Order under Section 57
Residential Tenancies Act, 2006

Citation: Kim v Sukhdeo, 2026 ONLTB 1743
Date: 2026-01-06
File Number: LTB-T-018233-24

In the matter of: 1711, 36 LEE CENTRE DR
TORONTO ON M1H 3K2

Between: Deok Hoi Kim
Su Jin Lee — Tenants

and

Neelanand Sukhdeo — Landlord

Deok Hoi Kim and Su Jin Lee (the 'Tenants') applied for an order determining that Neelanand Sukhdeo (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on November 12, 2025.

The Tenants, their legal representative Grace Yun, the Landlord and his legal representative Divakar Paramsothy attended the hearing. The Landlord called Selina Budhoo, Bibi Sukdheo and Rabichand Sukdheo to testify.

Determinations:

1. The Tenants say the Landlord repossessed their rental unit in bad faith as no one named in the notice of termination moved in and the Landlord listed the unit for sale within two months. The Landlord says his plans changed by circumstances beyond his control. For reasons that follow, the application is granted. The Landlord will be ordered to pay the Tenants the increased rent they paid for one year and general compensation.
2. The Tenants' request to amend their application in the form delivered on November 5, 2025 was granted because the Landlord did not oppose it and on considering the factors in Rule 15 in of the Board's *Rules of Procedure*, the Board agreed the amendment is appropriate, would not prejudice any party and is consistent with a fair and expeditious proceeding.
3. To succeed on this application, the Tenants must prove each of the requirements of paragraph 57(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') on a balance of probabilities:

(a) The Landlords gave the Tenants notice of termination under section 48 of the Act (the ‘N12 notice’);

(b) The Tenants vacated the rental unit as a result of the N12 notice;

(c) No person referred to in subsection 48(1) of the Act occupied the rental unit within a reasonable time after the Tenant vacated; and

(d) The Landlord served the N12 notice in bad faith.

4. The Act also contains a reverse onus in subsection 57(5) that says if a landlord gives a notice under section 48 and then puts the unit up rent within one year of the tenant vacating, the landlord is presumed to have given the notice in bad faith “unless the contrary is proven on a balance of probabilities”. In this case, because the Landlord listed the rental unit for sale on January 28, 2024, it is the Landlord that must prove it is more likely than not they were not acting in bad faith in giving the N12 Notice to the Tenants.

5. In some situations, the Board may determine that an unforeseen change in circumstances which prevents the person named in the N12 Notice from taking possession is sufficient to show that the Landlord did not act in bad faith.[1]

6. In this case, the parties agreed that the Landlord gave the N12 notice on August 24, 2023 saying he needed the unit for his parents and that the Tenants vacated the rental unit on December 8, 2023.

7. There can be no question that the Tenants vacated the rental unit because the Landlord gave the N12 notice. The Landlord and Tenants were in regular communication to coordinate the Tenants’ move-out date and there is no suggestion that the Tenants vacated the unit for any reason other than because the Landlord had asked them to. I accept the Tenants’ testimony that they did want to vacate but felt they had no choice once they were given the N12 notice.

8. The Landlord testified that he gave the Tenants the N12 notice on August 24, 2023 appointing November 1, 2023 as the date of termination because his parents B.S. and R.S. wanted to live in the rental unit. They were downsizing their own home and considered the rental unit well suited to their needs because unlike their own home, the rental unit has no stairs and was therefore more convenient as advanced age and ill health made negotiating stairs impractical for B.S. R.S. testified to add that doing lawn maintenance and snow removal at his house was becoming a challenge and he too embraced the prospect of living in the rental unit instead because it was a condo.

9. Although he seemed unsure of the exact date, the Landlord testified that he thinks his spouse R.S. was pregnant as of August 24, 2023. The point the Landlord was making is that he and R.S. were planning on moving to a larger home to meet the needs of their expanding family around the time he served the N12 notice. But when his spouse’s pregnancy became medically complex, the family decided they should all live together so B.S. can help with childcare.

[1] See for example: *TST-99804-18 (Re)*, 2019 CanLII 134477 (Ont. LTB); *TST- 80046-16 (Re)*, 2017 CanLII 28627 (Ont. LTB); and, *TST-66921-15 (Re)*, 2016 CanLII 39740 (Ont. LTB).

10. The family also had financial concerns. The Landlord worried that carrying the mortgage on the rental unit and contributing towards his parents' mortgage may prove unsustainable since it was now uncertain when R.S. might be able to rejoin the workforce. The Landlord testified his financial problems became apparent in November or December 2023. So at some point in December 2023, the Landlord decided to sell the unit. He listed it for sale in January 2024 and signed an agreement of purchase and sale on February 20, 2024.

