



Order under Section 57 Residential Tenancies Act, 2006

File Number: LTB-T-056910-24

In the matter of: Unit A, 3777 Janice Drive
Mississauga ON L5M0J4

Between: Carla Guerrier Tenant

And

Asad Kidwai Landlords
Anam Kidwai

Carla Guerrier (the 'Tenant') applied for an order determining that Asad Kidwai ('AsadK') and Anam Kidwai ('AnamK') (the 'Landlords') gave a notice of termination in bad faith.

The application was originally brought on for hearing by videoconference on January 23, 2025. It was adjourned at the request of the Tenant as her representative was unable to attend. That inability to attend followed the Board's closing of the matter following an invalid request by the Landlord AsadK, being a respondent, that the application was withdrawn. The Landlord AsamK explained that her father, AsadK, misunderstood the nature of his request. The request was made in error.

The hearing of the application commenced by videoconference on September 15, 2025. The Tenant, the Tenant's representative, S. Whittick, the Landlord AsadK, on behalf of both Landlords, and the Landlords' representative, S. Mirza, attended the hearing. S. Kidwai ('SK') signed into the hearing as a potential witness and was assigned to a breakout room, but there was insufficient time in the hearing for her to testify.

The hearing continued by videoconference on October 17, 2025. The Tenant, both of the Landlords, AsadK and AnamK, and the Landlords' representative, S. Mirzais, attended the hearing. SK attended a portion of the hearing as a witness.

Determinations:

1. The Tenant seeks remedies for having vacated the unit as a result of an N12 notice of termination allegedly issued in bad faith. The unit was advertised for rent, at a substantially higher rate, prior to the one year anniversary of the date she vacated.

The Test

2. Subsection 57(1)(a) of the *Residential Tenancies Act*, 2006 (the 'Act') provides that in order to obtain a remedy the Tenant must establish that:
 - The Landlords gave an N12 notice of termination under section 48 of the Act in bad faith;
 - The Tenant vacated the rental unit as a result of the notice or as a result of an 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 Tenants vacated the rental unit.
3. Subsection 48(1) of the Act provides that a landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by, *inter alia*, a child of the landlord.
4. Subsection 57(5) provides that, for the purposes of subsection 57(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 one year following the date that the former tenant vacates the unit the landlord either advertises the unit for rent or enters into a tenancy agreement in respect of the rental unit with someone other than the former tenant.
5. The question before me is whether the evidence before the Board establishes that the Landlords gave the notice of termination under section 48 in bad faith and whether a person referred to in clause 48(1) occupied the rental unit within a reasonable time after the Tenant vacated – that is, whether the first and third branches of the test set out in paragraph 2 above were made out.

Facts and Evidence

6. The following facts are undisputed except as otherwise indicated (the 'Tenant Brief' is located at TOP Doc-6318176 and the Landlord Brief at TOP Doc-6367171):
 - a) The unit is one of two basement units in a house in Mississauga (the "House"). The Landlord AsadK and his wife live upstairs in the House;
 - b) The House is owned by AsadK and one of his daughters, AnamK;
 - c) The Tenant's occupancy of the unit commenced in November 2020;

