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N12 – Motives and Intentions

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How does a tenant dispute the validity or “good faith” issuance of the N12 application?

In a situation where the tenant can testify or provide evidence that there have been tensions between the parties and a relationship which has, over time, become strained, it is reasonable to raise as a concern the motives and intentions of the landlord in issuing the N12 notice.

In *Fava v. Harrison*¹, the Divisional Court provided that:

In our view, Board Member Van Delft’s conclusion restricts the meaning of the term “good faith” to an unreasonable degree. By excluding any consideration of the landlord’s motives in deciding whether the landlord has acted in good faith, she has unduly restricted the consideration the Board must give to that term.

Which is to say that we should consider the motives when considering good faith. This line of thinking has been upheld by the Board in persuasive matters such as *TSL-84534-17*² where a son wished to take possession of the main floor of a home owned by his parents. The Board, at para 34 and 37 drew an inference from the motives and ruled against the landlord citing tensions between he landlord and tenant in the lead up to the service of the N12 notice.

Moreover, if there have been past attempts to evict the tenant illegally, letters threatening to force the tenant to vacate, or even multiple failed attempts at terminating the tenancy through the Board, evidence of this should be brought to the Chair’s attention. This is demonstrated in cases such as *TSL-86133-17*³ where a landlord wanted to re-take possession of the property for

¹ *Fava v. Harrison*, 2014 ONSC 3352, at para 18

² *TSL-84534-17 (Re)*, 2018 CanLII 42632 (ON LTB)

³ *TSL-86133-17 (Re)*, 2017 CanLII 60857 (ON LTB)

hobbies. The Board determined that the landlord's overriding intention was to evict the tenants due to tensions and found that a primary goal of evicting the tenant does not constitute good faith.

While this provides a brief overview, the law can be very complex, and many aspects are case specific. If you have an issue, call a paralegal at Cochrane Moore LLP in Oshawa for a free consultation.

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