



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

**Citation:** Chiasson v Jiahu, 2023 ONLTB 81751

**Date:** 2023-12-19

**File Number:** LTB-T-071072-22

**In the matter of:** 57 Walter English Drive  
East Gwillimbury Ontario L9N0R8

**Between:** Helen Maureen Chiasson Tenants  
Lenny J Chiasson

**And**

Sivagurumathan Sivaalinganathan Landlords  
Arani Sivaalingnathan

Sun Jiahu Purchasers  
Yuhong Li

Helen Maureen Chiasson and Lenny J Chiasson (the 'Tenants') applied for an order determining that Sivagurumathan Sivaalinganathan and Arani Sivaalingnathan (the 'Landlords') gave a notice of termination in bad faith.

This application was originally heard by videoconference on July 22, 2022. On that date, the Tenants, the Purchasers and the Purchasers's Agent, Justin Tsang were in attendance. The hearing was adjourned to permit the Landlord (Sivagurumathan Sivaalinganathan and Arani Sivaalingnathan) and the Purchasers/Current Owner of the rental unit, (Sun Jiahu and Yuhong Li), to receive notice of this proceeding and provide them with the opportunity to participate.

At the return on, on August 30, 2023, only the Tenants attended the hearing.

As of 12:31 p.m. on August 30, 2023, neither the Landlords nor the Purchasers were 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. This is a T5 Application filed by the Tenants alleging that they were served an N12 Notice of termination given under section 49 of the *Residential Tenancies Act, 2006* (the "Act") for purchaser's own use in bad faith.
2. As explained below, the Tenants proved the allegations contained in the application on a balance of probabilities. Therefore, the application is granted and the Purchasers are ordered to pay the Tenants \$10,689.00.

N12 Notice

3. By way of background, the rental unit is a 4-bedroom house, with 2 car garage and the Tenants were responsible for paying the utilities. Their two sons, pregnant daughter-in-law, and their grandchild also resided in the rental unit. They were paying \$2,074.00 per month for the rental unit.
4. The Purchasers and the Landlord entered into an agreement of purchase and sale for the rental unit in July/ August 2020.
5. On behalf of the Purchasers, the Landlords Sivagurumathan Sivaalinganathan and Arani Sivaalingnathan gave the Tenants an N12 Notice of Termination on August 16, 2020 which provided a termination date of October 31, 2020. The N12 was served under section 49 of the Act which states:

**49 (1)** A landlord of a residential complex that contains no more than three residential units who has entered into an agreement of purchase and sale of the residential complex may, on behalf of the Purchasers, give the tenant of a unit in the residential complex a notice terminating the tenancy, if the Purchaser in good faith requires possession of the residential complex or the unit for the purpose of residential occupation by,

- (a) the purchaser;
- (b) the purchaser's spouse;
- (c) a child or parent of the purchaser or the purchaser's spouse; or
- (d) a person who provides or will provide care services to the purchaser, the purchaser's spouse, or a child or parent of the purchaser or the purchaser's spouse, if the person receiving the care services resides or will reside in the building, related group of buildings, mobile home park or land lease community in which the rental unit is located.

6. The Tenants testified that when they were served the N12 the Landlord told that that the Purchasers were not investors and did not intend to keep them as tenants.
7. The Tenants vacated the rental unit on or about October 31, 2020.
8. The sale of the residential complex was completed around the beginning of November 2020.
9. The Tenants testified the Purchasers never moved into the rental unit. The Tenants' son went to the rental unit in late November and saw a sign on the lawn that the rental unit was for lease. The Tenants' son knocked on the door and found that the Purchasers was not residing in the rental unit.

Purchaser added as a party

10. The sale of the rental unit was completed after the Tenants vacated. As result, I find the Tenants were never in a landlord and tenant relationship with the Purchasers.
11. However, I agree with the Tenants that the Purchasers should be added as party to this proceeding as the N12 Notice identified the Purchasers as the individual who would move into the rental unit.
12. Section 187 of the Act provides:

187 (1) The parties to an application are the landlord, or the non-profit housing cooperative, and any tenants, or members of the non-profit housing co-operative, or other persons directly affected by the application. [Emphasis added]

13. In this case, I am satisfied that even though the Purchasers were never a landlord, they were directly affected by this application as the termination of the tenancy was for the Purchasers' benefit.
14. In addition, adding the Purchasers as a party, after they were provided with notice, is consistent with the guidance provided in LTB Interpretation Guideline 12: Eviction for Personal Use, Demolition, Repairs and Conversion

T5 Application

15. Subsection 57(1)(b) 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 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) or 49(2) 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.

