



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

Citation: Wright v Leclerc, 2022 ONLTB 14560

Date: 2022-12-27

File Number: LTB-T-076133-22

In the matter of: 2, 183 Rochester Street
Ottawa ON K1R7M5

Between: 7323913 Canada Inc
Louise Leclerc

Landlords

and

Kirsten Wright

Tenant

Kirsten Wright (the 'Tenant') applied for an order determining that 7323913 Canada Inc and Louise Leclerc (the 'Landlords') gave the Tenant a notice to end the tenancy because a purchaser required the rental unit in bad faith.

This application was heard by videoconference on May 25, 2022.

The Tenant attended the hearing and was self-represented. The second-named Landlord ('L.L.') attended the hearing and was self-represented.

Determinations:

1. In this application the Tenant alleges that the Landlords served a notice of termination in bad faith.
2. The Tenant vacated the property on June 30, 2020. The only remedy being sought is a monetary one.
3. For reasons that follow, the Tenant's T5 application is granted in part.

THE T5 APPLICATION

4. The issue before me is whether the Landlords gave the Tenant an N12 notice of termination (the 'N12 Notice') in bad faith. The evidence supports a finding that the Landlords breached section 49 of the *Residential Tenancies Act, 2006* (the 'Act').

Tenant's Evidence

5. The Tenant testified that in and around May 1, 2020, she was served an N12 Notice that informed her that the Landlord had entered into an Agreement of Purchase and Sale (the 'APS') of the rental unit and that the purchaser intended to move into the rental unit. The

N12 Notice had a termination date of June 30, 2020. The Tenant also testified that she confirmed the details of the notice with the Landlords directly prior to vacating.

6. The Tenant explained that in response to the N12 Notice she began searching for a new apartment to rent, eventually entering into a new tenancy agreement for an apartment unit. However, between the time she was served the N12 Notice and June 30, 2022 (the day she vacated) she learned from other tenants living in the residential complex that they had not been issued an N12 notice, nor were they aware that the building had been sold, which left her suspicious of the circumstances.
7. In and around July 22, 2020, she had an Ontario Land Registry report prepared to identify who the new owner was that had purchased the building, when she learned that a change in ownership consistent with the N12 Notice had not occurred, which prompted her to file her application with the Board.
8. Entered into evidence by the Tenant was a copy of the N12 Notice dated May 1, 2020, and a copy of a 'Parcel Register (Abbreviated) for Property Identifier' prepared on July 22, 2020 at Land Registry Office #4 which showed that the owner of the property was a corporation named 9310673 Canada Inc. who took ownership from 7323913 Canada Inc. on March 17, 2017. The last transaction listed was dated April 18, 2017, which confirmed that the property had not actually sold.

Landlords' Evidence

9. L.L. contested the allegations made by the Tenant, testifying that an N12 Notice was issued in 'good faith' after the Landlords entered into an APS prior to issuing the N12 Notice, only for the purchase to be cancelled one day before the Tenant vacated the unit.
10. Elaborating further, L.L. testified that the owner of the residential complex is a numbered company identified as 9310673 Canada Inc., a company which she is the President of with signing authority, and not 7323913 Canada Inc.
11. On and around April 18-20, 2020, an APS was entered into between a company identified as GXX Inc. (as the intended purchaser), and 9310673 Canada Inc., L.L., and another individual named 'Christine Leclerc' (as vendors) for purchase of the residential complex identified as '183 Rochester Street, Ottawa, Ontario, K1R 7M7'. Due to what was described as a 'Failed Inspection of the property', the parties mutually agreed to terminate the purchase of the residential complex on June 29, 2020, the day before the Tenant vacated the property.
12. Filed by L.L. with the Board in response to the Board's request for Post-Hearing Submissions, and in support of the Landlords position was: (i) a copy of a 'Letter of Intent to Purchase' dated April 17, 2020, signed by unnamed individuals with authority to 'Bind this corporation' identifying GXX Inc. as the 'Purchaser' and '9310673 Canada Inc.' as the 'Vendor'; (ii) a copy of a 'Mutual Termination' document dated and signed on June 29, 2020 showing that the parties mutually decided to cancel the sale; and, (iii) Land Registry Office #4 Charge/Mortgage dated July 27, 2022 showing that GXX Inc. registered a mortgage of \$210,000.00 against the property owners as borrowers (i.e., the 'Chargor(s)')

