



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

Citation: David Hancock v Charles John Legge, 2023 ONLTB 47423

Date: 2023-07-12

File Number: LTB-T-000276-23

In the matter of: 272 Vancouver Crescent
Oshawa Ontario L1J5X9

Between: David Hancock Tenant
Desiree Hancock

And

Charles John Legge Landlord
Deanna Francoise Rose

David Hancock and Desiree Hancock (the 'Tenants') applied for an order determining that Charles John Legge and Deanna Francoise Rose (the 'Landlord'), gave a notice of termination in bad faith.

This application was heard by videoconference on May 16, 2023.

Only the Tenant David Hancock (DH) attended the hearing.

As of 9:30am, the Landlord was not present or represented at the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. The Tenants brought a T5 Application claiming the Landlord gave them an N12 notice of termination in bad faith.
2. Pursuant to section 57(1) of the *Residential Tenancies Act, 2006*, the Board may make an order against a landlord if, on application by a former tenant of a rental unit, the Board determines that 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 occupied the rental unit within a reasonable time after the former tenant vacated

the rental unit. To be successful in their T5 application, the Tenants 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 Tenants 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 Tenants vacated.

3. The Tenant David Hancock (DH) testified that he moved into the rental unit in 2018, alongside his spouse Desiree Hancock (DR) and their two children.
4. Subsequent to the Tenants' move-in, the subject property was sold to the current Landlords. DH testified the Landlords served the Tenants with a Form N12 notice of termination ("Form N12") in the middle of January 2022, containing a notice of termination date of April 30, 2022. The Tenants produced a copy of the Landlords' cover letter and Form N12 which provided that the Landlords' child intended to move into the rental unit and occupy it for at least one year. As a result of receiving the Form N12, the Tenants vacated the rental unit at the end of April 2022 and for employment reasons, relocated outof-province to Winnipeg, Manitoba. I find the first and second requirements under section 57(1) are satisfied as the Tenants received a Form N12 from the Landlord in bad faith, and in accordance with the Tenants' uncontested evidence, the Tenants vacated the rental unit as a result of this notice.
5. DH states that shortly after the Tenant's relocation, the Landlords sold the rental unit. DH submits the Landlord sought vacant possession of the rental unit in order to sell the rental unit, noting the property was listed on the MLS property listing platform in mid-July 2023; a for sale sign was placed on the front lawn at the beginning of August 2023; and the property was sold in August 2023.
6. The LTB's Interpretation Guideline 12 states that while the initial burden falls on the tenant to establish that the notice of termination was served in bad faith, it is presumed, *unless the contrary is proven on a balance of probabilities*, that a landlord gave a notice of termination under s. 48 in bad faith if, within one year after the former tenant vacates the rental unit, the landlord advertises the rental unit for sale. I see no reason to depart from the guideline in these circumstances. I accept the Tenants' uncontested evidence that the property was sold in August 2023 and accordingly, there is a presumption of bad faith unless the contrary is proven by the Landlords on a balance of probabilities. The Landlords did not attend the hearing. While DH testified the Landlords' child took possession of the property sometime following the Tenants' departure, this was only to "*hold a spot while it was cleaned up*". DH stated he viewed pictures of the property on selling websites and

described the property as not looking lived-in. Given the circumstances described, the imminent re-listing of the property once vacant possession was obtained, and the requirement under section 48(1) that possession be required for a period of at least one year, I find the third requirement under section 57(1) is still satisfied by the Tenants; namely, the person named in the N12 notice did not move into the rental unit as purported.

Remedies

7. The next issue to be determined is remedies. The Tenants seek a rent abatement of \$21,420.00; compensation for moving and storage expenses of \$12,873.00 (not including the rent abatement claim); and, general compensation for mental stress and exhaustion in the amount of \$25,000.00.
8. The Tenants submit they did not receive one month's compensation in the amount of \$1,785.00, as required under section 55.1 of the Act. I find it is reasonable to order the Landlord to pay this sum in accordance with their statutory obligation when a Form N12 is given. The balance of the Tenants' 12 month rent abatement claim is denied, as the Tenants did not sufficiently particularize the underlying basis for such a claim, nor did the Tenants differentiate the basis for such claim in light of the other remedies requested.
9. The Tenants seek moving and storage expenses in the amount of \$12,873.00. The said sum is comprised of storage costs for 6 months \$2,988.00; a trailer purchase (1/2) cost of \$5,000.00; \$1,100.00 in fuel costs; \$2,000.00 for replacement costs for items discarded.
10. I find the amount claimed for fuel in the amount of \$1100 to be a reasonable estimate of fuel costs incurred, as the DH testified he drove with his spouse in the family vehicle to Winnipeg first, followed by DH flying home and then driving the truck and trailer separately from Oshawa to Winnipeg.
11. DH noted the Tenants purchased a trailer at a cost of \$10,000.00 to accommodate the move to Manitoba. While the Tenants seek \$5,000 (1/2 cost) for the purchase of the utility trailer, DH produced a U-Haul listing showing the rental cost at the time for a 6'X12" cargo Trailer to be \$3735.00. The Tenants have a duty to take reasonable steps to minimize their losses under [Section 16](#) of the [Act](#). I find the rental cost of \$3735.00 to be a more reasonable estimate of the Tenants utility costs, as opposed to 50% of the actual purchase cost of the trailer for which the Tenants, admittedly, still have use.

12. In July 2022, the Tenants and their family returned to Ontario due to severe flooding in Manitoba. Upon returning to Ontario, the Tenants' items were placed in storage, the cost of which the Tenants claim as part of this application. The Tenants claim for storage is denied, as this cost is more appropriately attributed to the Tenants' decision to return to Ontario, and not the initial relocation to Manitoba. The Tenants' claim for "discarded items" is also denied, as the Tenants did not sufficiently particularize and substantiate which items were discarded due to the relocation.

13. The Tenants also seek \$25,000.00 in general compensation due to mental stress, exhaustion and overall impact that the move has had on the Tenants. I am satisfied the Tenants have suffered as a result of the bad faith eviction and in particular, as a result of being displaced from their social network, residence and employment. DH noted that his children - approx. 9-10 years of age at the time - were forced to change schools due to the move. While DR took a new position within her company in Manitoba, DH was forced to take on a lower paying job after leaving behind a senior staff position for a landscaping company. I accept DH's submission that the relocation was both stressful and inconvenient. While DH noted the continued inconvenience the eviction has had upon their return to Ontario in July 2022, I find this inconvenience and/or cost is more appropriately attributed to the Tenants' decision to return to Ontario, and not the bad faith eviction that led to their initial displacement. Given the overall circumstances, as described, I find an award of \$4,500.00 for general compensation is warranted in the circumstances.

It is ordered that:

1. The Landlords shall pay to the Tenants \$11,120.00
2. The Landlords shall also pay to the Tenants \$53.00 for the cost of filing the application.
3. The total amount the Landlords owe the Tenants is \$11,173.00.
4. If the Landlords do not pay the Tenants the full amount owing on or before July 23, 2023, the Landlords will start to owe interest. This will be simple interest calculated from July 24, 2023 at 6.00% annually on the balance outstanding.

July 12, 2023

Date Issued

Peter Nicholson

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

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