



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

**Citation:** Thayalan v Joseph David, 2023 ONLTB 40647

**Date:** 2023-05-31

**File Number:** LTB-T-076045-22  
(formerly TET-19195-21)

**In the matter of:** 39 Ronway Crescent  
Toronto Ontario M1J2S1

**Between:** Jayamathy Thayalan, Krishan Thayalan, Tenants  
Nivishaa Thayalan, Thayalan selvaratnum  
and Vaishavi Thayalan

**And**

Subashini Joseph David and Yogeswaran  
Arimuthu

Landlords

I hereby certify this is a  
true copy of an Order dated

**June-07, 2023**

Landlord and Tenant Board

**Your file has been moved to the Landlord and Tenant Board's new case management system, the Tribunals Ontario Portal. Your new file number is LTB-T-076045-22**

Jayamathy Thayalan, Krishan Thayalan, Nivishaa Thayalan, Thayalan selvaratnum and Vaishavi Thayalan (the 'Tenants') applied for an order that Subashini Joseph David and Yogeswaran Arimuthu (the 'Landlords') gave a Notice of Termination in Bad Faith

This application was heard by videoconference on April 26, 2022 at 9:00 a.m.

The Tenants, represented by Shawn D. Harvey and Bavithra Vigneswararajah, licensed Paralegals ( the "TTR" ) , attended the hearing.

As of 12:48 p.m., the Landlords were not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Tenant's evidence.

### **Preliminary Issue:**

1. I granted the Tenant's request to amend the application to remove the request for a rent abatement ("remedy 1") and add remedy 5 which is described by the Tenant as follows:

"LAND LOARD MUST COMPENSATE FOR MY DAUGHTER'S POST CONCUSSION INJURY TREATMENT EXPENSES, DUE TO THE FALL AT THE BASEMENT STAIRS WHICH DID NOT HAVE PROPER HANDRAIL. WE INFORMED THE LAND LOARD BEFORE EVEN BEGAN OUR TENANCY TO FIX IT FOR US IN 2015. IT WAS LAND LOARD'S NEGLIGENCE. CURRENTLY, PAYING FROM OUR OWN POCKET FOR PHSIO/CHIRO/COUNSELING TREATMENTS FOR THE TIME BEING.

LAND LOARD NEVER COMPENSATED ONE MONTH RENT FOR N-12 NOTICE GIVEN BY LAW, WHEN WE MOVED.

**Determinations:**

1. The Tenants' application alleges that the Landlords served a N12 Notice to End your Tenancy Because the Landlord, a Purchaser, or a Family Member Requires the Rental Unit, the "Notice" in bad faith.
2. For the reasons as set out below I will be granting the Tenants' application.
3. This application is brought pursuant to s. 57(1)(a) of the *Residential Tenancies Act, 2006*(the 'Act') which states:

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,

(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;

4. What this provision means is that in order to succeed on this application the Tenants must provide sufficient evidence to establish it is more likely than not that:

(1) The Tenants got a notice of termination under s. 48;

(2) The Tenants moved out of the rental unit as a result of the Landlords' notice;

(3) The notice was given in bad faith meaning the Landlords had no intention of moving into the rental unit; and

(4) The Landlords did not in fact move into the rental unit within a reasonable time after the Tenants vacated.

Tenants' evidence

5. The monthly rent for the former unit, 39 Ronway Crescent , Toronto, was \$2,000.00 and was due and payable on the 15<sup>th</sup> day of each month.
6. The Tenants moved into the rental unit December 15, 2015.
7. The Tenant moved out of the rental unit on August 24, 2020 and filed this application on August 23, 2021.

8. The TTR submitted a copy of N12 – Notice to End your Tenancy Because the Landlord, a Purchaser or a Family Member Requires the Rental Unit (the “N12 Notice”). The N12 Notice specifies a termination date of October 14, 2020 and indicates that the Landlord, spouse and child intend to move into the rental unit. The N12 Notice is dated July 1, 2020 and is signed by Yogeswaran Arimuthu.
9. The TTR also submitted a copy of a letter from the Landlord dated March 1, 2020 to Tenant Jeyamathi Thayalan. The letter informs the Tenant that the Landlord will be terminating the lease as of July 15, 2020 because his brother requires a place to live. The Landlord states that he is communicating this decision 4 and ½ months in advance to allow the Tenants time to find another place to live and takes into consideration the Tenants’ children’s school. The letter is signed at the bottom as “received” on February 25, 2020 by T. Jayamathy and specifies that “we can move anytime”.
10. Tenant Thayalan Selvaratnam testified that they moved out of the rental unit on August 23, 2020 pursuant to a N9 Tenant’s Notice to End the Tenancy that had been sent to the Landlords.
11. The TTR submitted that regardless of when the N12 Notice was effective, the Tenants moved out because the Landlord had made their intention known and wanted them to move out.
12. The Tenant testified that the Landlord did not pay the required 1 month’s compensation as required by the Act.
13. The Tenant testified that they became aware that the Landlord had not used the property as expected when they returned to the rental unit to pick up mail. This occurred sometime in January or February 2021. The people living in the house told him that they had bought the house from his Landlords.
14. The TTR submitted a copy of a MLS Listing showing that 39 Ronway Cres Toronto MLS# E4931105 had been listed for sale on September 28, 2020 and had sold on November 30, 2020. The property had been listed for \$829,000.00 and had sold for \$935,000.00.
15. The Tenant testified that having to move has had been a significant impact on the families’ lives. Between the time they had moved into the rental unit, 2015 and when they moved out in August 2020, the time they moved out
  - there had been a change in the rental market.
  - conditions were being influenced by the current COVID 19 pandemic
  - to get a comparable unit they had to move approximately 30 kilometres away.
  - this in turn impacted all aspects of their lives