named as 9310673 Canada Inc., Louise Leclerc (as 'President') and Christine Leclerc (as 'Secretary/Treasurer')).

13. Collectively, L.L. testified that the N12 Notice was issued as the Landlords planned to sell the residential complex, however, mutually agreed to terminate the APS due to a 'Failed inspection of the property'.
14. Finally, the L.L. explained that the failed property inspection pertained to the presence of collection of garbage in the backyard, a broken wall, and what was described as 'illegal wiring' throughout the residential complex. L.L. entered into evidence photographs purported to depict these deficiencies and as evidence as to why the purchaser, GXX Inc., decided to terminate the purchase.
15. In response to questions from the Board as to why the purchaser, GXX Inc., decided not to purchase the property, yet, instead chose to lend \$210,000.00 against the same property as collateral (with all the same purported problematic deficiencies), L.L. did not have an explanation for this decision.

Analysis

16. In a T5 application based on an N12 for 'purchaser's own use' the Board must consider section 57(1)(b) of the Act which states the following:

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,

(b) the landlord gave a notice of termination under section 49 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 49 (1) (a), (b), (c) or (d) or 49 (2) (a), (b), (c) or (d) occupied the rental unit within a reasonable time after the former tenant vacated the rental unit;

(2) No application may be made under subsection (1) more than one year after the former tenant vacated the rental unit.

17. In other words, for a Tenant to succeed on an application of this nature, I must be satisfied that, on a balance of probabilities, that:

- The Landlord gave the Tenant an N12 notice in bad faith;
- The Tenant vacated the rental unit because of the N12 notice; and
- No person referred to in section 49(1) or (2) of the Act occupied the rental unit within a reasonable time

18. Based on the evidence before me, all three requirements have been met.

19. It is not disputed that the Landlords gave the Tenant an N12 Notice and that she vacated the unit upon receiving it by taking immediate steps to find alternative accommodations.

The Tenant vacated the unit on June 30, 2020, the same date identified as the date of termination on the N12. It is also not disputed that the purported purchaser identified on the N12 Notice did not move into the unit within a reasonable period of time.

20. The real issue in dispute is whether the N12 was given in bad faith when it was served. I am satisfied on a balance of probabilities that it was. The N12 that was given to the Tenant stated that the Landlords had entered into an APS when they had not. Moreover, the N12 Notice was also invalid pursuant to section 49 of the Act.
21. The Landlords signed a 'Letter of Intent to Purchase', which was not an actual agreement to purchase the residential complex, as the terms and conditions of this letter demonstrates that the parties to that agreement intended to engage in further discussions before entering into an APS. This letter, and the terms and conditions, was to serve as the basis for those future negotiations. This is captured in the opening paragraph of the letter which is written as follows:

This legally binding letter of intent is to **set out the basis** upon which GXX Inc. (hereinafter referred to as "The Purchaser") is prepared to purchase of the subject property located at 183 Rochester Street, Ottawa, Ontario, K1K 7M7 (hereinafter referred to as "The Property"). [Emphasis added]

