



## **Order under Subsection 135 Residential Tenancies Act, 2006**

**Citation:** Odie v Al-mter, 2023 ONLTB 78288

**Date:** 2023-12-01

**File Number:** LTB-T-076429-23

**In the matter of:** 1017 LAUZON RD  
WINDSOR ON N8S3M7

Tenant

**Between:** Nathalie Odie

**And**

Ahmed Al-mter

Landlord

Nathalie Odie (the 'Tenant') applied for an order determining that Ahmed Al-mter (the 'Landlord') collected or retained money illegally (the T1 application).

Nathalie Odie (the 'Tenant') applied for an order determining that Ahmed Al-mter (the 'Landlord'):

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household (the T2 application).

Nathalie Odie (the 'Tenant') applied for an order determining that Ahmed Al-mter (the 'Landlord') gave a notice of termination in bad faith (the T5 application).

This application was heard by videoconference on November 22, 2023.

Only the Tenant and her Legal Representative Brandon Valley attended the hearing.

As of 1:17 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 Tenant's evidence.

### **Determinations:**

1. The Tenant brought this T1 application claiming that the Landlord did not use the Tenant's last month rent deposit to pay for the last rental period of the tenancy and did not return the deposit to the Tenant as well as that the Landlord did not provide compensation to the Tenant with respect to an N12 notice that was served.
2. The Tenant's T2 application claims that the Landlord substantially interfered with her reasonable enjoyment of the rental unit because he threatened that he was going to discard her belongings and she has not been able to retrieve them.



3. The Tenant's T5 application claims that the Landlord gave a N12 notice of termination in bad faith. For the reasons that follow, the Tenant's applications are partially granted.

Background:

4. The Tenant moved into the rental unit on July 1, 2021 and paid a last month's rent deposit to the Landlord in the amount of \$1,850.00 upon signing the lease.
5. The Tenant states that the Landlord emailed her on March 26, 2023 stating that he was moving back into the rental unit and gave her 60 days to move out of the rental unit. An N12 notice of termination was attached to the email which indicated a termination date of June 1, 2023 and stated that the Landlord intends to move into the rental unit and occupy it for at least one year.
6. The Tenant states that on April 4, 2023, the Landlord then provided her by email with an N4 notice stating that she owed rent and was in arrears. The Landlord stated that the Tenant had until April 24, 2023 to vacate the rental unit.
7. The Tenant states that she then decided to move out right away, staying with a friend, and did not dispute the notice of termination. The Tenant submits that she moved out of the rental unit on April 7, 2023, took only a few essential items, left her belongings in the rental unit and did not return the key to the rental unit to the Landlord.
8. The Tenant submits that she had two roommates living with her in the rental unit at the time of the delivery of the notices of termination but she was the only Tenant named on the lease. The Tenant states that when she left the rental unit, her two roommates remained in the rental unit and she does not know when they vacated.
9. The Tenant states that she was having issues with one of her roommates as he had mental health issues and did not feel comfortable returning to the rental unit even though she still had her key and all of her belongings were in the rental unit. The Tenant stated that at no time did she contact her roommates to have her belongings returned but that some of the belongings were being used by the roommates including kitchen kittens and furniture.
10. The Tenant testified that she did attempt to retrieve her possessions by calling the Landlord but was only able to speak with him in the middle of May when he told her that she owed rent and that if she did not pay the arrears, her belongings "would be put on the road".
11. The Tenant states that in June, 2023, the Landlord listed the rental unit for lease through multiple websites which listed an increased rent and that the Landlord did not comply with section 48(1) of the *Residential Tenancies Act, 2006* (the 'Act') by providing compensation to her in the amount of one month's rent.

