% annually on the balance outstanding.
4. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

**January 25, 2024**

**Date Issued**

15 Grosvenor Street, Ground Floor  
Toronto ON M7A 2G6

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Nancy Morris

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.