11. B.S. verified the Landlord's testimony. She and R.S. had originally planned to sell their own home so they could help the Landlord financially. She made preparations for moving into the rental unit but in the end, the family determined they would all live together so they can assist the Landlord with childcare and with money. The Landlord's spouse S.B. described her complicated labour and the challenges she faced as a new mother. She testified she felt lucky to have her in-laws' assistance but confirmed this was not the original plan. It was a situation forced upon them one intervening event—her complicated pregnancy. It is not an ideal arrangement because as a young couple she and the Landlord would prefer not to be sharing accommodations with their parents but this arrangement continues, for S.B. now works outside of the home as is in particular need of support from her in-laws.

12. The Court of Appeal for Ontario has confirmed that a landlord's good faith obligations towards the tenants in respect of an N12 notice continue beyond the date it was given to a tenant.[2] It is not sufficient for the Landlord to demonstrate that the occupant intended to live in the unit at the time the N12 Notice was given. Rather, a landlord must act in good faith throughout HIS dealings with his tenants.

13. I cannot accept the Landlord's evidence because I found his disparate explanations vague and incoherent and because they were unsupported by any documentary corroboration. The Landlord's testimony struck me as deliberately evasive at times (for example he was unwilling to commit to when he realized his spouse was facing a complicated pregnancy or when he realized he may be faced with financial pressures or to what extent he was contributing to the cost of his parents' home). I found his explanations to defy logic for he did not explain why he would be carrying the costs of the rental unit while his parents lived there even as they planned to sell their own house to help him financially. None of the witnesses explained why the Landlord was contributing towards his parents' mortgage and what if any assistance his parents gave, or were expected to give, once they unburdened themselves of that property. There was no evidence that ever happened in fact.

14. Critically, the one intervening, allegedly unforeseen event, that caused the Landlord to change his plans—his spouse's complicated pregnancy and subsequent need for his child's hospitalization in the ICU—were entirely uncorroborated by any documentation.

15. In summary, I found the Landlord and his witnesses presented a well-rehearsed but incoherent narrative that lacked the air of reality.

16. Guided by subsection 202(1) that requires me to ascertain the real substance of all transactions and activities relating to the rental unit and the good faith of the parties, I find the Landlord has failed to rebut the presumption of bad faith on a balance of probabilities.

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[2] *Elkins v. Van Wissen*, 2023 ONCA 789 at paras 42-45.

The application will be allowed because the Tenants proved all the requirements in subsection 57(1)(a) on a balance of probabilities.

Remedies

17. Having proven the grounds for their application, the Tenants are entitled to those remedies listed in subsection 57(3) that they can prove on a balance of probabilities.

18. The Tenants would like to recover the increased rent they paid on their new lease. Their search for a place to live was hampered by necessary travel and health challenges. They had to stay in the same area because of their children's school. Given the urgency, they agreed to a new lease whose rent costs $952.50 more per month than at the rental unit.. Their new condo is in an adjacent building and is more or less identical to the rental unit. This evidence was unchallenged by the Landlord. Therefore, the Landlord must pay the Tenant $11,430.00 for the increased rent that the Tenants have incurred because I find this head of damages and the quantum claimed have been proven on a balance of probabilities.

19. The Tenants also seek $2,000.00 for "physical and emotional damages". The Tenants testified to the stress and inconvenience of having to move while juggling other commitments such work and health. I find the Tenants led insufficient evidence to connect their alleged physical and emotional damage to this unlawful eviction. Still, the Board recognizes that being unlawfully evicted from one's home is an affront to one's dignity and the stress and inconvenience of an unplanned more are properly compensable under paragraph 1.1 of subsection 57(3). Based on the evidence presented and my knowledge of similar cases decided by the Board, I assess $2,000.00 as general compensation which I consider fair and reasonable in the circumstances of this case.

20. The Tenants requested $1,400.00 in lost wages characterized as reasonable out-of-pocket moving and other like expenses. Lost wages are neither expenses nor out-of-pocket. This head of damages is not recoverable under paragraph 1.2 of subsection 57(3) as pleaded.

21. An administrative fine is not warranted in this case. An administrative fine is sometimes levied to encourage compliance with the *Residential Tenancies Act, 2006* and to deter this Landlord and landlords generally from engaging in similar activity in the future. This remedy is not normally imposed unless a landlord has shown a blatant disregard for the Act and other remedies will not provide adequate deterrence and compliance. I am not persuaded the Landlord's actions were a deliberate attempt to flout the Tenants' rights. I find it at least equally likely they were born of a misapprehension of the law. Furthermore, substantial monetary remedies have already been granted and I find no further deterrence is needed.

It is ordered that:

1. The total amount the Landlord shall pay the Tenants is $13,478.00. This amount represents:

   - $11,430.00 for increased rent the Tenants have incurred for the one year.
   - $2,000.00 for general compensation

- $48.00 for the cost of filing the application.

2. The Landlord shall pay the Tenants the full amount owing by January 17, 2026.
3. If the Landlord does not pay the Tenants the full amount owing by January 17, 2026, the Landlord 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

Nersi Makki
Member, Landlord and Tenant 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.