22. Section 49(1) of the Act provides that a landlord who has entered into an agreement of purchase and sale of the residential complex may, on behalf of the purchaser, give the tenant of a unit in the residential complex a notice terminating the tenancy, if the purchaser in good faith requires possession of the residential complex or unit for the purpose of residential occupation.
23. First, as noted I am not satisfied that the Landlords and purchaser had in fact entered into an APS for the unit. This alone grounds a finding that the N12 Notice was served in bad faith.
24. In this case, the 'Purchaser' named on the documents was a business that later provided the Landlords with a \$210,000.00 mortgage loan. This business does not meet the statutory requirement of a 'Purchaser' for which an N12 Notice can be issued to terminate a tenancy under the Act, nor was the business' intention to occupy the unit for residential occupation which, collectively, renders the N12 Notice invalid. I also find the Landlords lack of a reasonable explanation for their connection with the mortgage holder, GXX Inc., suspicious as there was no explanation provided as to why a business would not want to purchase a property because of alleged deficiencies yet, use the same property as collateral to secure a \$210,000.00 mortgage loan.
25. Based on the forgoing, I am satisfied that the Tenant took the notice as a requirement to move out and did so. I am also satisfied that the Landlord issued an invalid N12 Notice to the Tenant who relied on it to vacate the unit.

26. Based on the forgoing, on a balance of probabilities, I am satisfied that the Landlord issued an N12 Notice of termination in bad faith.

Remedies

27. The Tenant sought compensation based on the increase in rent she had to pay in her new rental unit and moving costs. The evidence supports an award of \$5,400.00 for the portion of the increased rent incurred for the one-year period from July 1, 2020, to June 30, 2021, \$350.00 for moving expenses, and the \$53.00 filing fee.

(a) Rent differential

28. The Tenant testified that the rent paid at the rental unit was \$1,200.00 when she moved out. Due to the high costs of rent in the local area, the most affordable unit she could find carried a monthly rent that was \$450.00 more per month than at the subject unit. The Tenant's current rent is \$1,650.00. Filed with the Board in response to the Board's request for Post-Hearing Submissions from the Tenant was a 'Residential Tenancy Agreement Ontario' signed by the Tenant and her new landlord on May 25, 2020, which outlined the terms and conditions of her new tenancy, including this new rent.
29. I accept the Tenant's evidence that her new unit is somewhat comparable to her former unit. In my view, ordering a rent differential for a one-year period is both reasonable and appropriate in the circumstances. The Landlords will therefore be ordered to pay the Tenant compensation of \$5,400.00 for rent differential.

(b) Moving expenses

30. Pursuant to subsection 57(3) of the Act, the Board can order a landlord to pay a specified sum to a former tenant for reasonable out-of-pocket moving expenses. The evidence supports an award of \$342.68 for moving expenses.
31. The Tenant testified that to facilitate her move she rented a moving truck and hired movers to assist her. In response to the Board's request for Post-Hearing Submissions the Tenant filed with the Board a 'U-Haul Equipment Contract' dated June 25, 2020 detailing the rental of a truck for \$42.68, and a hand-written receipt from a 'J. Johnson' for \$300.00 for "3 guys, 3 hrs" of labor which, she testified represented the 3 people she hired to assist her move.
32. I accept the Tenant's testimony and documentary evidence of the actual out-of-pocket expenses that were incurred by the Tenant because of the Landlords breach and will thus order the Landlords to pay the Tenant \$342.68 in moving expenses.

It is ordered that:

1. The Landlords shall pay to the Tenant \$5,400.00. This amount represents all the increased rent that the Tenant had incurred from July 1, 2020 to June 30, 2021.
2. The Landlords shall also pay to the Tenant \$342.68 for moving costs the Tenant incurred due to the Landlord's breach.

3. The Landlords shall also pay to the Tenant \$53.00 for the cost of filing the application.
4. The total amount the Landlords owes the Tenant is \$5,795.68.
5. The Landlords shall pay the Tenant the full amount owing by January 14, 2023.
6. If the Landlords do not pay the Tenant the full amount owing by January 14, 2023 the Landlords will owe interest. This will be simple interest calculated from January 15, 2023 at 5.00% annually on the outstanding balance.

January 4, 2022
Date Issued

Emile Ramlochan
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.