

Order under Sections 57 and 135  
**Residential Tenancies Act, 2006**

**File Number:** TNT-05879-18  
TNT-06008-18

RD and SC (the 'Tenants') applied in Board File No. TNT-05879-18 for an order determining that AZ (the 'Landlord') has collected or retained money illegally ('T1 application'); and also applied in Board File No. TNT-06008-18 for an order determining that the Landlord, gave a notice of termination in bad faith ('T5 application').

These applications were heard together in Newmarket on September 26, 2018.

The Tenant, RD and the Landlord attended and testified at the hearing. The Landlord's father, ('RZ') also attended the hearing and testified as a witness for the Landlord.

**Determinations and Reasons:**

**T1 application – illegal collection or retention of money**

Issues and Conclusions

1. The Tenants claim that:
  - (a) the Landlord collected an illegal security deposit of \$250.00 at the commencement of the tenancy and continues to withhold that amount;
  - (b) the Landlord did not pay interest on the last month's rent deposit of \$2,500.00 collected at the commencement of the tenancy on April 1, 2016; and
  - (c) the Landlord gave the Tenants a Form N12 notice of termination and did not pay the full compensation required by section 48.1 of the *Residential Tenancies Act, 2006* (the 'Act').
2. For the reasons that follow, I find that:
  - (a) the Landlord collected an illegal security deposit of \$250.00 and must return that amount to the Tenants;
  - (b) the Landlord did not pay interest on the last month's rent deposit of \$2,500.00 and must pay interest on that amount from April 1, 2016 to March 31, 2018;

(c) the Landlord paid the compensation required by section 48.1 of the Act.

3. The Landlord does not dispute that the Tenants paid a security deposit of \$250.00 when the tenancy began, that the Landlord did not pay interest on the last month's rent deposit, and that the Landlord was required to compensate the Tenants in an amount equal to one month's rent pursuant to section 48.1 of the Act.
4. The Landlord submits that, when the parties met at the rental unit on May 13, 2018 when the Tenants had moved out of the house, they entered into an oral agreement to settle the claims between them on the basis of a net payment of \$1,400.00 made by the Landlord. According to the Landlord, there was damage to the rental unit caused by the Tenants and there had been damage to a door caused earlier in the tenancy by the Tenants. The Landlord testified that the parties agreed to set off amounts claimed by the Landlord for the damage to the rental unit against the amounts owing to the Tenants for compensation, the security deposit and interest on the rent deposit. The Landlord testified that the parties agreed to settle these claims on the basis of a net payment of \$1,400.00 to the Tenants and that the payment was made to the Tenants on that day.
5. Subsection 3(1) of the Act states that the Act applies despite any agreement or waiver to the contrary. Therefore, parties cannot contract out of their rights and obligations under the Act.

*Security deposit and interest on rent deposit*

6. Section 105 of the Act specifies that a landlord may not collect any security deposit other than a rent deposit not exceeding the rent for one month, which must be applied to the last rent period before the tenancy terminates [subsection 106(10)]. Subsection 106(6) of the Act requires that landlords pay interest to tenants annually on the amount of the rent deposit. These are mandatory provisions of the Act.
7. By collecting an illegal security deposit, and by not paying interest on the rent deposit, the Landlord has collected and retained money illegally. That money must be returned to the Tenants despite any agreement to the contrary.

***Compensation under section 48.1***

8. **Section 48.1 of the Act provides that, when a landlord gives a tenant a notice of termination under section 48 of the Act on the ground that the landlord requires possession of the rental unit for the purpose of residential occupation, the landlord "shall compensate a tenant in an amount equal to one month's rent".**
9. **It is noteworthy that section 48.1 does not state that the landlord must pay compensation of one month's rent to the tenant; rather, it states that the landlord must compensate that tenant in an amount equal to one month's rent. That compensation could be provided in a form other than a payment of one month's rent. For example, a reduction equal to one month's rent in outstanding rent arrears or a waiver of the payment of rent for one month**

could be compensation equal to one month's rent. So long as a landlord compensates a tenant in an amount equal to one month's rent, the requirement of section 48.1 may be satisfied.

