Order under Section 21.2 of the Statutory Powers Procedure Act And Section 57 of the Residential Tenancies Act, 2006

Citation: Esmaeili-Pringle v Swapillai; Rezai 2026 ONLTB 1742
Date: 2026-01-06
File Number: LTB-T-054303-22-RV

In the matter of: 32 Jardine St.
Beaverton Ontario L0K1A0

Between: Jaguar Esmaeili-Pringle — Tenant

And

Antoinette Swapillai
Joseph Swapmillai — Landlords

Ellahe Rezai — Purchaser

Review Order

Jaguar Esmaeili-Pringle (the 'Tenant') applied for an order determining that Antoinette Swapillai, Joseph Swapmillai (the 'Landlords') and Ellahe Rezai (the Purchaser) gave a notice of termination in bad faith.

This application was resolved by order LTB-T-054303-22 issued on February 20, 2024.

On March 19, 2024, the Purchaser Landlord, Ellahe Rezai, requested a review of the order and that the order be stayed until the request to review the order is resolved.

On March 20, 2024 interim order LTB-T-054303-22-RV-IN was issued, staying the order issued on February 20, 2024 and directing the matter to a review hearing.

The request to review was heard on March 10, 2025. On April 8, 2025, interim order LTB-T-054303-22-RV-IN2 was issued granting the Purchaser Landlord’s review request and directing the matter to be heard de novo (anew).

This application was heard de novo on August 26, 2025. The parties were directed to provide written closing submissions on or before August 29, 2025.

The following individuals attended the de novo hearing:

- Jaguar Esmaeili-Pringle – the Tenant
- Kelsie Bradshaw – the Tenant’s agent
- Antoinette Swapillai – the Landlord
- Thirusenthuran Sivapatham – the Landlord’s legal representative
- Jennifer Joseph – the Landlord’s interpreter (Tamil language)
- Karu Kandiah – the Landlord’s witness
- Ellahe Rezai – the Purchaser
- Kristopher Flores – the Purchaser’s legal representative
- Donnub Jafarzadeh – the Purchaser’s witness

Preliminary:

1. On consent of the parties, the application is amended to remove Evan Borrelli as a Tenant and/or Applicant party to the application.

2. The application is also amended on consent of the parties to reflect the appropriate monetary remedies sought by the Tenant.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities.

2. The Tenant’s T5 application was filed on May 19, 2022 and alleges that the Landlord served an N12 notice of termination under section 49 of the *Residential Tenancies Act, 2006* (the Act) in bad faith.

3. The following facts are not in dispute:

    - The rental unit was a detached dwelling. The Tenant resided in the entire unit.
    - The Tenant moved into the rental unit on August 1, 2020.
    - On August 17, 2021, the Landlords served the Tenant with an N12 notice of termination with a termination date of October 31, 2021. The N12 notice was served because the Purchasers required the rental unit for their own use.
    - The Landlords filed an L2 application with the Board to terminate the tenancy and to evict the Tenant (TEL-21192-21).
    - On March 9, 2022, order TEL-21192-21 was issued on consent of the parties terminating the tenancy effective April 15, 2022.
    - The Tenant lawfully terminated on May 5, 2022, by way of Sheriff Enforcement.
    - The Purchaser and/or a member of their immediate family never moved into the rental unit.
    - The rental unit was advertised for rent on May 15, 2022 and was re-rented on July 6, 2022.

Tenant’s Evidence:

4. The Tenant provided oral testimony at the hearing.

5. The Tenant testified that prior to the rental unit being sold, that the Landlords advised the Tenant of their intentions to sell the unit because they could not financially afford the mortgage on the property.

6. The Tenant did not dispute that an agreement of purchase and sale was entered into between the Landlords and the Purchaser in July 2021. The Tenant testified that on or about July 2021, the Purchaser inquired from the Tenant if they would be willing to remain as a tenant if they agreed to an increased rental amount. The Tenant stated that he agreed to this offer but confirmed that no new rental amount or agreement was reached between the parties prior to vacating the rental unit.

