



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

**Citation:** Zhang v Cerundolo, 2023 ONLTB 55922

**Date:** 2023-08-16

**File Number:** LTB-T-007626-23

**In the matter of:** 4 Orlon Crescent  
Richmond Hill Ontario L4C6S5

**Between:** Haiyan Zhang Tenants  
Yongzhao Song

**And**

Lina Cerundolo Landlord

Haiyan Zhang and Yongzhao Song (the 'Tenants') applied for an order determining that Lina Cerundolo (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on July 12, 2023. The Tenant Yongzhao Song attended the hearing and was represented by Yun Tao Li, paralegal. The Landlord attended the hearing and was represented by Raïessa Mahabir, paralegal.

**Determinations:**

1. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.
2. The Tenant's T5 application was filed on September 30, 2022 and alleges that the Landlord served a N12 notice of termination in bad faith.

Evidence:

3. On March 1, 2021 the Landlord served the Tenants with an N12 notice with a termination date of July 16, 2021. The N12 notice alleged that the Landlord's child required the rental unit for her own personal use.
4. The Tenants did not vacate the rental unit on or before the termination date set out in the N12 notice and the Landlord never filed an L2 application to terminate the tenancy based on the notice. The Tenants vacated the rental unit on October 4, 2021.
5. As of the hearing date, the Landlord's daughter had not moved into the rental unit and the unit has been vacant since the Tenants vacated.

6. The Tenants advised the Landlord after the N12 notice was served that they would not be vacating the rental unit on or before the termination date set out in the notice.

**File Number:** LTB-T-007626-23

7. The Landlord testified that because the Tenants did not vacate the unit by the termination date in the notice, that she found an alternate rental unit for her daughter. The Landlord also stated that the rental unit has been vacant since the Tenants vacated because the unit required extensive renovations due to damages caused by the Tenants. The Landlord has also filed a L10 application with respect to these damages.
8. The parties also agreed that on September 20, 2023 the Tenants and their legal representative were served with an N5 notice alleging wilful and/or negligent damages to the rental unit. The termination date on the N5 notice was October 11, 2021.

Analysis:

9. The Tenants application was filed pursuant to section 57 of the *Residential Tenancies Act, 2006*, (the Act) which states 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,

(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 or as a result of an application to or order made by the Board based on 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;

10. There is no dispute that the Landlord served the Tenants with an N12 notice of termination under section 48 of the Act. However, based on the evidence before the Board, I am not satisfied that the Tenants vacated the rental unit pursuant to this notice or that the notice was served in bad faith.
11. The evidence is clear that the N12 notice was served on March 1, 2021 and that the termination date of the notice was July 16, 2021. It is also clear that the Landlord did not file an application to the Board to terminate the tenancy and that the Tenants did not vacate the rental unit until October 4, 2021.
12. Pursuant to section 69(2) of the Act, the Landlord had until August 15, 2021 to file an application with the Board based on the notice of termination served as this was 30 days after the termination date on the notice of termination served. The Landlord did not do so and as such, the notice of termination was deemed void and/or stale dated after this date.
13. In order to be successful in filing a T5 application under section 57 of the Act, the Tenant must prove that they vacated the rental unit pursuant to a notice of termination served by the Landlord under sections 48, 49 or 50 of the Act.

14. In this case, the Tenants vacated the rental unit almost 3 months after the termination date on the N12 notice served. The Landlord did not file an application with the Board to terminate the tenancy with respect to this notice and no order was issued by the Board requiring the Tenants to vacate the rental unit. There was also no evidence provided at the hearing that the Tenants advised the Landlord on the date they vacated that they were

**File Number:** LTB-T-007626-23

vacating pursuant to the N12 notice, which was served approximately 7 months prior to the date the Tenants vacated the rental unit.

15. Based on the evidence before me, it appears on a balance of probabilities that the Tenants in fact vacated the rental unit on October 4, 2021 in accordance with the N5 notice of termination that was served to them on September 20, 2021 with a termination date of October 11, 2021 and not the N12 notice that was served.

16. As the Tenants have failed to satisfy the Board that they vacated in accordance with the N12 notice of termination served by the Landlord, the application is not properly before the Board on an application under section 57 of the Act. As such, the application must be dismissed.

17. This Order contains all the reasons for this matter. No further reasons will issue.

**It is ordered that:**

1. The Tenant's application is dismissed.

**August 16, 2023**

**Date Issued**

15 Grosvenor Street, Ground Floor  
Toronto ON M7A 2G6

Fabio Quattrociocchi

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.