



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

**Citation:** WYLIE v SILVA, 2023 ONLTB 62541

**Date:** 2023-09-19

**File Number:** LTB-T-050853-22

**In the matter of:** 3, 200 CANTIN STREET  
OTTAWA ON K1L6T1

**Between:** JASON WYLIE Tenant

**And**

CHRISTOPHER SILVA Landlord  
LOCAL STAFFING

JASON WYLIE (the 'Tenant') applied for an order determining that CHRISTOPHER SILVA and LOCAL STAFFING (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on September 7, 2023 at 09:00 am.

The Landlord Representative Jennifer Drago, the Landlord and the Tenant attended the hearing.

### **Preliminary Issues:**

1. At the outset of the hearing the Landlord Representative requested the matter be adjourned as she had failed to submit to the Board and provide to the Tenant the evidence and submissions she intended to rely upon, citing technical issues with her email.
2. The Tenant objected to the request testifying that he had been in contact with the Landlord Representative for several months, that the matter had been ongoing for over a year and that even though he was self represented he had managed to submit and provide his evidence on time and expected the same of the Landlord Representative, a professional paralegal. In support of these statements the Tenant entered in evidence email correspondence between himself and the Landlord Representative dating as far back as May 25, 2023, and as recent as September 5, 2023.

3. Having reviewed the email correspondence I noted that on May 25, 2023 the Landlord Representative had indicated to the Tenant she had evidence to support the Landlord's case. However, it appears that the Landlord Representative made no effort to file or serve the evidence until shortly before the hearing and she didn't identify any technical issues to the Tenant affecting her attempted service until September 5, 2023. I note that this was after the Tenant had asked the Landlord's Representative about lack of disclosure on September 3, 2023 via email in which he reminded her the deadline was September 1, 2023.
4. Putting this to the Landlord Representative, her only response was to reiterate having had technical issues and that she wasn't obligated to provided disclosure any earlier than seven days prior to the hearing in accordance with the Board's Rules of Procedure.
5. Having considered the circumstances before me, I denied the adjournment request. The Landlord had ample opportunity to submit evidence more than seven days prior to the hearing. The fact that the Landlord Representative waited until the very last minute before attempting to serve the evidence and then ran into technical issues is not a sufficient reason to adjourn the hearing given the prejudice the Tenant will suffer as a result of the delay. Further, the Landlord was present to give oral testimony at the hearing.
6. I therefore directed that the matter would proceed as scheduled.

**Determinations:**

7. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities.
8. The rental unit consisted of an apartment in a three story, multi-unit building which the Tenant moved into in 2010. On November 20, 2020, the Landlord gave the Tenant a N12 Notice to Terminate (N12 Notice) with a termination date of January 31, 2021. The Tenant did not move out and the Landlord filed an eviction application resulting in a hearing before the Board on April 22, 2021 and the issuance of Board Order EAL-93855-21, terminating the tenancy effective May 31, 2021 issued on May 18, 2021.
9. Following the issuance of that order, the Landlord and Tenant entered into an agreement to extend the Tenancy to June 30, 2021, and the Tenant vacated on July 1, 2021. Copies of the agreement and Board Order EAL-93855-21 were entered in evidence.
10. At the time the tenancy was terminated the monthly rent was \$745.00 a month.
11. The Tenant filed their application on April 17, 2022 alleging the Landlord gave the N12 Notice for their own use in bad faith.

**Tenant testimony and evidence**

12. The Tenant testified that after moving out of the rental unit he kept an eye on the property and noticed that in the months that followed that a Saturn sedan was in the rental unit's designated parking spot and not the pick-up truck he knew the Landlord to drive. Following this, on April 5, 2022, he saw a for sale sign in front of the building. Calling the realtor, he was told that all the units in the building were under lease. He verified this by reviewing the online advertisement on or about April 6, 2022 which stated the building was an excellent investment opportunity and that his former unit could be rented for \$1,400.00 a month. A picture of the for-sale sign and a screenshot of the realtor listing, showing the building for sale at \$799,000.00 were entered in evidence.
13. The Tenant also testified that when he reviewed the listening pictures of the interior of the rental unit showed ladies clothing and footwear in the closets leading him to believe, in conjunction with what the realtor had told him, that the Landlord never moved in. However, on cross examination he agreed that the clothing could have been staged or belong to the Landlord's girlfriend but he believed the Landlord never moved into the rental unit, reiterating the conversation he had with the realtor.
14. The remedies requested by the Tenant are as follows:
  - a. Difference in rent for a period of 12 months at \$430.00 a month for a total of \$5,160.00. This was supported by a copy of his new lease agreement showing his new rent to be \$1,175.00 entered in evidence;
  - b. \$40.00 in gas he used when moving from the rental unit to the new one;
  - c. \$600.00 in general compensation to cover the increased utilities as the rental unit included heat whereas the new unit does not. This was supported by hydro bills entered in evidence for a period of 6 months at \$100.00 a month;
  - d. \$847.50 in legal fees from the previous hearing, supported by an invoice entered in evidence.

