



**Order under Sections 57(1) and 135  
Residential Tenancies Act, 2006**

**Citation:** Marcia Boone v Jeveethan Elangeswaran, 2023 ONLTB 36301

**Date:** 2023-05-17

**File Number:** LTB-T-000836-23

**In the matter of:** 2096 RUDELL ROAD  
NEWCASTLE ON L1G1B9

**Between:** Marcia Boone Tenant

**And**

Jeveethan Elangeswaran Landlord

Marcia Boone (the 'Tenant') applied for an order determining Jeveethan Elangeswaran (the 'Landlord') gave a notice of termination in bad faith.

Marcia Boone (the 'Tenant') also applied for an order determining Jeveethan Elangeswaran (the 'Landlord') has collected or retained money illegally.

This application was heard by videoconference on May 1, 2023.

The Tenant Marcia Boone and the Tenant's Legal Representative Caroline Wilson and the Landlord Jeveethan Elangeswaran and the Landlord's Legal Representative Thirusenthuran Sivapatham attended the hearing.

**Determinations:**

1. The T5 application alleges the Landlord gave the Tenant notice to end the tenancy in bad faith. The T1 application alleges the Landlord did not pay the Tenant the compensation required by the *Residential Tenancies Act, 2006* (the Act).
2. The rental unit is a detached single family with four bedrooms and 3.5 bathrooms. The monthly rent was \$2,200.00.

Preliminary Issue

3. The Landlord pointed out no N12 notice of termination was served on the Tenant. This was not disputed by the Tenant. The Landlord requested I dismiss the applications as a result. The Tenant submitted they intended to call evidence that showed the communications between the parties amounted to an N12 notice. I determined it was most prudent to hear the merits of the applications before making any decision and the hearing proceeded.

T5 Application

4. This application is brought under section 57(1) of the Act which sets out a three part test. In order to be successful, first, the Tenant must establish the Landlord gave a notice of termination in bad faith. Second, that the Tenant vacated the rental unit in response to the notice or a Board order based on the notice. Third, that no person referred to in the notice occupied the rental unit within a reasonable time.
5. The Landlord did not serve the Tenant an N12 notice of termination under section 48 or 49 of the Act. This was undisputed. However, this fact alone is not determinative of the issue. In some circumstances, the communication between the parties can amount to a notice of termination of the tenancy.
6. At the hearing, the Tenant submitted text messages between herself and the Landlord. The Landlord did not dispute this evidence. Some of the text messages are dated and some are not.
7. On March 18, 2022, the Landlord texted the Tenant advising her he was considering either selling the rental unit or keeping it for another year or two. The Tenant responds by saying she prefers the “keep option”.
8. On March 21, 2022, the Landlord sent the Tenant a text message advising her he had spoken with his father and that “the best thing to right now is sell the house”. The text messages show the parties then discussing the amount of notice the Tenant is entitled to. The Tenant asks if she has 60 days from May 1, 2022. She also tells the Landlord she will have to “look into the tenant allowances for move out dates”. The Landlord responds by acknowledging he has to provide the Tenant 60 days notice and says “I can give you until May 21, 2022”.
9. The Tenant testified she had done some research prior to moving out of the rental unit and spoke to realtor. As a result of this research and discussions with a realtor, she requested compensation from the Landlord.
10. In a partial text message, the Tenant tells the Landlord that a realtor she spoke to told her she is entitled to “60 days notice from the lease ending or we would be entitled to a month’s rent”.
11. The parties discuss a letter of recommendation and the Landlord offers to provide the Tenant’s phone number to his realtor.

12. The Tenant reiterated the Landlord told her he was selling the rental unit, gave her a date to leave by and that was “enough for her”. She again referenced the text message from March 21, 2022 where the Landlord tells the Tenant he spoke with his father and decided to sell. This is the message that provides 60 days notice, ending on May 21, 2022.
13. The Landlord testified he planned to sell the rental unit and gave the Tenant 60 days notice to vacate. His evidence was after she moved out on May 1, 2022 he was advised by his realtor the market had softened and he would not receive the price he was hoping to get.
14. The Landlord testified he decided to re-rent the rental unit in the first week of May 2022. He also testified he did not advise the Tenant that he had changed his mind. On May 17, 2022 the rental unit was rented to new tenants for \$3,600.00 per month. The Landlord admitted he did not give the Tenant an N12 notice of termination or pay her compensation. The Landlord testified he was not aware of “the rules”.
15. The Tenant’s evidence was she found new accommodations and had to take possession on April 2, 2022 in order to secure the new unit. Her monthly rent is now \$2,650.00. Her new home is smaller. It is a townhouse with three bedrooms and 1.5 bathrooms. It has a smaller back yard than the rental unit had. Her evidence was she vacated the rental unit on April 30, 2022.

#### Analysis

16. Section 57(1)(a) of the Act reads as follows:

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;

17. On the evidence of both parties, I am convinced the communications between the parties amounts to an N12 notice of termination. There was no dispute between the parties of what was said between the two. The Landlord admitted he wanted to sell the house and in March 2022, he gave the Tenant 60 days notice to vacate. At the hearing, the Landlord gave no evidence he was unsure of what he wanted to do when he gave the Tenant 60 days notice to vacate. His evidence was the market was “hot” and he wanted to sell. Based on the evidence of both parties, I do not find there was any confusion between the parties.

