



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

Citation: Caron v Obeidfarms 2014 INC, 2023 ONLTB 68490

Date: 2023-10-17

File Number: LTB-T-061976-22

In the matter of: 2175 WINDHAM ROAD 19
LASALETTE ON N0E1H0

Between: Danielle Caron Tenant
Austin Vaz-Caron

And

Obeidfarms 2014 Inc Landlord

Danielle Caron and Austin Vaz-Caron (the 'Tenants') applied for an order determining that Obeidfarms 2014 Inc (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on August 28, 2023. The Landlord and the Tenant attended the hearing. Peter Karsten represented the Landlord

I heard evidence from Danielle Caron and Moe Obeid on behalf of the Landlord.

Determinations:

1. As explained below, the Tenants proved the allegations in the application on a balance of probabilities. Therefore, the Landlord must pay to the Tenants \$4,967.32.
2. This T5 application was filed on August 2, 2022. The T5 is based on the assertion that the Tenants vacated the unit as a result of an N13 notice delivered by the Landlord under section 50 of the *Residential Tenancies Act, 2006* (the 'RTA') and that notice was delivered in bad faith.
3. The Tenants asked for: (a) out-of-pocket expenses of \$4,904.32; (b) general compensation of \$500.00; and (c) an order that the Landlord 'learn the responsibilities of being a landlord' and maintain the rental unit. The Tenants also asked for a 25% rent abatement over 12 months.
4. On May 31, 2021, the Landlord delivered an N13 notice with a termination date of October 15, 2021. That N13 indicated that the unit would be changed to a bunkhouse for seasonal farm workers. The Landlord filed an L2 application based on this N13. That application was heard on January 19, 2022. On January 19, 2022, the Landlord withdrew its application. That same day, the Landlord delivered another N13 identical to the first N13, except it had a termination date of May 31, 2022.

5. The Tenants vacated the unit on June 17, 2022.

6. Section 57 of the RTA says, in part:

57 (1) *The Board may make an order described in subsection (3) if, on application by a former tenant of a rental unit, the Board determines that,...*

(c) the landlord gave a notice of termination under section 50 in bad faith, the former tenant vacated the rental unit as a result of the notice or as a result of an application to or order made by the Board based on the notice, and the landlord did not demolish, convert or repair or renovate the rental unit within a reasonable time after the former tenant vacated the rental unit.

(3) The orders referred to in subsection (1) are the following:

1. An order that the landlord pay a specified sum to the former tenant for all or any portion of any increased rent that the former tenant has incurred or will incur for a one-year period after vacating the rental unit.

1.1 An order that the landlord pay a specified sum to the former tenant as general compensation in an amount not exceeding the equivalent of 12 months of the last rent charged to the former tenant. An order under this paragraph may be made regardless of whether the former tenant has incurred any actual expenses or whether an order is made under paragraph 2.

1.2 An order that the landlord pay a specified sum to the former tenant for reasonable out-of-pocket moving, storage and other like expenses that the former tenant has incurred or will incur.

2. An order for an abatement of rent.

3. An order that the landlord pay to the Board an administrative fine not exceeding the greater of \$10,000 and the monetary jurisdiction of the Small Claims Court.

4. Any other order that the Board considers appropriate.

7. The Tenants must establish: (a) the Landlord gave the N13 notice in bad faith; (b) they vacated as a result of the N13; and (c) the Landlord did not convert the unit—begin to use it as a bunkhouse for seasonal workers—within a reasonable time after the Tenants vacated.

8. There is no serious dispute that: (a) the Tenants vacated the unit as a result of the N13—they would not have vacated were it not for the N13; and (b) the Landlord never started to use the unit as a bunkhouse. This application comes down to whether the Landlord was acting in good faith when it delivered the N13.

9. The presumption of bad faith under subsection 57(5) does not apply where the T5 is based on section 50 of the RTA. As a result, the Tenants were required to establish on the balance of probabilities that the Landlord delivered the N13 in bad faith.