### **Landlord testimony and evidence**

15. The Landlord testified that he did move into the rental unit as stated in the N12 Notice and that the clothing shown in the listing was that of his girlfriend of time as was the Saturn sedan parked in the unit's designated parking spot. He didn't dispute that he had listed the apartment and building for sale on April 5, 2022.

16. It was his testimony that due to the delay in gaining possession of the rental unit he incurred penalties from his mortgage lender and the lender withdrew the mortgage after the first year and he had depleted all of his savings. As a result, he listed the building for sale only for the period when he was trying to obtain a new mortgage and took it off the market once he did on July 15, 2022. He then testified that he would not have accepted any offers that required him to vacate the rental unit.
17. He further testified that he had purchased the property with the intent of moving into the rental unit, his mother into another and using the income from the remaining units to offset their cost of living. It was his position that the fact he was still living in the rental unit gave credence to his argument that there was no bad faith on his part as alleged by the Tenant. He further iterated this would all be supported by his evidence if it had been submitted.
18. On cross examination he testified that it was the Realtor's idea to state on the listing and to respond to inquiries that all the units were under lease to make the property more attractive to potential buyers but he was steadfast in his position that he wouldn't have accepted any offer that required him to vacate the rental unit, even if it meant a substantial profit and financial stability.
19. The Landlord Representative then submitted there was no bad faith on part of the Landlord submitting that the Landlord did move into and still resides in the rental unit in accordance with N12 Notice.

### *Analysis*

17. This "bad faith" application was filed pursuant to subsection 57(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') which requires the Tenant to prove each of the following on a balance of probabilities:
  - (1) The landlord gave a notice of termination under section 48 of the Act (i.e. for landlord's own use) in bad faith;
  - (2) The tenant vacated the rental unit as a result of the notice; and
  - (3) The person listed in the N12 Notice did not occupy the rental unit within a reasonable time after the former tenant vacated the rental unit.
18. Sections 57(5) and 57(6) of the Act creates a rebuttable presumption that an N12 was served in bad faith if a landlord takes steps to re-rent or sell the rental unit within one year of the tenant vacating.
19. In this case the Landlord did not dispute that he served the N12 Notice and that the Tenant vacated because of that N12 Notice.

20. What he did dispute was the Tenant's assertion that did not occupy the rental unit after the Tenant vacated, claiming that the realtor only stated the unit was under lease to make it more appealing to potential buyers and that the clothing and vehicle depicted was that of his girlfriend at the time. I do not accept this explanation. I find it highly unlikely that a licensed realtor would falsely tell potential buyers that all units in the building were under lease only to disclose later that that was not the case. Furthermore, notwithstanding the disclosure issues, there was no reason why the Landlord couldn't have had the realtor or his girlfriend at the time present to testify in support of his statement. Therefore, I am satisfied on the balance of probabilities that the second and third part of the test contained in subsection 57(1)(a) have been proven.
21. With respect to the remaining issue of bad faith, the Landlord didn't deny listing the apartment building for sale less than one years after the Tenant vacated. Accordingly, there is a rebuttable presumption that the N12 Notice was served in bad faith. I find that the Landlord has not rebutted this presumption. I don't accept his explanation as to why he listed it for sale or his statement that he would had refused any offer that would have required him to vacate. I think it more likely than not if his financial situation was as bad as he claimed he would have taken any reasonable offer.
22. Therefore, the Tenant has proven al three parts of the test contained in subsection 57(1)(a) of the Act and what is left for me to determine the remedies to award the Tenant.

#### Remedies

22. Given the testimony and evidence above, I find that a rent differential of \$5,160.00 is appropriate in the circumstances. Specifically, there was no dispute as to what the monthly rent was prior to when the Tenant moved out of the rental property, and I accept the Tenant's evidence as to his current rent. Further, given the presumption of bad faith and the fact the rental unit was advertised as generating double the amount the Tenant last paid, I am satisfied that the 12 months of rent differential requested is reasonable.
23. Similarly, I am satisfied that the \$600.00 difference in heat is also reasonable given the circumstances, the evidence submitted in support and the fact the Landlord, nor their Representative challenged this claim.
24. As to the remaining remedies sought, it is not the Board's practice to reimburse legal fees, and in the absence of a receipt or any other supporting documentation I am not satisfied that awarding reimbursement for the gas claimed is reasonable.

**It is ordered that:**

1. The total amount the Landlord shall pay the Tenant is \$5,760.00. This amount represents:
  - \$5,160.00 for increased rent the Tenant has incurred for the one-year period from July 1, 2021, to June 30, 2022.
  - \$600.00 for the addition expenses that the Tenant has incurred to heat his new rental unit for 6 months as a result of having to move out of the rental unit.
2. The Landlord shall pay the Tenant the full amount owing by September 30, 2023.
3. If the Landlord does not pay the Tenant the full amount owing by September 30, 2023, the Landlord will owe interest. This will be simple interest calculated from October 1, 2023 at 6.00% annually on the balance outstanding.

**September 19, 2023**

**Date Issued**

15 Grosvenor Street, Ground Floor  
Toronto ON M7A 2G6

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**Kelly Delaney**

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.