7. On or about February 15, 2022, the Purchaser viewed the rental unit a second time and the Tenant stated that during this visit that the Purchaser advised him that their daughter would be moving into the rental unit. The Tenant submitted into evidence an email dated February 14, 2022 titled "buyer revisit" (TT exhibit #1). This email simply serves as the Landlords serving the Tenant with notice to enter the unit on February 15, 2022.

8. After vacating the rental unit, the Tenant discovered that the rental unit was advertised for rent via Kijiji on May 15, 2022 and on MLS on June 17, 2022 for $2,700.00 per month, which is $700.00 more than the rent charged at the time the Tenant vacated the rental unit. The Tenant submitted into evidence a copy of these advertisements / real estate listings (TT exhibit #2).

<u>Landlord's Evidence:</u>

9. The Landlord Antoinette Swapillai provided oral testimony at the hearing. The Landlord testified that they entered into an agreement of purchase and sale (APS) with the Purchasers on July 31, 2021. The Landlord submitted into evidence a copy of this APS (LL exhibit #1).

10. The Landlord stated that the N12 notice of termination was served based on the information passed onto them from their realtor and the Purchaser, which was that the Purchaser required the rental unit for the personal use of them and their family.

11. The Landlord stated that the APS closed on May 9, 2022 and that at no point did the Purchaser advise that they no longer required the rental unit for their own personal use.

12. Karu Kandiah also provided oral testimony at the hearing on behalf of the Landlord. Mr. Kandiah is the relator who was retained by the Landlord during the APS process. Mr. Kandiah stated that at the time the APS was signed, that the Purchaser and/or their agents were advised that the rental unit was tenanted and that the Purchaser indicated that they required vacant possession of the rental unit for their own use.

13. Mr. Kandiah also confirmed that at no point during the APS process did the Purchasers advise of a change in their intent to occupy the rental unit and further stated that the APS was extended twice due to the Tenant not vacating the rental unit and/or awaiting the LTB proceedings to finalize.

14. The Landlord submitted into evidence an affidavit submitted by the Purchaser on October 14, 2021 (LL exhibit #1). This affidavit was the same document that was submitted as part

of the Landlord's L2 application to terminate the tenancy pursuant to file number TEL-21192-21 and confirms that the Purchaser and/or their family required the rental unit for residential occupation.

<u>Purchaser's Evidence:</u>

15. The Purchaser Ellahe Rezai also provided oral testimony at the hearing. Ms. Rezai reiterated at the hearing that she had no intention of residing in the rental unit despite stating so on the affidavit filed with the prior L2 application and stated that she purchased the rental unit for her daughter to reside in to accommodate her daughters change in employment.

16. Ms. Rezai confirmed that her daughter never occupied the rental unit and further confirmed that the unit was advertised for rent shortly after the Tenant vacated the rental unit and after the APS closed. Ms. Rezai stated at the hearing that her daughters' intentions changed due to a change in her employment and because of the Tenant not vacating the rental unit as per the termination date in the N12 notice / the delays in the LTB proceedings.

17. Donnub Jafarzadeh also provided oral testimony at the hearing. Ms. Jafarzadeh is the daughter of the Purchaser.

18. Ms. Jafarzadeh testified that at the time the N12 notice was served, she was a Long-Term Occasional teacher (LTO) with the Ottawa Catholic School Board (OCSB). Ms. Jafarzadeh stated that her contract was ending on November 30, 2021, and that she was applying for a position with the Toronto School Board and as such, required the rental unit as of December 1, 2021 to be closer to work.

19. Ms. Jafarzadeh confirmed at the hearing that her contract with the OCSB was subsequently renewed from December 1, 2021 to June 30, 2022. The Purchaser submitted into evidence a letter from the HR department of the OCSB confirming this (Purchaser exhibit #1).

20. Ms. Jafarzadeh stated that her intention all along was to reside in the rental unit once she obtained employment in Toronto and that the delays in moving into the rental unit were due to the Tenant not vacating in accordance with the N12 notice and obtaining full time employment with Algonquin College as a professor. The Purchaser submitted into evidence an employment acceptance letter from Algonquin college dated June 22, 2022 confirming Ms. Jafarzadeh's new employment effective the fall 2022 semester. (Purchasers exhibit #2).