Analysis:*The T1 application:*

12. The Tenant alleges that the Landlord did not use her last months rent deposit to pay for the last rental period of the tenancy and did not return the deposit to her. The Tenant also alleges that the Landlord gave her an N12 Notice to End your Tenancy Because the Landlord, a Purchaser or a Family Member Requires the Rental Unit ('N12 notice') and did not pay compensation in the amount of \$1,850.00, being one month's rent. The Tenant testified that she vacated the rental unit as the result of an N12 notice and did not receive compensation.
13. Based on the uncontested evidence and submissions before me, I am satisfied, on a balance of probabilities, that the Landlord provided an N12 notice pursuant to section 48 of the *Act* and did not provide the required compensation to the Tenant pursuant to section 48.1 of the *Act* which states:

A landlord shall compensate a tenant in an amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant if the landlord gives the tenant a notice of termination of the tenancy under section 48.

14. As I have found that compensation equal to one month's rent was not provided to the Tenant, the Tenant shall be awarded one month's rent compensation in the amount of \$1,850.00.
15. Section 105 of the *Act* states that the only security deposit that a landlord may collect is a rent deposit collected in accordance with section 106 of the *Act*.
16. Section 106 of the *Act* states that a landlord may require a tenant to pay a rent deposit with respect to a tenancy if the landlord does so on or before entering into the tenancy agreement.
17. Section 135 of the *Act* states that a Tenant or former Tenant may apply to the Board for an order that the Landlord, superintendent or agent of the Landlord to pay to the Tenant any money the person collected or retained in contravention of this *Act*.
18. Based on the uncontested evidence and submissions before me, I find that the Tenant has not established, on a balance of probabilities, that the Landlord failed to not use the last month's rent deposit, which was collected upon signing the tenancy agreement in July, 2021, to pay for the last rental period of the tenancy and did not return the deposit to the Tenant. I say this as the Tenant was still in possession of the rental unit, her roommates were still occupying the unit and the Tenant had retained the keys to the rental unit. Further, the tenant testified that she was unaware of when her roommates vacated the rental unit and did not know if the last month's rent deposit had been applied or not. I therefore find that the Tenant has failed to prove on a balance of probabilities, that the last month's rent deposit was not applied by the Landlord. Therefore, no remedy shall be granted.

*The T2 application:*

19. Based on the uncontested evidence and submissions before me, the Tenant elected to leave the rental unit on April 7, 2023 rather than on June 1, 2023 (the date indicated in the N12 notice) and did not return to the rental unit to collect her belongings. While the Tenant states that she made multiple attempts to speak to the Landlord to retrieve her items, and she states he threatened to put her items on the road in mid-May, 2023, I find that she did not mitigate her damages.

20. Pursuant to section 16 of the *Act*,

When a landlord or a tenant becomes liable to pay any amount as a result of a breach of a tenancy agreement, the person entitled to claim the amount has a duty to take reasonable steps to minimize the person's losses.

21. In this case, the Tenant chose to leave her belongings behind, some of which her roommates were also using, and the Tenant did not return to collect them. The Tenant still had possession of the rental unit, she had a key to the rental unit and she could have collected her belongings. The Tenant also could have contacted her roommates to obtain the belongings but elected not to as she claims they had issues and she did not feel comfortable going to the rental unit as she did not get along with her roommates. I do not find that the Tenant took reasonable steps to minimize her losses and therefore failed to mitigate her losses and there is no evidence that the Landlord actually discarded her items. I find that the Tenant has not established that the Landlord substantially interfered with her reasonable enjoyment of the rental unit. The Tenant's T2 application shall be dismissed.

*The T5 application:*

22. Pursuant to section 57(1) of the *Residential Tenancies Act, 2006*, S.O. 2006, c17 (the 'Act'), the Board may make an order against a landlord if, on application by a former tenant of a rental unit, the Board determines that,

(a) the landlord gave a notice of termination under section 48 in bad faith, the former tenant vacated the rental unit as a result of the notice ... and no person referred to in clause 48 (1) (a), (b), (c) or (d) occupied the rental unit within a reasonable time after the former tenant vacated the rental unit.

23. Subsection 57(1) (a) of the *Act* establishes a three-part test. In order to be successful in their T5 application, the Tenant must establish all three of the requirements of subsection 57(1)(a) on a balance of probabilities:

- First, that the Landlord gave a notice of termination under section 48 of the Act (the N12 notice) in bad faith;
- Second, that the Tenant vacated the rental unit as a result of the N12 notice or Board order based on the N12 notice;
- Third, that the person named in the N12 notice did not move into the rental unit within a reasonable time after the Tenant vacated.

