



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

Citation: WEEKES v FIRST CHOICE PROPERTY MANAGEMENT, 2023 ONLTB 67898

Date: 2023-10-13

File Number: LTB-T-056839-22

In the matter of: 72, 1725 ERNEST AVENUE
LONDON ON N6E2W3

Between: DARRYL WEEKES Tenant

And

FIRST CHOICE PROPERTY MANAGEMENT Landlord

DARRYL WEEKES (the 'Tenant') applied for an order determining that FIRST CHOICE PROPERTY MANAGEMENT (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on October 4, 2023. Only the Tenant attended the hearing.

As of 9:30am, 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. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities.
2. The Tenant's T5 application was filed on June 29, 2022.
3. The Tenant testified that on January 21, 2022 the Landlord served the Tenant with an N12 notice of termination with a termination date of March 31, 2023. The N12 notice asserted that the Landlord required vacant possession of the rental unit for their own personal use.
4. The Tenant vacated the rental unit on May 5, 2022.
5. On June 29, 2022, the Tenant received a phone call from his prior neighbour who advised that there was a "for lease" sign on the front lawn of the rental unit. The Tenant also drove by the rental unit on the same day and confirmed that the rental unit was being advertised for rent.
6. The Tenant also testified that the rental unit was being advertised for lease online and submitted into evidence a screen shot of the listing dated June 29, 2023.

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7. The Tenant stated that had it not been for the N12 notice being served, he would not have vacated the rental unit.
8. 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.
9. Sections 57(5) and (6) of the Act also state:
 - (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,
 - (a) advertises the rental unit for rent;
 - (b) enters into a tenancy agreement in respect of the rental unit with someone other than the former tenant;
 - (c) advertises the rental unit, or the building that contains the rental unit, for sale;
 - (d) demolishes the rental unit or the building containing the rental unit; or
 - (e) takes any step to convert the rental unit, or the building containing the rental unit, to use for a purpose other than residential premises.
 - (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.
10. Based on the uncontested before the Board, I find on a balance of probabilities that the Landlord served the Tenant with the N12 notice of termination in bad faith. The evidence indicates that the Tenant was served with a N12 notice alleging that the Landlord required the rental unit for their own personal use, that the Tenant vacated the rental unit shortly after being served with the notice and that within less than two months after the Tenant vacated, the rental unit was being advertised for rent.

Remedies:Difference in rent:

11. The Tenant's monthly rent has increased by \$745.00 per month. The monthly rent at the rental unit was \$1,355.00 and the Tenant's new rent at his current rental unit is \$2,100.00 per month. The Tenant has resided in his new rental unit for at least twelve months.
12. As the Board is satisfied that the Landlord terminated the tenancy in bad faith, the Landlord will be ordered to pay to the Tenant \$8,940.00, which represents the difference in rent for a twelve-month period.

Moving costs:

13. The Tenant incurred \$558.57 for renting a moving truck and is entitled to reimbursement of those moving costs.

Administrative Fine:

14. The Tenant's application also requests that the Landlord be ordered to pay a administrative fine to the Board. The Board's Interpretation Guideline 16 entitled Administrative Fines addresses when the Board generally imposes fines:

An administrative fine is a remedy to be used by the Board to encourage compliance with the *Residential Tenancies Act, 2006* (the "RTA"), 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 RTA and other remedies will not provide adequate deterrence and compliance.

15. Based on the evidence before the Board, I find that it is appropriate to order the Landlord to pay an administrative fine in the amount \$1,000.00.
16. The evidence before the Board is clear that the Landlord advertised the rental unit for rent less than two months after the Tenant vacated the rental unit. The evidence before me suggests that the Landlord's true intentions were to carry out the bad faith eviction and not move into the rental unit as plead on their notice of termination served to the Tenant.
17. As such, I find that a administrative fine is warranted in these circumstances.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$9,551.57. This amount represents:
 - \$8,940.00 for increased rent the Tenant has incurred for the one-year period from May 2022 to April 2023.
 - \$558.57 for the reasonable moving, storage and other like expenses that the Tenant 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 Tenant the full amount owing by October 24, 2023.
 3. If the Landlord does not pay the Tenant the full amount owing by October 24, 2023, the Landlord will owe interest. This will be simple interest calculated from October 25, 2023 at 7.00% annually on the balance outstanding.
 4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.
 5. The Landlord shall pay to the Landlord and Tenant Board an administrative fine in the amount of \$1,000.00 by October 24, 2023.

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October 13, 2023
Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Fabio Quattrociochi
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.

Payment of the fine must be made to the LTB by the deadline set out above. The fine can be paid by certified cheque, bank draft or money order made payable to the Minister of Finance. If paying in person, the debt can also be paid by cash, credit card or debit card.