<u>Findings & Analysis:</u>

21. The N12 notice of termination was served pursuant to subsection 49 (1) (a) of the *Residential Tenancies Act, 2006* (the Act):

> **49** (1) A landlord of a residential complex that contains no more than three residential units who has entered into an agreement of purchase and sale of the residential complex may, on behalf of the purchaser, give the tenant of a unit in the

residential complex a notice terminating the tenancy, if the purchaser in good faith requires possession of the residential complex or the unit for the purpose of residential occupation by,

(a) the purchaser;

22. The Tenant's application was filed pursuant to Subsection 57(1)(b) of the Act and requires the Tenant to prove the following on a balance of probabilities:

    a. The Landlord gave the Tenant an N12 notice of termination under section 49 of the Act;
    b. The Tenant vacated the rental unit as a result of the N12 notice of termination;
    c. No person referred to in subsection 49(1) or 49(2) of the Act occupied the rental unit within a reasonable time after the Tenant vacated

23. In *Elkins v. Van Wissen*, 2023 ONCA 789, the Court of Appeal for Ontario held that when deciding a T5 application relating to an N12 served for purchaser's own use under section 49 of the Act, the LTB must consider the good faith intention of both the landlord and the purchaser. The Court also found that the Board has jurisdiction to order remedies against the purchaser alone, the vendor landlord alone or against both depending on who is found to have acted in bad faith.

24. Based on the evidence and submissions before the Board, I find that the notice of termination was served in bad faith. I further find that the Purchaser is the party solely responsible for the bad faith and that there was no bad faith intent by the Landlords.

25. The evidence before the Board is clear that at the time the agreement of purchase and sale was entered into, that the Purchaser advised the Landlords that they required possession of the rental unit for the own use of their family. The Landlords served the N12 notice in accordance with the Act and based on the information provided by the Purchaser.

26. There was no evidence before the Board to suggest that the Landlords knew or had any indication that the Purchaser would not be moving into the rental unit or that the Purchasers true intentions were for her daughter only to reside in the unit. This finding is based on the testimony of the Landlord's realtor / witness and the affidavit filed with the LTB for the prior application.

27. I am therefore unable to conclude that the Landlords acted in bad faith.

28. The evidence before the Board is also clear that neither the Purchaser or a member of their immediate family occupied the rental unit after the Tenant vacated the rental unit and that the rental unit was advertised for rent 10 days after the tenancy had terminated. I also do not accept the reasons given for either the Purchaser or her daughter not residing in the rental unit after the APS closed.

29. Firstly, the Purchasers testimony that the rental unit was for her daughter's own use only was inconsistent with the information provided to the Landlord, the Tenant and the LTB with respect to the prior eviction proceedings. The affidavit sworn by the Purchaser and filed with the Board clearly states that the use of the unit is for both her and her family and

not just her daughter alone. I therefore find that the Purchaser was required to move into and/or reside in the rental unit after the tenancy had terminated, which was not done.

30. The testimony from the Purchaser's daughter with respect to her intentions and reasons for not moving into the rental unit are also not credible or acceptable given the evidence before the Board.

31. Firstly, the Purchasers daughter testified that her intent was to reside in the rental unit as of December 1, 2021 because he work contract with the OCSB was ending and that she was looking to start new employment with the Toronto school board. The Purchaser's daughter however provided no evidence to support that such a job offer was confirmed for December 1, 2021 with the Toronto school Board and therefore, I find it unlikely that she would plan to relocate over four hours from her current residence when she had no guaranteed employment located near the rental unit.

32. Secondly, the Purchaser took the position that he daughter still maintained an intention to reside after the Tenant had vacated the rental unit, but did not do so because she obtained new employment with Algonquin College. The evidence before the Board however confirms that this new employment was obtained more than one month after the Landlord had already made the decision to advertise the rental unit for rent and therefore, I do not find this testimony to be credible nor do I find that this was a reasonable explanation for the Landlord's daughter to not occupy the rental unit after May 5, 2022.