- d) Monthly rent of \$1,250.00 was charged throughout the Tenant's tenancy;
- e) AnamK had children and a husband in Milton but as of June 2024, when the relevant events commenced, lived at the house in Mississauga with her parents and her new-born child. She had suffered from post-partum depression and needed the support of living with her mother;
- f) SK, who is the sister of AnamK and another daughter of AsadK, had been living and working in Saudi Arabia. Her daughter was accepted at McMaster University ('DaughterM') with studies to commence in September 2024. As of June 2024 SK planned to live with DaughterM in Canada. Her other daughter ('DaughterT') was already studying at University of Toronto and was living with AsadK, his wife, and AnamK in the upper portion of the House;
- g) SK arrived in Canada on June 16, 2024;
- h) On June 18, 2024 both AnamK and SK met for about 20 minutes with the Tenant in the Tenant's unit. They indicated to the Tenant that SK was going to be moving back to Canada to be with her daughters and would need the Tenant's unit as of August 22, 2024. Both AnamK and SK testified that the meeting was cordial and referred to a recording of that meeting, of which excerpts were played and of which transcripts were referenced during the hearing (Refer exhibits 10 and 11 at TOP Doc-6367190 and 6396605 respectively. The Tenant acknowledged that the recording and transcript made the meeting sound amicable, but that in reality she felt pressured and uneasy during the meeting. AnamK and SK indicated to the Tenant that SK's need for the unit was urgent;
- i) The meeting was followed with a letter from AnamK and SK (Refer Exhibit 2 at page 10 of Tenant Brief), essentially reiterating the substance of the meeting and the need for the Tenant to vacate by August 22nd. The letter incorrectly indicated that SK was also an owner of the house, but this was not an issue in the hearing and the Landlords confirmed that the ownership is as indicted in this order;
- j) The Landlords served the Tenant with an N12 notice of termination on June 22, 2025, with a termination date of August 22nd;
- k) The Tenant had just lost her job and her mother was ill with cancer, so the timing was problematic for her to move. There were repeated problems with the electricity in the unit, which the Tenant attributed to a deliberate effort on the part of the Landlords to make her occupancy uncomfortable and to expedite her departure;
- l) On seeing a sign for a unit nearby where her mother lived, advertising two months' free rent, the Tenant seized on the opportunity and took the unit. Her

mother was in poor health and the location would allow her to more easily look after her mother;

- m) The Tenant entered into a lease for the new unit for 14 months, paying for 12 months at \$2,277.00 per month;
 - n) The Tenant notified the Landlords near the end of June of her intention to vacate early. She received \$1,250.00 compensation for the one month's rent required for the N12 notice of termination, and \$1,250.00 for return of the last month's rent deposit;
 - o) The Tenant testified that rent was paid on or about the 10th of each month, so the Tenant understood that if she left before the stipulated August 22nd termination date she had until July 10th to vacate on payment of the rent for June. This understanding is, but for two days, consistent with the terms set out in the initial lease for the unit signed on November 8, 2020 (Refer Exhibit 1 at page 4 of the Tenant Brief). The tenancy commenced on November 9, 2020 and rent was due on the 9th of each month. As of June 2024 the tenancy agreement was on a month to month basis and I find that the rental period for rent paid in June 2024 ended July 8, 2024;
 - p) The Tenant began moving her items out of the unit on June 30, 2024 and completed her move on July 7, 2025;
 - q) The unit was advertised for rent in either May or June 2025, with an availability date of July 1, 2025 and a rental rate of \$1,600.00; and
 - r) The unit was rented out further to that advertisement. SK testified that the new tenants moved into the unit on July 8th or 9th, 2025.
7. The Tenant testified that she had had an altercation with the Landlord AsadK in June 2024, shortly before June 18th meeting with AnamK and SK. AsadK told the Tenant that he wanted to raise the rent – that the allowable 2.5% increase was not enough. AnamK denied that AsadK had made any such indication to the Tenant, but the basis for that alleged knowledge was not provided and AsadK gave no testimony at the hearing.
8. AnamK and SK provided the following additional testimony about the circumstances and events leading up to and following the Tenant's departure:
- a) SK's primary residence when she came to Canada was with her parents in the house in which the Tenant's unit was located;
 - b) Beginning in mid-June 2024, shortly prior to the Tenant's departure, SK and the DaughterM were staying with SK's parents in the upper area of the house;
 - c) SK's two daughters did not get along and SK needed to move herself and the DaughterM into a unit separate the area upstairs with her family. Further, SK

had recently been admitted to a Masters program at Harvard and would need quiet for study. She could attend the program remotely but would need to go to Boston frequently for in-person attendance. Her location in Mississauga, rather than in Saudi Arabia, better allowed her to effect the required in-person attendance and allowed her to attend remotely by day rather than at night from Saudi Arabia;