10. In this case, the Landlord alleged that there was damage to the rental unit for which the Tenants were responsible. The Landlord stated that the repairs would cost more than \$1,000.00. He and the Tenants met, discussed the issues and, according to the Landlord and his father, RZ, the parties agreed to settle their respective claims by offsetting the Landlord's claims against the amount payable to the Tenants and by payment of a net payment of \$1,400.00 to the Tenants.
11. The Tenant, RD, did not deny that he agreed to accept the payment of \$1,400.00 as alleged by the Landlord, although he claims to have been coerced into that agreement. He does not dispute that the \$1,400.00 payment was made by the Landlord, but seeks payment of the \$1,100.00 balance.
12. There is nothing in the evidence before me to suggest that the Tenants were coerced into the agreement. The Landlord and his father may well have persuaded or convinced the Tenants that the proposal was a fair and reasonable way of resolving the issues between them, but there is no evidence of threats or improper pressure upon the Tenants.
13. I am satisfied that the parties agreed that the Tenants' entitlement to compensation was satisfied by a cash payment of \$1,400.00 and by a waiver by the Landlord of any claims for damage by the Tenants to the rental unit. By entering into that agreement, the Tenants agreed that the value of the compensation they were receiving was equal to one month's rent (\$2,500.00).
14. The Tenant, RD testified that, after he and the Landlord entered into the agreement regarding the compensation, and after the cash payment was made to him, he stated to the Landlord that he was accepting the \$1,400.00 as partial payment but would be pursuing the Landlord for the rest of the compensation. Even if I accepted that testimony it would not change the fact that the parties had already reached and implemented the agreement regarding the compensation. Further, this testimony from RD was given only in cross-examination and reply and after the Tenant had already repeatedly agreed that he entered into the agreement but alleged that he was coerced into doing so. I do not accept this testimony.
15. Therefore, I find that the Landlord compensated the Tenants in an amount which the Tenants agreed was equal to one month's rent.

#### **T5 application – bad faith notice of termination**

16. It is not disputed that, on or about March 24, 2018, the Landlord gave the Tenants a Form N12 notice of termination under section 48 of the Act to terminate the tenancy on June

15, 2018 on the ground that the Landlord in good faith required possession of the rental unit for residential purposes by the Landlord.

17. The Tenants found a new rental unit and, on April 5, 2018 gave a notice of early termination effective on May 15, 2018 as permitted under subsection 48(3) of the Act. It is not disputed that the Tenants moved out of the rental unit by May 15, 2018.
18. Section 57 of the Act permits an application by a former tenant if a landlord gave a notice of termination in bad faith, the tenant vacated the rental unit as a result of the notice of termination, and no person mentioned in subsection 48(1) occupied the rental unit within a reasonable time after the tenant vacated the rental unit.
19. There is no dispute that the Landlord gave a notice of termination under section 48 and that the Tenants vacated the rental unit as a result of having received that notice of termination.
20. The issues to be determined are whether the Landlord gave the notice of termination in bad faith and whether the Landlord or any other person described in subsection 48(1) occupied the rental unit within a reasonable period of time after the Tenants vacated the rental unit.

#### Good faith

21. The requirement in section 48 that a landlord, in good faith, requires possession of a rental unit has been interpreted as requiring only that a landlord establish that they genuinely intend to move into the unit and live there for residential purposes for at least one year [*Feeney v. Noble*, [1994] O.J. No. 2049 (Div. Ct.)]. A landlord does not have to prove that they “need” to live in the rental unit, or that their reasons for wanting to do so are reasonable. Neither the reasonableness of the landlord’s intention, nor the fact that the landlord may have other motives for wanting to occupy the unit, nor the fact that there might be other available alternatives is the issue, [*Salter v. Beljinac*, [2001] O.J. No. 2792 (Div. Ct.), and *Feeney v. Noble*]. However, those factors may provide circumstantial evidence from which inferences can be drawn when deciding whether a genuine or sincere intention to occupy the unit exists [*Fava v. Harrison*, [2014] O.J. No. 2678 (Div. Ct.); *Salter v. Beljinac*].
22. The rental unit is a detached five-bedroom home with a finished basement. It was purchased in January, 2016. The Landlord claims that he rented the home for two years until he could “get on his feet”, always intending to move into the unit when he could do so. The Landlord is 27 years old, is single, currently lives with his parents, and states that he intends to move into the rental unit on his own and remain there indefinitely.
23. The Landlord agrees that he has not moved into the rental unit. He states that he is having renovations and repairs done before he moves into the unit. He produced as evidence at the hearing some photographs and a quotation dated May 30, 2018 for \$\$12,500.00 for work to begin on June 15, 2018 and stated that the work began on that date. He testified that the work has not been completed and that he hopes to move into

the home before the end of the year, which would be about seven months after the Tenants moved out.