16. In a recently released decision, the Court of Appeal in *Elkins v. Van Wissen*, 2023 ONCA 789 provided guidance respecting how to apply the test in subsection 57(1)(b) of the Act and who can be found liable if the N12 was served in bad faith.

17. The Court of Appeal found that the LTB should consider all relevant evidence when determining whether the N12 was served in bad faith and should not restrict itself to consideration of whether there was good faith at the time the N12 was served.

18. The Court also found that when deciding a T5 application relating to an N12 served for purchaser's own use, the LTB must consider whether the purchaser "in good faith" required the rental unit for residential occupation. It is insufficient to assess only whether the landlord acted in bad faith in giving the N12. Further, if the LTB finds that the purchaser acted in bad faith where the N12 was served for purchaser's own use, s.57(3)4 of the Act gives the LTB the power to make an order against the purchaser.

### Analysis

19. The Tenants proved all of the requirements in subsection 57(1)(b).

20. The Tenants moved out of the rental unit on October 31, 2020, as a result of the N12 notice.

21. Based on the Tenants' uncontested evidence before me, I find that the Purchasers' failed to move into the rental unit after the Tenants vacated.

22. Despite being provided with notice of this application and hearing, the Purchasers and the Landlords chose not to attend. Accordingly, any explanation regarding why the Purchasers did not move in was not in evidence before the Board.

23. In the circumstances, I am satisfied on a balance of probabilities that the Purchasers did not intend to live in the rental unit when they directed the Landlords to serve the N12 Notice based upon the fact the rental unit was listed for rent less than a month after the Tenants vacated. I am therefore satisfied that the N12 notice was served in bad faith as a result of the Purchasers direction to the Landlord.

24. I therefore find that the N12 Notice was served in bad faith, and it was the Purchasers who acted in bad faith in causing the Landlord to serve the notice on their behalf.

### Remedies

25. As noted above, in *Elkins* the Court of Appeal found that the LTB has the authority under section 57(3) of the Act to make an order against the Purchaser if it finds that the Purchaser acted in bad faith. Having found that the Purchasers acted in bad faith, I find that the following remedies are appropriate in the circumstances.
26. The Tenants sought a remedy of the difference in rent between their new residence and the rental unit.
27. The Tenants now reside in a 4-bedroom rental unit, with a 1 car garage, no fence and they are responsible for paying utilities. Their sons, daughter-in-law and grandchildren now reside elsewhere. The current rent is \$2,800.00 per month, which is \$726.00 per month more than what they were paying for the rental unit.
28. Therefore, I find that the Purchaser must pay the Tenants \$7,536.00 for the increased rent that the Tenants have incurred or will incur for a one-year period after the Tenants moved out of the rental unit.
29. The Tenants have also claimed out of pocket moving expenses. While the Tenants do not have receipts for these expenses, I do not find that the claimed expenses are unreasonable.

Therefore, I find that the Purchaser must pay the Tenants \$100.00 for the reasonable out-of-pocket moving, storage, and other like expenses that the Tenants have incurred or will incur as a result of having to move out of the rental unit.

30. The Tenants testified that the N12 Notice caused emotional and financial turmoil during the height of the COVID-19 pandemic. Their two sons who lived with them no longer live with them which has caused infighting in the family. The Tenants have both suffered from mental health issues which has compromised their emotional well being and caused them to contemplate separating. I find that bad faith service of the N12 and the resulting termination of the tenancy caused the Tenants who lived in a multi-generational home emotional and financial stress. Therefore, I find that the Landlords must pay the Tenants \$3,000.00 for general compensation.

**It is ordered that:**

1. The Purchasers (Sun Jiahu and Yuhong Li) shall pay the Tenants \$10,689.00. This amount represents:
  - \$7,536.00 for increased rent the Tenants have incurred for the one-year period from November 1, 2020 to October 31, 2021.
  - \$100.00 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.

- \$3,000.00 for general compensation.
  - \$53.00 for the cost of filing the application.
2. The Purchasers shall pay the Tenants the full amount owing by December 30, 2023.
  3. If the Purchasers do not pay the Tenants the full amount owing by December 30, 2023, the Purchasers will owe interest. This will be simple interest calculated from January 1, 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.

**December 19, 2023**

**Date Issued**

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**Camille Clyne**

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.