



Order under Section 57 Residential Tenancies Act, 2006

File Number: LTB-T-017351-23

In the matter of: 607, 15 WATER WALK DR
UNIONVILLE ON L6G0G2

Between: Varun Gupta Tenant

And

Umapathisivam Santhiramoorthy Landlord

Varun Gupta (the 'Tenant') applied for an order determining that Umapathisivam Santhiramoorthy (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on March 20, 2024.

The Landlord, Umapathisivam Santhiramoorthy, The Landlord's Legal Representative, Karas Patchamuttu, and the Tenant, Varun Gupta attended the hearing.

This application was reconvened and heard on April 30, 2026.

The Landlord, the Landlord's Legal Representative, and the Tenant, attended the hearing.

Adjournment Request – April 30, 2026

1. At the onset of the hearing, the Landlord's Legal Representative requested an adjournment of the matter as he had been recently retained and requires more time to review the file.
2. The Tenant opposed the adjournment request as this matter has been ongoing for a few years and would like for this matter to be heard.
3. After hearing the parties submissions, and in consideration of Guideline 16, I denied the Landlord's Legal Representative's adjournment request. This matter has been adjourned in March 2024, and I do not find that further adjournment would not be consistent with the Board's mandate to hear matters in an expeditious manner.

Determinations:

T5 Application

4. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.
5. Subsection 57(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') requires the Tenant to prove each of the following on a balance of probabilities:
 - The Landlord gave the Tenant an N12 notice of termination under section 48 of the Act;
 - The Tenant vacated the rental unit as a result of the N12 notice of termination;
 - No person referred to in subsection 48(1) of the Act occupied the rental unit within a reasonable time after the Tenant vacated; and
 - The Landlord served the N12 notice of termination in bad faith.
6. In order for the Tenant to be successful in their T5 application, they have to establish all three of the requirements in 57(1)(a) on a balance of probabilities.
7. The Tenant said that they received a N12 notice of termination in June 2021, with a termination date of August 30, 2021 which stated that the Landlord requires the rental unit as his parents intend to move into the rental unit. The Tenant testified that they received an email with this N12 notice of termination, they were out of the country. The Tenant said they returned to Canada on or about October 2021, as they had difficulties purchasing tickets for a flight home due to the COVID-19 pandemic.
8. The Tenant referred to an email exchange on or around November 22, 2021 that they sent to the Landlord's real estate agent, stating that they have not been approved for the condo they were in the process of purchasing. The Tenant further stated in another email exchange on or around November 30, 2021, the Landlord's real estate agent stated that the Landlord is agreeable to the Tenant vacating the rental unit on December 15, 2021. The Tenant vacated the rental unit on or about February 25, 2022.
9. The Tenant testified that they vacated the rental unit due to the N12 Notice. The Tenant stated that if they did not receive the N12 Notice they would not have vacated the rental unit.
10. The Tenant testified that the Landlord's parents did not move into the rental unit as per the N12 Notice. On or about early March 2022, the Tenant went back to the building to pick up mail. He was informed by the concierge that a young woman is currently living in the apartment. The Tenant further found an online listing of the rental unit, and it states that it was listed and sold in March 2022.
11. The Tenant is requesting that the Board find that the Landlord gave the N12 Notice in bad faith and is seeking a remedy of \$18,000.00 for a rent abatement which represents expenses incurred due to having to move out.
12. Upon cross examination, the Tenant stated that his wife moved out of the country, and that he moved back into his parents' place. The Tenant confirmed that he did not lose any money in terms of moving out, and was not impacted financially.

13. At the hearing on March 20, 2024, the Landlord testified that he served the N12 Notice on the Tenant as the Tenant did not pay their rent for three months. The Landlord further testified that he served the N12 Notice as his parents required the rental unit for their own use. The Landlord testified that his parents moved into the rental unit on or about March 1, 2022, shortly after the N12 Notice was served, however they had to sell the property on April 29, 2022 due to financial trouble.

Legal Analysis

14. The reverse onus provisions of s. 57(5) are engaged and the N12 notice is presumed to be given in bad faith, as the Tenant is alleging that the Landlord sold the rental unit, rather than their parents living there as per the N12 Notice. Accordingly, the Landlord must lead evidence sufficient to rebut the presumption—to establish on the balance of probabilities—that it was more likely than not—that the N12 notice was delivered in good faith.
15. The relevant considerations on an application under section 57 based on an N12 delivered under section 48 is whether: (a) the landlord genuinely intended that the person identified on the N12 would occupy the unit; and (b) the person identified on the N12 genuinely intended to occupy the unit. [See *Feeney v. Noble*, 1994 CanLII 10538 (ON SCDC) and *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC)]
16. The fact that the person identified as wanting to occupy the rental unit did not move into or occupy the unit and that the landlord re-rented the rental unit are not the sole considerations when determining the landlord's good faith. A landlord may be able to establish that an unforeseen change in circumstances resulted in the person identified on the N12 being unable to occupy the unit, or if that individual did not live in the rental unit for minimum one year. All other things being equal, this would be sufficient to rebut the presumption of bad faith arising under subsection 57(5) and (6). [See, for example, *Al Richan v Mirza*, 2021 CanLII 141438 (ON LTB)].
17. Upon hearing the Landlord's submissions, I am not satisfied that Landlord gave the N12 Notice in good faith. I heard and considered the Landlord's evidence that his parents did move in however sold the rental unit due to financial difficulty, however the Landlord led insufficient evidence to contradict that of the Tenant. I do not find that the Landlord provided sufficient detail explaining the financial circumstances that led to the sale of the property, to satisfy that there was a genuine change in their parent's circumstances. Furthermore, the Landlord did not offer sufficient evidence to explain and/or contradict that of the Tenant's, that as per the listing the rental unit was sold in March 2022 not in April 2022.

Remedies

18. In their application, the Tenant is requesting that the Board order \$18,000.00 as a rent abatement. This abatement is for the months that the Landlord threatened and gave him stress, and he has been paying rent for one year until the current date.

19. An abatement of rent is a contractual remedy on the principal that if a tenant is paying 100% of the rent, then the tenant should be getting 100% of what they are paying for, and if they are not getting that, then a tenant should be entitled to an abatement equal to the difference in value. In this circumstance, I do not find it appropriate to award the Tenant a rent abatement for the Landlord's threatening actions and stress, as this is not an application that was brought under section 22 of 23 of the Act. In addition, the Tenant stated that he moved to his parents' place. During cross examination, the Tenant stated that as he moved into his parents' place and therefore it did not impact him financially. As the Tenant did not demonstrate that he was negatively financially impacted due to having to move, and/or that they had an increase of expenses due to the move (for example, paying a higher rent), I find that the Tenant failed to meet the burden of proof to establish their claim in this regard. As such, the Landlord's request for a rent abatement of \$18,000.00 is denied.

It is ordered that:

1. The Tenant's application is dismissed.

May 28, 2026

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Nathalia Debski

Member, Landlord and Tenant Board

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