- d) SK asked her father, AsadK, to allow her and DaughterM to live in the Tenant's unit. He agreed;
- e) The Landlords understood, from an email (Refer Exhibit 13 at pages 2 and 3 of the Landlord Brief) that the Tenant would be vacating the unit by June 30, 2024;
- f) SK and DaughterM moved into the unit July 12, 2024;
- g) The reason that the unit was rented out to new tenants in July 2025 was that the Landlord AsadK decided that he needed the income from the unit and could no longer afford to not have it tenanted. SK did not pay rent for the unit, though she helped her parents with various expenses such as food;
- h) The Landlord AnamK, who had been living with her parents in the upper portion of the house, was able by this time to return to live with her husband and other children in Milton. She no longer needed her mother's help with the post-partum depression. Her departure freed up the room she had been using for SK to return to live in the upper portion of the house. The McMaster Daughter, who had been living with SK, also moved upstairs and shared a room with her sister;
- i) AsadK had, prior to SK moving into the unit, relied on rental income from that unit. Despite the fact that SK did not pay rent, AsadK was relying on SK for some financial support. His pride prevented him from continuing to allow SK to provide him assistance so he needed to re-rent the Tenant's unit; and
- j) AsadK was faced with additional financial challenges which he had not had in the past. His two siblings had passed away in the two years leading up to the hearing and their passing presented AsadK with new financial obligations.

Analysis:

(i) Bad Faith N12 Notice

9. It was uncontested that the Landlords advertised the unit for rent within either 10 or 11 months from the date the Tenant vacated the unit. Therefore, the presumption of bad faith set out in subsection 57(5) applies and the onus shifts from the Tenant to the Landlords to establish, on a balance of probabilities, that the Landlords gave the N12 notice of termination in good faith.
10. The Landlords submit, in effect, that at the time the N12 notice was served they had a good faith intention for SK to take over the Tenant's unit for SK's own use for at least a year. The Landlords' decision for SK to vacate was based on changes in circumstances subsequent to the service of the N12 notice and was not indicative of any bad faith intent.
11. My determination about the Landlords' intentions must be made on a contextual basis, in consideration of the circumstances, events and decisions which followed the service of the N12 notice. While the Act describes the test in section 57 as being bad faith in the issuance of the notice, I must also consider the purposes of the Act, which include to balance the rights and responsibilities of residential landlords and tenants. More specifically, in interpreting and applying sections 48 and 57 of the Act, I must balance the rights of landlords to in good faith take occupancy of a unit for their own residential occupation for a period of at least one year with the rights of tenants to security of tenure. This latter includes tenants' right to pursue a remedy at the Board if the landlord obtained the unit in bad faith and does not live in the unit for at least one year.
12. Limiting the question of good faith to an exploration of the mind of the Landlords at the instant of serving the N12 notice, and to ignore all the surrounding circumstances, would lead to results inconsistent with the objects of the Act. To require the Tenants to establish what was in the mind of the Landlords at the instant of the N12 notice being served, without regard to the surrounding circumstances and to the behaviour of the Landlords subsequent to the service of the N12 notice, would upset the balance of interests which the Act aims to achieve (Refer *CET-67272-17 (Re)* and *TST-914-18 (Re)*).
13. A number of Board decisions have found that an unforeseen change in circumstance that prevents the person listed in the N12 notice of termination from taking possession may result in a finding that it was not served in bad faith. (Refer *TST-08803-19 (Re)*, *CET-25233-12 (Re)* and *TST-63837-15 (Re)*). The key question in the circumstances of the application before me, however, is whether the change in circumstance prevented SK from maintaining possession for at least one year as required under section 48, further to the requisite intent behind the N12 notice. That is to say, did new, unanticipated, circumstances compel SK to leave the unit – and so not maintain possession for at least year?