10. The test for 'good faith' is whether the Landlord genuinely intended to convert the rental unit into a bunkhouse for seasonal workers when the N13 was delivered. **[RTA, s. 73(1)(a) and *Pharwaha Properties Holding Ltd. v Ahmad*, 2021 CanLII 149667 (ON LTB). See also *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), *Feeney v. Noble*, 1994 CanLII 10538 (ON SC) and *McLean v. Mosher*, 1992 CanLII 7625 (ON SC)]**
11. The LTB can consider the conduct and actions of a landlord to draw inferences concerning whether the landlord's professed desire to convert a rental unit is genuine. **[*Fava v. Harrison*, 2014 ONSC 3352 (CanLII)]**
12. In this case, I am satisfied that the conduct and actions of the Landlord demonstrate that it is more likely than not that the intention of the Landlord when the N13 was served was not to convert the unit to a bunkhouse, but to induce the Tenant to vacate the unit.
13. Ms Caron's evidence, which I accept, was that after the Landlord purchased the rental unit, Mr. Obeid advised her that he believed the rent was too low. While that alone would not be sufficient to lead to the conclusion that the Landlord was not acting in good faith when the N13 was delivered, it is one of several things that, when taken together, lead me to the conclusion the N13 was not delivered in good faith—that it is more likely than not that the Landlord did not intend to convert the unit to a bunkhouse when the N13 was delivered.
14. The Tenants filed an e-mail from Krista Gallagher indicating that, on 27 July 2022, she found a Kijiji posting listing the unit for rent. The Kijiji posting appears to have been in a section for long-term rentals and identified the rent as \$2,200 per month. **[see DOC-57207 DOC-572020 and DOC-572090]** The Kijiji posting had a different residential address than the unit, but Ms Caron testified that she recognized her furniture in the pictures posted to Kijiji. I accept this evidence and find the Kijiji listing was for the unit.
15. In my view, the fact that the Landlord attempted to re-rent the unit within a very short time of the Tenant vacating is strong evidence that the Landlord did not genuinely intend to convert the unit to a bunkhouse, but instead intended to re-rent at a higher rent. The fact that the Landlord used an incorrect address to list the unit on Kijiji supports, in my view, a finding that the Landlord was not acting in good faith when the N13 was delivered.
16. The Landlord asserted that the unit was not converted to a bunkhouse because, among other things, it discovered it would be difficult to do so—Mr. Obeid's evidence was that the Landlord did not know how long the process would take when the N13 was delivered.
17. Subsection 73(1) of the RTA contemplates that a landlord will have obtained all necessary permits to carry out the activity on which an N13 is based or, if it has not, will have taken all reasonable steps to obtain all necessary permits. The fact that the Landlord did not take steps to identify what would be required to convert the unit to a bunkhouse before delivering the N13, supports a finding that Landlord did not genuinely intend to 'convert' the unit to a bunkhouse when the N13 was delivered.
18. In terms of a remedy, I am satisfied that the Tenants have established that out-of-pocket expenses of \$4,144.32 were incurred to move to Alberta. Ms Caron testified that she could not find suitable alternative accommodations in Ontario and, as a result, the Tenants moved to Alberta. The fact that the Tenant moved to another Province is, in my

view, not particularly relevant. Paragraph 57(3)1.2 is not restricted to out-of-pocket expenses for moves within Ontario. I am not, however, going to order that the Landlord reimburse the Tenant for the costs of Ms Caron becoming licensed in Alberta. In my view, that is not an expense contemplated by paragraph 57(3).1.2.

19. The Tenants claimed general compensation based on the impact of leaving their home and being 'forced' to relocate to another Province. I am satisfied that the Tenants experienced a certain amount of 'pain and suffering' and that this was caused by the fact that the Landlord acted in bad faith in delivering the N13 and forcing the Tenants out of their home. I am awarding the Tenants \$500.00 in general compensation as requested.
20. The Tenants claimed a rent abatement based on the assertion that the Landlord and its lawyer harassed them. I am not satisfied that the issues identified by the Tenants as being the basis for a rent abatement are sufficiently linked to the N13. The Tenants identified issues that might have constated substantial interference with the reasonable enjoyment of the unit, but I am not satisfied that there is a link between the issues identified by the Tenants and the N13. In terms of the conduct of Mr. Karsten identified by the Tenants, he was acting for and advancing the interests of his client and none of his engagements with the Tenants appear to have been improper.
21. I note that the Tenants claimed for what they asserted was the fair value of household appliances that they left behind in the rental unit. The value of the appliances the Tenants left behind is not an expense of the type contemplated by paragraph 57(3).1.2. The Tenants hired a moving company to move her belongings and could have taken these appliances. Ms Caron testified that the Tenants did not do so for economic reasons—the value of the appliances did not warrant the additional cost she would have incurred to move them to Alberta.
22. I am not prepared to order that the Landlord 'learn the responsibilities of being a landlord' or maintain the rental unit.
23. The Tenants were successful on the application and are entitled to recover from the Landlord the \$53.00 she paid to file the application.

It is ordered that:

1. The total amount the Landlord shall pay to the Tenants is \$4,697.32.
2. The Landlord shall pay the Tenants the total amount owing by October 28, 2023.
3. If the Landlord does not pay the Tenants the total amount owing by October 28, 2023, the Landlord will owe interest. This will be simple interest calculated from October 29, 2023 at 7.00% annually on the balance outstanding.

October 17, 2023
Date Issued

E. Patrick Shea
Vice Chair, Landlord and Tenant Board

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