24. I find that the Landlord gave the notice of termination in bad faith. In reaching this conclusion, I rely on the totality of the evidence, but mainly on the following:

- (a) In late 2017, as the April 15, 2018 expiry of the initial two-year term of the tenancy agreement was approaching, the Landlord told the Tenants that he wanted to enter into a new lease agreement for another year. The parties had ongoing discussions until mid-February, 2018 but they fell apart because the Landlord wished to raise the rent by more than the guideline amount which was not acceptable to the Tenants. While it is the intention of the Landlord at the time the N12 notice of termination that is relevant to a determination of good faith, it is clear that, as of mid-February, 2018, the Landlord did not intend to move into the rental unit and wanted to enter into a new one-year tenancy agreement. I am not satisfied that the Landlord has shown any reason for a change in his intention about one month later when the notice of termination was given other than his dissatisfaction with the Tenants' refusal to agree to increase the rent.
- (b) The Tenants complained about a furnace problem on March 18, 2018. RD testified that the Landlord appeared angry at their insistence that the issue be repaired and threatened to kick them out, saying that the repair was not the Landlord's responsibility. The notice of termination was served a few days later.
- (c) The Landlord did not offer persuasive testimony explaining why he, as a single person, wishes to live on his own in a large, five-bedroom home with a finished basement. Again, while it is not necessary that the Landlord's intention be reasonable if it is genuine, this unexplained factor provides circumstantial support for the inference that the Landlord's stated intention to occupy the rental unit is not genuine.
- (d) Although the Landlord's notice of termination did not require the Tenants to move out until June 15, 2018, the Landlord has known since April 5<sup>th</sup>, 2018 that the Tenants would be vacating the rental unit by May 15<sup>th</sup>. Work did not begin on the repairs/renovations until June 15<sup>th</sup>, and it appears that it will not be completed for another 2 to 3 months. It does not appear from the scope and extent of the work shown in the renovation contract that such work should require six months or more. I find that the Landlord has not occupied the rental unit within a reasonable time after the Tenants vacated the rental unit.
- (e) The Landlord did not present any evidence of steps that he has taken to demonstrate that he intends to move into the rental unit. For example, there is no evidence of any steps by him to arrange to furnish the house. He testified that he intends to do so, but there is no objective evidence to support that claim.

25. I am satisfied on a balance of probabilities and on all the evidence before me that, when he gave the notice of termination to the Tenants, the Landlord did not genuinely intend to move into the rental unit for residential occupation and that he gave the notice of termination in bad faith. He has not moved into the rental unit within a reasonable period of time. It is more likely than not that he intends to either sell or re-rent the unit at a higher rent.

#### Remedies

26. Pursuant to section 57(3) of the Act, after a finding of bad faith, the Board may order that the Landlord pay the former tenant all or part of the increased rent the former tenant has incurred during the one-year period after vacating the rental unit, reasonable out of pocket expenses for moving and storage, an abatement of rent, an administrative fine and make any other order that the Board considers appropriate.
27. The Tenants' expenses for moving and storage are well-documented. They spent \$1,111.97 for a moving company and renting a truck.
28. The Tenants found a comparable rental unit in the same area for \$2,800.00 a month, a \$300.00 increase in rent. Thus, the Tenants are entitled to a rent differential in the amount of \$3,600.00.
29. The Tenants in their T5 application requested that the Board impose an administrative fine on the Landlord. Administrative fines are used by the Board to encourage compliance with the Act, and to deter landlords from engaging in similar activity in the future. I do not consider that a fine is required in this case. I anticipate that the content and other aspects of this Order will be sufficient deterrence to prevent similar activity in the future.

#### **It is ordered that:**

1. The Landlord shall pay to the Tenants the sum of \$336.25. This amount represents \$250.00 collected for an illegal damage deposit and \$86.25 for interest on the last month's rent deposit.
2. The Landlord shall also pay to the Tenants \$3,600.00. This amount represents all of the increased rent that the Tenants will incur from May 16, 2018 to May 15, 2019.
3. The Landlord shall also pay to the Tenants \$1,111.97, for the reasonable out-of-pocket expenses that the Tenants have incurred for moving costs.
4. The Landlord shall also pay to the Tenants \$100.00 for the cost of filing the applications.
5. The total amount the Landlord owes to the Tenants is \$5,148.22.
6. If the Landlord does not pay the Tenants the full amount owing by October 13, 2018, the Landlord will owe interest. This will be simple interest calculated from October 14, 2018 at 3.00% annually on the outstanding balance.

7. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

**October 2, 2018**  
**Date Issued**

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Neil Kaufman  
Member, Landlord and Tenant Board

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