14. I find, as follows, that the Landlords have failed to rebut the presumption of bad faith triggered by subsection 57(5) of the Act:

- The good faith intention includes an element of commitment to at least one year of residency unless new, unanticipated circumstances render that commitment untenable;
- The Landlords knew, or ought to have known, that the Landlord AsadK was in a delicate financial situation as of June 2024. The question of whether the Landlord AsadK spoke to the Tenant about the need for higher rent was in dispute. I prefer the direct testimony of the Tenant on this point over the unsupported presumption on the part of AnamK that AsadK made no such statement. The almost 30% increase in rent effected with the \$1,600.00 rent to the new tenants is not determinative of, but is consistent with, the Landlords' intention to seek higher rent;
- The fact that SK was able, on the request of AsadK, to give up the unit and move herself and the McMaster daughter back upstairs within one year was also foreseeable. AnamK was living in the house as a result of her post-partum depression. Her husband and other children were living in Milton and it is more likely than not that the temporary nature of her residency with her parents was foreseeable;
- SK's testimony about the new financial challenges faced by AsadK from the death of his two siblings was vague. If the Landlords' proposed to rely on these events as a significant change in circumstances following the service of the N12 notice, the onus was on them to establish relevant facts about those events. No specific evidence, verbal or otherwise, was provided;

15. I find that the Landlords have failed to establish that the change in circumstances constituted the type of change which compelled SK to move from, and the Landlords to re-rent, the unit. I find that the first branch of the subsection 57(1)(a) test has been made out.

(ii) *Vacated as a Result of N12 Notice*

16. It was undisputed that the Tenant vacated as a result of the Landlords serving the N12 notice. That branch of the three part test is made out.

17. I note, in obiter, that the N12 notice of termination appears to have been defective in that it set a termination date 60 days from the date of service rather than 'at least 60 days' and 'the day a period of the tenancy ends'. As set out in subparagraph 6(o) above, I find that the monthly rent period ended on the 8th of each month such that the N12 notice should likely have stipulated a termination date of September 8, 2024 rather than August 22, 2024. If the Landlords had raised the validity of the N12 notice as an issue, which they did not, I would have found that they could not rely on their own breach of the Act to escape liability in the context of a T5 application of the type before me.

(iii) *Whether Section 48(1)(c) Person Occupied the Unit*

18. The Landlords submitted that SK took occupancy of the unit and stayed there for a year, such that this branch of the test for award of compensation has not been made out.
19. The Tenant testified that she understood, from reviewing SK's LinkedIn profile and a social media posting, that SK was employed in and lived in Saudi Arabia (Refer Exhibit 7 at pages 26 and 28 of the Tenant Brief). The Tenant brought this application largely because she believed that SK did not in fact move into the unit. She acknowledged, however, that she had no evidence as to whether or not SK moved in.
20. I accept SK's and AnamK's uncontroverted direct testimony to the effect that SK took occupancy of the unit and find as a fact that SK and the McMaster Daughter moved into the unit on July 12, 2024.
21. An N12 notice given under section 48 of the Act stipulates that the landlord (or, as in this situation, a child of the landlord) must be intending to live in the rental unit for at least one year. That requirement cannot be ignored when interpreting and applying subsection 57(1) of the Act. A landlord cannot defeat an application under subsection 57(1) of the Act by simply occupying the subject unit for a nominal amount of time regardless of that landlord's bad faith.
22. I find, as follows, that SK failed to occupy the unit for at least a year following the date the Tenant vacated:
 - a) SK testified that the new tenants did not move into the unit until July 8th or 9th 2025. This implication of this assertion was that SK did not vacate the unit until one of these two dates – one or two days, respectively, after one year following the Tenant's departure on July 7, 2024;
 - b) As set out at subparagraph 6(o) above, I find that the Tenant's monthly tenancy ran from the 9th of each month to the 8th of the following month. That means that the last month of occupancy (for which rent had been fully paid) did not go to June 30, 2024, as inferred by the Landlords, but to July 8, 2024;
 - c) If the new tenants in fact took occupancy on July 8th the one-year condition for SK's occupancy was not met. If they in fact took occupancy July 9th, that date would fall only one day outside the one year stipulation. The advertisement referenced a July 1st commencement date. The Landlords did not produce any documentation to support the assertion that the lease did not commence until after the advertised July 1st. I find it more likely than not that the new tenants' right to occupancy commenced on or prior to July 8th such that SK did not occupy the unit for a full year; and
 - d) I note that SK testified that she moved into the unit on July 12, 2024 so that, in any event, the one year residency requirement was not met.