24. On an application to the Board, the person who alleges a particular event occurred has the burden of proof to establish that it is more likely than not that their version of events is true. In this application, the burden typically falls on the Tenant to establish that the notice of termination was served in bad faith.
25. However, the fact that the rental unit was listed for lease on June 7, 2023, just a few days after the termination date indicated on the N12 notice that was served on the Tenant creates a rebuttable presumption that the Landlord served the N12 notice in bad faith. In other words, in this case, the burden falls on the Landlord to establish whether or not the rebuttable presumption applies.

*Rebuttable Presumption of Bad Faith*

26. Subsections 57(5) and 57(6) of the *Act* establishes a rebuttable presumption of bad faith on the following ground:
- (5) For the purposes of an application under clause (1)(a), it is presumed, *unless the contrary is proven on a balance of probabilities*, that a landlord gave a notice of termination under section 48 in bad faith, if at any time during the period described in subsection (6) the landlord,
    - ... (c) advertises the rental unit, or the building that contains the rental unit, for sale;
  - (6) The period referred to in subsection (5) is the period that,
    - (a) begins on the day the landlord gives the notice of termination under section 48; and
    - (b) ends one year after the former tenant vacates the rental unit.
27. The Tenant's application asserts that the Landlord served the N12 notice in bad faith as they had listed the house for lease and never had the intention of residing in the rental unit for residential purposes, for a period of at least one year; it was always the Landlord's intention to re-rent the house.
28. On the uncontested evidence and submissions before the Board, I find that the Landlord served an N12 notice on the Tenant, the Tenant moved out of the rental unit as a result of the N12 notice and the Landlord had the property listed for lease, intended to re-rent the property, and did not intend to move into the rental unit for residential purposes for a period of at least one year. On a balance of probabilities, I therefore find that the Landlord served the N12 notice of termination in bad faith.
29. The Tenant seeks general compensation in the amount of \$24,700.00. The Tenant's Legal Representative submits that the amount of \$22,200.00 represents 12 months of the last rent charged and requests this amount pursuant to section 57(3) 1.1. of the *Act* as well as an additional amount of \$2,500.00 which represents general damages for mental stress.

30. There was insufficient evidence at the hearing to substantiate the Tenant's claim for monies to be awarded for mental stress and I am therefore not prepared to order this requested remedy.
31. As the Tenant testified that she had no intention of vacating the rental unit but for the N12 notice. I see no reason not to award her the twelve months of general compensation requested, totalling \$22,200.00. An order shall issue accordingly.
32. The Tenant also requested the Board order the Landlord to pay an administrative fine for breach of the *Act*. The Board's Interpretation Guideline 16 provides insight into the Board's use of fines and states that an administrative fine is a remedy to be used to encourage compliance with the *Act* 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 *Act* and other remedies will not provide adequate deterrence and compliance."
33. In this case, as the Tenant has been awarded a substantial monetary remedy, I find that this provides sufficient deterrent. The request for an order for an administrative fine is denied.
34. The Tenant paid \$48.00 to file her application and is entitled to reimbursement of those fees.
35. This order contains all of the reasons within it and no further reasons will be issued.

**It is ordered that:**

1. The Landlord shall pay to the Tenant the amount of \$1,850.00. This amount represents compensation not paid to the Tenant pursuant to section 48.1 of the *Act*.
2. The Landlord shall pay to the Tenant the amount of \$22,200.00. This amount represents an amount not exceeding the equivalent of twelve months of the last rent charged to the Tenant.
3. The Landlord shall pay to the Tenant the amount of \$48.00 for the cost of filing the application.
4. The total amount the Landlord owes to the Tenant is \$24,098.00.
5. The Landlord shall pay the Tenant the full amount owing by December 12, 2023.
6. If the Landlord does not pay the Tenant the full amount owing by December 12, 2023, the Landlord will owe interest. This will be simple interest calculated from December 13, 2023 at 7.00% annually on the balance outstanding.

**December 1, 2023**  
**Date Issued**

Heather Chapple  
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.