18. On balance of probabilities, I find the notice provided to the Tenant by the Landlord was for personal use. I say this because there was no purchaser in place when the Landlord

gave the Tenant 60 days notice to vacate. What the Landlord does with the property after he has received vacant possession without an agreement of purchase and sale is his own personal use. Therefore, I consider section 57(1)(a) for my analysis.

19. While the notice provided by the Landlord was invalid as the termination date did not fall on the last day of a rental period, I do not find this matters. It would be unfair to allow the Landlord to circumvent the Act or escape liability simply because he failed to comply with the correct procedures. Further, it would be contrary to the intent of the Act to disallow applications under section 57(1)(a) of the Act because the Landlord's notice of termination is invalid.

20. Section 57(5) reads as follows:

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;

21. The presumption of bad faith contained in section 57(5) is triggered in this case as the Landlord had re-rented the rental unit within three weeks of the Tenant vacating. The Landlord's evidence that the market softened requiring him to change his plans and re-rent the unit, for significantly more money, seemed convenient for the time lines and events involved. I do not accept the Landlord only found out from his realtor that the market had changed after the Tenant vacated. Even if I am wrong, the Landlord's intention was to sell the property, not reside there for a period of one year. Listing the property for sale would also have triggered a presumption of bad faith.
22. On a balance of probabilities, I find it more likely than not, the Landlord intended to either sell or re-rent the rental unit at the time he gave the Tenant 60 days notice to vacate the unit. Since neither intention is permitted by the Act, I find the notice given to the Tenant was done so in bad faith.
23. I am satisfied the Tenant vacated the rental unit in response to the Landlord giving her 60 days to vacate the rental unit. The Tenant stated more than once she believed she had to move out because the Landlord was selling and the Landlord did not dispute this.
24. I am also satisfied the only persons that moved into the rental unit within a reasonable period of time were the Landlord's new tenants. New tenants, paying a higher rent amount

than the Tenant was, are not included in the persons that must occupy the rental unit in a reasonable period of time for a period of at least one year.

25. On all of the evidence, I am convinced on a balance of probabilities the Tenant has met their burden on this application. She has proven the Landlord gave her notice to terminate the tenancy in bad faith, that she vacated the rental unit as a result of this notice and that no person contemplated under section 57(1)(a) occupied the rental unit within a reasonable period of time.

#### T1 Application

26. The Tenant's T1 application alleges the Landlord did not comply with section 48.1 of the Act by giving her notice of termination pursuant to section 48 of the Act and failing to pay the required compensation. Section 48.1 of the Act says:

A landlord shall compensate a tenant in an amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant if the landlord gives the tenant a notice of termination of the tenancy under section 48.

27. I have already determined the Landlord gave the Tenant notice to vacate the rental unit pursuant to section 48 of the Act. At the hearing, it was not disputed the Landlord did not pay the Tenant the one month's compensation he was required to. I am satisfied on a balance of probabilities the Tenant has proven her claim on this T1 application.

#### Remedies

28. The Tenant sought \$2,200.00 for the compensation the Landlord did not pay her as required by section 48.1. As a result, this amount will be granted.
29. The only other remedy requested by the Tenant was \$26,400.00 pursuant to section 57(3)1.1 of the Act. This subsection permits the Tenant to seek general compensation up to the equivalent of one year's rent at the last rent charged. In this case the monthly rent was \$2,200.00. The Tenant did not provide any submissions as to how they arrived at the amount they were seeking other than it was the maximum permitted under the legislation.
30. While the Tenant sought this general compensation in the rent abatement area of the application, they clearly articulate in writing the amount being sought and the legal basis for it. I found the Landlord could not possibly be confused or surprised by this claim for general compensation. The application clearly states "as per Bill 184" and seeks one year's rent. The application stipulates the amount being requested.
31. The Landlord argued the Tenant had a duty to mitigate the general compensation being requested by seeking legal advice and knowing what her rights were. I do not find a

Tenant should have to seek legal counsel to protect themselves from the behaviour of a Landlord rooted in bad faith.

32. Further, I find the Tenant did mitigate. She rented a home in the Province of Ontario, availing herself of the protections contained within the *Residential Tenancies Act, 2006*.
33. The Tenant was not provided the proper notice period she was entitled to. Her evidence was she rushed to find a new place to live given the circumstances. She had to prepay four months of rent to secure her new home. The actions of the Landlord caused her to downsize and pay more in monthly rent. The Tenant lost her home of four years to a Landlord operating outside of the Act. The Landlord's explanation that he did not know the rules serves as little comfort to the Tenant. He has profited while the Tenant has lost.
34. The Landlord re-rented the unit for \$1,400.00 per month more than the Tenant was paying him. As a result of the Landlord's conduct, the Tenant now pays an additional \$450.00 per month for her housing. I find awarding the Tenant one year's worth of these amounts a fair and reasonable amount for general compensation. This amount totals \$22,200.00 and it will also be ordered.

**It is ordered that:**

1. The Landlord shall pay to the Tenant the amount of \$24,400.00. This amount represents general compensation of \$22,200.00 pursuant to section 57(3)1.1 of the Act and \$2,200.00 for the unpaid compensation required under section 48.1 of the Act.
2. The Landlord shall also pay to the Tenant \$53.00 for the cost of filing the application.
3. The total amount the Landlord owes the Tenant is \$24,453.00.
4. If the Landlord does not pay the Tenant the full amount owing on or before May 28, 2023, the Landlord will start to owe interest. This will be simple interest calculated from May 29, 2023 at 6.00% annually on the balance outstanding.

**May 17, 2023**

**Date Issued**

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John Cashmore

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.