23. I find that all three branches of the test in subsection 57(1) of the Act have been established so that subsection 57(3) of the Act entitles the Tenant to: all or any portion of any increased rent that the Tenant has incurred for a one year period; and reasonable out-of-pocket moving expenses.

Remedies

24. The Tenant claimed in her application that her new rent amounted to a monthly increase of \$1,027.00, being the difference between \$2,077.00 and \$1,250.00. She testified that she received two months' free rent on entering into the new tenancy agreement, agreeing to pay 12-months' rent for 14 months of occupancy. She testified that the move was traumatic for her and came at a difficult time, as she had recently lost her employment and her mother was ill with cancer. She also indicated that the move allowed her to be closer to her mother and better able to care for her.
25. In calculating the rent differential to the Tenant over the one year period following her departure from the unit, I have incorporated the impact of the two-months free rent. The effective new monthly rent over the 12 months amounted to \$1,951.71 $((\$2,077 \times 12)/14)$ per month, yielding a monthly increased rent of \$701.71 $(\$1,951.71 - \$1,250.00)$ per month or \$8,420.52 over 12 months.
26. The Tenant testified that the new unit was newer than her old unit, but was smaller. I have no other evidence on which to compare the features of the two units. She testified that the new unit's proximity to her mother better enabled her to care for her mother.
27. I find that the Tenant should properly receive most, but not all, of the increased rent over the year, as she did enjoy some benefit from the new unit. I find that the Landlords must compensate the Tenant in the amount of \$7,500.00 for the rent differential.
28. The Tenant claimed a total of \$400.00 for out-of-pocket moving expenses. She claimed \$282.05 for the move of large items, which she supported with receipts (Refer Exhibit 4 at pages 37-38 of the Tenant Brief). On receiving a quote for full move (Refer Exhibit 5 at page 39 of the Tenant Brief) she decided to effect the balance of the move herself and so incurred \$25.00 per day in gasoline expense for seven days. The total amounts to more than \$400.00 but the application has set the claim at that amount. I find the amount to be reasonable and the Tenant is entitled to that compensation.
29. The Tenant claimed \$10,000.00 in general damages for pain and suffering and humiliation arising from the N12 events.
30. While I consider that the Landlords' termination was effected without due consideration to the likely temporary aspect of SK's occupation and note that the Landlords enjoyed a significant increase in rental income within a scant year of the Tenant's departure, there was no evidence that the termination process was itself effected in a threatening or abusive way. I do not attribute the Tenant's hasty departure from the unit to wrongdoing on the part of SK or the Landlords. I find that the Tenant has not established that the Landlords' behaviour warranted an award to the Tenant for general damages. That portion of the Tenant's claim is denied.

It is ordered that:

1. The Landlords shall pay to the Tenant \$7,953.00, representing:
 - \$7,500.00 for a portion of the increased rent the Tenant incurred for the one year period following her departure from the unit;
 - \$400.00 for the reasonable moving, storage and other like expenses that the Tenant incurred as a result of having to move out of the rental unit; and
 - \$53.00 for the cost of filing the application.
2. The Landlords shall pay the Tenant the full amount owing by February 10, 2026.
3. If the Landlords do not pay the Tenant the full amount owing by February 10, 2026, the Landlords will owe interest. This will be simple interest calculated from February 11, 2026 at 4.00% annually on the balance outstanding.

January 30, 2026
Date Issued

Lynn Mitchell
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.