- the children had to change schools, they attended the same school for 6 years,
- they do not like the current school, miss their friends that they had grown up with.
- Recreation for the children, hockey and dance was still at the old location and an additional drive of 25 minutes each way
- there was an impact on their social lives
- they are far from their community
- they are far where from where they are used to shopping
- the wife has added 30 minutes to her commute to work each way

### Analysis

16. Based on the Tenants' uncontested evidence, I find that they vacated the rental unit on August 24, 2020 as a result of the Landlords serving an N12 notice of termination under section 48(1) of the Act.
17. I further find that the evidence establishes that the Landlord did not move into the rental unit within a reasonable amount of time after the Tenant vacated based on the fact that the Tenants discovered that someone other than the Landlord was living in the rental unit approximately 4-5 months after the Tenants vacated.
18. With respect to the remaining issue of good faith, s. 57(5) of the Act states 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 the landlord advertises the unit for sale within one year of the date the tenant vacates. In this case, I find that the Landlord listed the unit for sale on September 28, 2020, which is less than one year after the Tenants vacated. As the Landlords did not attend the hearing there is no evidence before me to rebut the presumption of bad faith.
19. As the Tenants have established all of the required elements of the test contained in s. 57(1)(a) of the Act, I find that that the Landlords served the Tenants the N12 in bad faith. The Tenants are therefore entitled to remedies under s.57(3) of the Act.

### Impact on Tenants

20. For T5 applications the burden of proof is upon the Landlord to show that they indeed did serve the N12 Notice in good faith. In this hearing the Landlords were neither present nor represented at the hearing although properly served with notice of this hearing by the LTB. Based on the believable and uncontested submissions by the Tenants I find that the Landlord did not serve the N12 Notice in good faith and am awarding the following remedies:

## Remedies Sought

### **Rent differential:**

21. The Tenants sought to have the Landlord pay a rent differential between the old unit and the new unit, for one year, of \$1,350.00 for 12 months or \$16,200.00.
22. I accept the Tenants' evidence and will award the Tenants the sum of \$16,200.00 for rent differential between the old new and the new unit for a period of one year.

### **Moving expenses:**

23. The Tenants sought to have the Landlord pay for expenses related to moving and storage of \$4,011.50. The TTR submitted a copy of invoice dated August 19, 2020 from 10057142 Canada Inc in the amount of \$4,011.50 and explained that that this was the cost of the movers that been hired to move the family, "a full service package including boxes and everything".
24. I am awarding the Tenants the sum of \$4,011.50 as I find that they have proven that this represents their reasonable out-of-pocket moving and storage expenses.

### **Compensation:**

25. The Tenants also sought to have the Landlord pay for daughter's expenses related to an injury sustained in the basement of the rental unit and the one months rent as required by the Act.
26. This is an application for the issuance of a Notice in Bad Faith, not related to maintenance or Tenant rights. As I did not receive submissions in relation to this item, I will not be making a reward for this item.
27. Based on the Tenant's evidence I find that the Landlord did not pay them compensation equal to one month's rent as required by section 48.1 of the Act. I will be awarding the Tenants the sum of \$2,000.00, compensation required to be paid when a N12 Notice is issued.

### **Administrative fines:**

28. A fine is appropriate where the other remedies awarded will not be sufficient to deter the offending conduct. In this case I believe that the other remedies awarded will not serve to deter future offending conduct. Based on submissions by the Tenants, namely the MLS listing, the Landlords profited at the expense of the Tenants. I find that Landlords' conduct to be egregious and disruptive to and without regard to the Tenants. The Landlords must pay a fine to the LTB of \$10,000.00.

**It is ordered that:**

1. The Landlords shall pay the Tenants the sum of \$4,011.50 for expenses incurred moving from the rental unit.
2. The Landlords shall pay the Tenants the sum of \$16, 200.00 for rent differential between the old new and the new unit for a period of one year.
3. The Landlords shall pay to the Tenants the sum of \$2,000.00, the one months' rent compensation as required by the Act.
4. The Landlord shall also pay to the Tenants \$53.00 for the cost of filing the application.
5. The total amount the Landlord owes the Tenants is \$22,264.50
6. If the Landlords do not pay the Tenants the full amount owing by June 18, 2023 the Landlord will owe interest. This will be simple interest calculated from June 19, 2023 at 6.00% annually on the outstanding balance.
7. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.
8. The Landlords shall pay a fine to the Board of \$10,000.00 by June 18, 2023.

**June 7, 2023**  
**Date Issued**

A handwritten signature in blue ink, appearing to read 'PAVLOVIC', is written over a horizontal line.

Peter Pavlovic  
Member, Landlords and Tenants 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.