



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

**Citation:** Dang v Do, 2023 ONLTB 48876

**Date:** 2023-07-10

**File Number:** LTB-T-003522-23

**In the matter of:** 1425 Islington Avenue  
Etobicoke ON M9A3K8

**Between:** Thanh Thuc Dang Tenant

**And**

Thuoc Van Do  
Landlord

Thanh Thuc Dang (the 'Tenant') applied for an order determining that Thuoc Van Do (the 'Landlord'), gave a notice of termination in bad faith; and, because the Landlord charged the Tenant an illegal rent and did not pay the Tenant the required one month's compensation.

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

The Landlord Thuoc Van Do, the Landlord's representative F. Bari, the Tenant and the Tenant's representative J. Nieuwhof attended the hearing.

**Determinations:**

1. The Tenant brought a T5 Application claiming the Landlord gave him an N12 notice of termination in bad faith and a T1 Application claiming the Landlord charged the Tenant an illegal rent increase. Both applications were filed on August 26, 2022.
2. The Tenant's T5 Application claims the Landlord gave the Tenant an N12 notice of termination in bad faith. Pursuant to section 57(1) of the *Residential Tenancies Act, 2006* (the "Act"), 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 Thanh Thuc Dang (TD) testified he moved into the rental unit in January 2021 and vacated the rental unit on June 1, 2022 as a result of notice to terminate tenancy given by the Landlord.
4. The Tenant produced text communications from March 29, 2022 whereby the Landlord's spouse, Hong Quyen (HQ), whom I find was acting as the Landlord's agent in her communications with the Tenant, advised the Tenant as follows:

...In May, my brother will come here from Viet Nam. I intend to let him live in your room....can you find another room in time?

5. Later, on April 3, 2022 at 1:25pm, HQ advised the Tenant as follows:

...Let me rephrase: my brother will come here so I need your room for him in early June if possible. If you haven't found a new place yet, you can continue to stay until finding one...

6. The Landlord maintains there was no notice of termination given to the Tenant, and states he met in person with the Tenant at 7:00pm on April 3, 2022. The Landlord claims the Tenant advised him he was not moving out "*unless he gets an LTB notice*". The Landlord testified it would take too long to go to the Landlord and Tenant Board and thus, he claims he advised the Tenant he did not have to move out and that he had "another solution" for his brother-in-law.

7. A text was produced from two days after the in-person meeting whereby the Tenant advised the Landlord's spouse/agent that people often "*ask for a lot of money when they know their landlord wants to repossess the house. I have no intention of doing that. Well, if you really want to take the room back for your loved ones to use, you can take it. This is your home...You don't need any papers for me. If you said the move-out date is at the end of May, then at the end of May, I will move out.*
8. Significantly, there was no correction given by the Landlord's spouse re: the use of the rental unit. In fact, the Landlord's spouse's response appears to reaffirm the Tenant's understanding the Landlord's brother-in-law still sought to move into the rental unit, by saying "*I'm so glad you messaged me like that....Thank you very much.*" Based upon this, and prior text communications, I find there was a "meeting of the minds" between the parties that the Landlord sought vacant possession of the rental unit for use by his brother-in-law.
9. While the text communications from the Landlord (or the Landlord's agent), collectively, do not comply with the legal requirements for a Form N12 notice of termination, I believe section 57(1)(a) still applies. In this regard, I agree and adopt the analysis of Vice-Chair Carey in TST-63263-15 (Re), 2014 CanLII 75856 (ON LTB), albeit in the context of the service of an invalid Form N13:

*...a landlord should not be able to escape the consequences of giving bad faith notice just because he or she gave a notice of termination that turns out to be invalid.*

10. Based upon the text communications between the parties, I find on a balance of probabilities the Tenant vacated the rental unit as a result of the representation that the Landlord's brother-in-law would be moving into the rental unit. While the Tenant did not insist upon receipt of a formal N12 notice, I find this is because the Tenant trusted the Landlord and accepted his reason for wanting to reclaim the rental unit.
11. The Tenant testified the Landlord's brother-in-law did not move into the rental unit and in fact, produced online advertisements posted by the Landlord immediately after vacating the rental unit, seeking \$850-\$1000 in rent for the rental unit and vacant possession was required. The Tenant also produced text correspondence between his acquaintances and the Landlord's spouse following his departure, confirming the availability of the rental unit.
12. I find all three requirements under section 57(1) are satisfied. In particular, I find based on a balance of probabilities that a notice was given to the Tenant in bad faith and the person (i.e. the "Landlord's brother-in-law"), did not move into the rental unit. Moreover, based upon the text communications between the parties, it is clear the Tenant vacated the rental unit because of the Landlord's representations.

