



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

**File Number:** HOT-12934-22

**In the matter of:** BASEMENT, 1673 NORTHFIELD AVENUE  
OSHAWA ON L1K0K7

**Between:** Mary Kotsiaftis

Tenant

**and**

Nadeem Ali  
Narmeen Ali

Landlords

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

**SEP 29, 2022**

Landlord and Tenant Board

This application was heard by videoconference on July 28, 2022, Narmeen Ali attended the hearing for the Landlords. The Tenant attended the hearing. The Tenant was represented at the hearing by Mitchell Kent.

Preliminary Issue

1. The Tenants' application the Landlords gave her a notice of termination in bad faith contrary to s.57(1)(a) of the *Residential Tenancies Act 2006*, (the 'Act').
2. Prior to the hearing, the Landlord, Narmeen Ali, requested an adjournment to retain a representative for assistance. I considered *LTB Interpretation Guideline 1* and declined the adjournment request.
3. *Guideline 1* states, "Where the Member is satisfied that the party has received sufficient notice of the hearing and has been provided with an adequate opportunity to prepare their evidence and submissions, summons witnesses and obtain counsel ahead of the hearing date, an adjournment is not usually granted unless there are exceptional circumstances." It goes on to state, "The right to representation is not absolute and an adjournment is not automatically granted when it is requested on this ground. The onus is on the party wishing to be represented to make all reasonable efforts to find a lawyer or paralegal able to represent them at the hearing once they become aware of the hearing date." *The Board's Guideline 1* is not binding on me, but I find it informative and reasonable and see no reason to depart from it in these circumstances
4. Ms. Ali received sufficient notice of this hearing. She had plenty of time to retain a representative. I do not find this to be an exceptional circumstance warranting an adjournment.

5. This hearing was scheduled for a full day. Even though I declined Ms. Ali's adjournment request, the matter was not called until later in the afternoon to give Ms. Ali additional time to prepare for the hearing.

#### Notice of Termination

6. On February 26, 2021, The Landlord, Narmen Ali, advised the Tenant she was getting married. The Landlord needed vacant possession of the rental unit because that is where she planned to reside with her spouse. Two days later, February 28, 2021, the Landlord followed the discussion with an e-mail terminating the tenancy May 01, 2022. The Landlord does not dispute the events in this regard.
7. Even though the notice of termination was not given on the prescribed form, s. 212 of the Act says substantial compliance with the Act respecting the contents forms notices of documents is sufficient. I find the e-mail sent to the Tenant substantially complies with a notice of termination given under s. 48(1)(a) of the Act.
8. For the reasons to follow, I find the notice of termination was given in bad faith contrary to s.57(1)(a) of the Act.

#### Analysis

9. Under s. 57(5) of the Act it is presumed, unless the contrary is proven on a balance of probabilities, that the Landlord gave a "bad faith" notice, if at any time during the period from the date of the notice to one year after the Tenant vacated the unit, that the Landlord,
  - advertises the rental unit for rent;
  - enters into a tenancy agreement in respect of the rental unit with someone other than the former tenant;
  - advertises the rental unit, or the building that contains the rental unit, for sale;
  - demolishes the rental unit or the building containing the rental unit; or
  - takes any step to convert the rental unit, or the building containing the rental unit, to use for a purpose other than residential premises.
10. It is undisputed notice of termination was given because the Landlord required vacant possession of the unit for her and her husband to reside. However, the Landlord never did reside in the rental unit and listed the rental unit for sale May 26, 2021. The rental unit was sold June 08, 2021, Since the unit was listed for sale within one year of the former tenant vacating, I find the presumption of bad faith is engaged under s.57(5)(c) of the Act. Therefore, the Landlord would be required to prove their good faith on a balance of probabilities.