33. Finally, at both the hearing and in the written submissions, the Purchaser took the position that the reason for not moving into the rental unit as indicated on the N12 notice was because of the Tenant not vacating the rental unit within a reasonable period and due to the delay in going through the LTB process. I do not accept this argument. The Tenant has security of tenure pursuant to section 37 of the Act and had the right to dispute the N12 notice and/or attend a hearing for the notice of termination served. To excuse the Landlord's breach of the Act simply because the Tenant asserted their own rights would result in an absurdity. The Purchasers could have ultimately cancelled the APS if they truly felt that residential occupation was no longer required by themselves or a member of their immediate family.

34. As I have found the Purchaser to be the sole party who caused the bad faith eviction, the remedies below will be ordered solely against the Purchaser and not the Landlords.

<u>Remedies:</u>

Rent Abatement:

35. The Tenant's amended application seeks a rent abatement of $8,890.18, which is a 73% rent abatement for the period of October 14, 2021 (the date the Purchaser served the affidavit for the prior LTB file) to April 17, 2022 (the termination date set out in the prior order terminating the tenancy).

36. An abatement is a contractual remedy designed to address the idea that tenants are paying for a bundle of goods and services and if they do not receive everything they are paying for, the rent should be abated in an amount proportional to the difference between what is being paid for and what is being received.

37. At the hearing and in their written closing submissions, the Tenant argues that his enjoyment of the rental unit was lost due to the stress and fear of being evicted due to the prior N12 proceedings. The Tenant relies on an LTB decision (LTB-T-048832-22) to support this argument.

38. In my view, the Tenant is not entitled to an abatement of rent. The case the Tenant relies on in their request for this remedy is a Board decision and is therefore not binding on me. The facts of the two cases are also distinguishable.

39. In this case, the Tenant continued to reside in the rental unit after receiving the N12 notice and asserted his rights under the Act to not move out in accordance with the notice of termination and to attend a hearing on the matter. There is insufficient evidence before the Board to suggest that the Tenant was unable to use or enjoy the whole rental unit as he clearly knew of his rights to challenge the Landlord's application and await an order from the Board to terminate his tenancy. The Tenant therefore knew that his tenancy would not be terminated until a Board order was issued.

40. As such, the Tenant's request for a rent abatement is denied.

Rent Differential:

41. The Tenant's amended application also seeks a rent differential of $9,600.00. This amount represents a $800.00 increase in rent for the Tenant's new rental unit for a period of 12 months.

42. The parties agreed at the hearing that the monthly rent prior to the tenancy terminating was $2,000.00 per month. The Tenant testified at the hearing that his new monthly rent was $2,800.00 per month. The Tenant submitted into evidence a copy of his new tenancy agreement confirming this increase in rent (TT exhibit #3).

43. As I am satisfied that the Tenant vacated the rental unit because of a notice of termination served in bad faith, this requested remedy is granted.

Moving and Storage Expenses:

44. The Tenant's amended application also seeks $5,134.82 for costs related to moving and storage. The costs claimed are broken down as follows:

- Uhaul Truck May 2022 - $467.15
- Uhaul Trailer May 2022 - $231 37
- Uhaul Car Hauler May 2022 - $62.09
- Uhaul Truck July 2022 - $355.50
- Storage 1 Month (May 2022-June 2022) - $423.83 (includes sign on fee, lock ect.)
- Storage 10 Months (July 2022-April 2023) - $250.00 per month x10 Total $2,500.00
- Gas for My Moving Truck: $177.28, $75.00, $80.05 Total - $332.33
- Pay Friends for Moving Help - $360.00
- Hotel stay for 3 Nights - $402.55

45. Based on the evidence and submissions before the Board, I find that all of the above noted amounts should be awarded to the Tenant except for the $2,500.00 claim for storage fees from July 2022 to April 2023.