13. The next issue to be determined is remedies. The Tenant seeks a rent abatement of \$8,400.00; rent differential compensation in the amount of \$7200.00; compensation for moving and storage expenses of \$212.93; and, general compensation for mental stress and exhaustion in the amount of \$8,400.00.
14. The Tenant's 12 month rent abatement claim and general compensation claims are denied, as the Tenant did not sufficiently particularize the underlying basis for such claims, nor did the Tenant differentiate the basis for such claims in light of the other remedies requested.
15. The Tenant's rent differential compensation claim is granted, in part. The Tenant produced a copy of a signed lease for a rental unit, commencing June 1, 2022, at a cost of \$1300/month. The condominium unit, including use of the balcony, is shared with one other person, whereas the rental unit was located in a home with multiple other residents. As such, the new unit is admittedly more private. Moreover, the Tenant now has access to a living room, which he acknowledged he did not have at the rental unit. As the shared use of the condominium unit appears to be a more desirable residence, I do not find the Tenant should be entitled to the rent differential for the entire increase in rent paid. Instead, I find it would be more reasonable for the Tenant to be granted the rent differential between the amount the Tenant was paying (\$700), and a discounted rate of \$1000/month, for a total abatement of \$3,600.00.
16. The Tenant seeks moving and storage expenses in the amount of \$212.93 and produced a gas receipt for a rented car in the amount of \$87.15; and a car rental cost receipt in the amount of \$125.78 for moving items. I find the Tenant should be entitled to these costs which are attributed to the bad faith eviction.
17. The Tenant also requested that the Landlord pay a fine. According to the Board's Interpretation Guideline 16, fines are typically only imposed where the Landlord has shown "blatant disregard" for the Act and other remedies will not provide adequate deterrence. Given the other remedies awarded in this application, I do not find that a fine is required in the circumstances.

#### T1 Application

18. The Tenant's T1 Application seeks the return of the illegal rent charged by the Landlord in the amount of \$400.00 and compensation in the amount of \$700.00 because the Landlord gave a notice to end tenancy and did not pay one month's compensation by the termination date in the notice.

19. With respect to the illegal rent claim, the Tenant testified the monthly rent was \$700/month from January 1, 2021 through to December 31, 2021. On December 16, 2021, the Landlord requested that the Tenant begin paying \$800.00/month, commencing January 1, 2022. It was not disputed that the Tenant paid the additional \$100/month for the months of January through to April 2022 and that a notice of rent increase was never provided, nor was the increase in rent in accordance with the rent increase guidelines. The Tenant shall therefore be entitled to the return of the illegal rent increase, in the amount of \$400.00.
20. The Tenant also seeks one month's compensation, as no such compensation was provided to the Tenant in accordance with section 55.1 of the Act. Given my findings that the Landlord served the Tenant a notice of termination in bad faith, the Tenant shall also be entitled to the one month's compensation from the Landlord.

**It is ordered that:**

1. The Landlord shall pay to the Tenant \$3,812.93. This amount represents the rent differential and moving expenses compensation.
2. The Landlord shall pay to the Tenant \$700.00. This amount represents the one month's compensation.
3. The Landlord shall pay to the Tenant \$400.00. This amount represents reimbursement of the unlawful rent increase.
4. The Landlord shall also pay to the Tenant \$53.00 for the cost of filing the application.
5. The total amount the Landlord owes the Tenant is \$4,965.93.
6. If the Tenant does not pay the Landlord the full amount owing on or before July 21, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 22, 2023 at 6.00% annually on the balance outstanding.

**July 10, 2023**

**Date Issued**

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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.