11. The Ontario Divisional Court in *Beljinac v. Salter* held the test of good faith is a genuine intention to occupy the premises. Ms. Ali submits at the time the notice of termination was given she intended to reside in the rental unit with her fiancé. Unfortunately, the relationship broke down and Ms. Ali never got married. Instead of moving into the rental unit, the rental unit was sold.
12. Ms. Ali submits that he she broke up with her ex-fiancé in May 2021, after the Tenant vacated because of the notice of termination. I do not find this to be the case.
13. Ms. Ali's own testimony was ex-fiancée had a history of aggressive behaviour. According to Ms. Ali this became apparent sometime in late 2020. Ms. Ali testified that she had to refrain her ex-fiancé from committing assault On January 03, 2021, prior to the engagement Ms. Ali had a nightmare that her ex-fiancé was charged with assault. This suggests there was problems with the relationship prior to the notice of termination being given.
14. In many cases, the Board has found that an unforeseen change in circumstances that results in the person listed in the notice of termination unable to occupy the rental unit does not constitute bad faith. However, in the present case before the Board I do not find the breakdown in Ms. Ali's relationship to be an unforeseen circumstance that would rebut the presumption of bad faith set out in s.57(5) if the Act.
15. Not surprisingly, the relationship continued to break down. The Board was provided a text message between Ms. Ali and her ex-fiancé on February 21, 2021. In the text messages it is apparent that the relationship and her ex-fiancé had deteriorated. Further text messages, on March 03, 2021, suggest the relationship was over. This matters because several Board cases including TST-87742-17, TST-87559-17, and CET-67272-17, extend the Landlords' obligation to act in good faith beyond the time the notice of termination is served. Even though the relationship with her ex-fiancé was over, still enforced the notice of termination on the Tenant. I find this to be an indication of the Landlord's bad faith with respect to the notice of termination.
16. I have considered the evidence before me and find the Landlord has not proven the notice of termination was served in good faith as required by section 57(5)(c) of the Act.

### Remedy


17. Pursuant to section 57 of the Act, the Board may order the Landlords pay a specified sum to the Tenant for all or any portion of any increased rent that the Tenant has had to pay for a one-year period after vacating the rental unit.

18. As the notice of termination was given in bad faith, and the Tenant was required to move into similar, but more expensive rental accommodation, in a rougher neighbourhood. Accordingly, the Landlords will be ordered to pay to the Tenant's rent differential of \$450 per month for the maximum 12 months or \$5400.00.
19. The Tenant seeks an award of general compensation. Section 57(3) (1.1) of the Act authorizes the Board to pay general compensation in the amount of up to 12 months rent the Tenants last paid should it be determined the Landlords gave a notice of termination in bad faith.
20. Having the notice or termination given in bad faith had considerable impact on the Tenant. The Tenant went through a great deal of stress having to relocate to a rougher neighbourhood. Due to the increased rent the Tenant must pay she has to file a Consumer Proposal. I have considered the evidence before me, and based on my knowledge of previous Board cases, I find an award of general compensation of \$2500.00 is appropriate in the circumstances.
21. The Tenant seeks reimbursement of \$75.00 for moving expenses. I find this to be a reasonable out-of-pocket expense and the Tenant is entitled to reimbursed accordingly.
22. The Tenant seeks general damages. I do not find it appropriate to award general damages when general compensation has been awarded. I find the award for general compensation, rent differential, and out-of-pocket moving expenses is sufficient to dispose of this application satisfactorily. Thus, the Tenant's request for general damages is dismissed.

**It is ordered that:**

1. The Landlords shall pay to the Tenant \$75.00 for the reasonable out-of-pocket expenses that the Tenant has incurred.
2. The Landlords shall pay to the Tenants \$5400.00 This amount represents all the increased rent that the Tenant incurred for one year after they vacated the rental unit.
3. The Landlords shall pay the Tenant \$2500.00 for general compensation.
4. The Landlords 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 \$8028.00
6. The Landlord shall pay the Tenants the full amount owing by October 31, 2022.
7. If the Landlord does not pay the Tenants the full amount owing by October 31, 2022, the Tenant will owe interest. This will be simple interest calculated from November 01, 2022, at 3.00% annually on the outstanding balance.

**September 29, 2022**  
**Date Issued**

A handwritten signature in blue ink that reads "Bryan Delorenzi". The signature is fluid and cursive, with a long horizontal stroke at the end.

Bryan Delorenzi  
Member, Landlord and Tenant Board

Head Office  
777 Bay Street, 12th Floor  
Toronto Ontario M5G2E5

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