46. The Tenant submitted into evidence invoices and receipts for the U-Haul rentals (TT exhibit #4). The Tenant also submitted into evidence bank statements / records to support the costs claimed for the gas for the moving truck, paying friends to help move and the hotel expenses (TT exhibit #5). These amounts were also not challenged by the Landlord or the Purchaser.

47. With respect to the claim for the storage fees, the Tenant only submitted into evidence bank records for the period of May 2022 to June 2022 (TT exhibit #6). The Tenant at the hearing provided no receipts, invoices or bank records for the period of July 2022 to April 2023 and further could not recall exactly how much he was charged each month for this period. As this is the Tenant's application, the onus rests with the Tenant to prove the amounts claimed on a balance of probabilities. As the Tenant was unable to confirm or provide sufficient evidence for the costs incurred from July 2022 to April 2023, this portion of the requested remedy is denied.

48. As such, the Tenant is only entitled to $2,634.82 for moving and storage costs.

General Compensation:

49. The Tenant's amended application also seeks $11 ,375.00 in general compensation. This amount is broken down as follows:

- $10,000.00 for pain and suffering
- $1,375.00 for lost wages

50. The Board has the authority to award damages for pain and suffering. The Divisional Court confirmed this jurisdiction in *Mejia v. Cargini, [2007] O.J. No. 437* (Ont. Div Ct.) in circumstances where the damages claimed are the result of a breach of the landlord's contractual or statutory obligations. When assessing the claim for general compensation, the Board must consider the overall impact the breach had on the tenant.

51. The Tenant testified that following his eviction from the rental unit that his life was in shambles and that he felt defeated. The Tenant stated that at the time he resided in the rental unit, he was caring for his brother who suffers from mental health concerns / disabilities. The Tenant also resided in the rental unit with four pets (2 cats, a dog and a snake).

52. The Tenant stated that following the eviction, he was homeless for about two months and lived in his car. As a result of the Tenant's living conditions for the months of May and June 2022, the Tenant had to place his brother in a care home and had to give away his pet cats and snake.

53. The Tenant also testified that because of his living conditions for the months of May and June 2022, that he lost his employment due to taking excess time off work and not being able to adequately conduct his work duties due to the stress incurred. The Tenant also

stated that his new rental unit following this eviction was located over an hour away and was smaller in size.

54. Based on the evidence and submissions before the Board and in assessing the impact the bad faith eviction had on the Tenant, I find that the Tenant is entitled to $10,000.00 in general compensation.

55. The evidence before the Board suggests that the bad faith eviction had a substantial impact on the Tenant’s day-to-day life and living arrangements which cannot be undone. The Tenant ultimately had to relocate his brother, had get rid of three of his pets and further had to relocate a substantial distance from his previous community.

56. I do not find however that the Tenant is entitled to the costs claimed for loss of work / employment as the Tenant did not provide any documentary evidence such as pay stubs and/or a termination letter from his employer to confirm that his employment was lost during the period after the tenancy had termination or the amount of the lost wages because of these proceedings.

57. As such, the Tenant is entitled to $10,000.00 in general compensation.

Filing Fee:

58. The Tenant incurred $53.00 for the costs of filing the application and is entitled to reimbursement of these costs.

59. This Order contains all the reasons for this matter. No further reasons will issue.

It is ordered that:

1. The Purchaser shall pay the Tenant is $22,287.82. This amount represents:
   - $9,600.00 for increased rent the Tenant has incurred for a period of 12 months.
   - $2,634.82 for the reasonable moving, storage and other like expenses that the Tenant has incurred as a result of having to move out of the rental unit.
   - $10,000.00 in general compensation
   - $53.00 for the cost of filing the application.
2. The Purchaser shall pay the Tenant the full amount owing by January 17, 2026.
3. If the Purchaser does not pay the Tenant the full amount owing by January 17, 2026, the Purchaser will owe interest. This will be simple interest calculated from January 18, 2026 at 4.00% annually on the balance outstanding.

January 6, 2026
Date Issued

Fabio Quattrociocchi
Member, Landlord and Tenant Board

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