Order under Section 57
Residential Tenancies Act, 2006

Citation: Bunn v Capital 3 Inc, 2026 ONLTB 1638
Date: 2026-01-06
File Number: LTB-T-000213-23

In the matter of: 4, 310 MITTON STREET SOUTH
SARNIA ON N7T 3E6

Between: Thomas Bunn — Tenant

and

Fraser Pollock — Landlord

and

Capital 3 Inc. — Former Landlord

Thomas Bunn (the 'Tenant') applied for an order determining that Fraser Pollock (the 'Landlord') and Capital 3 Inc (the 'Former Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on March 3, 2025.

Only the Tenant and the Landlord attended the hearing. The Tenant was represented by Melissa F. Bradley. The Landlord was represented by David A. Price. The Former Landlord did not appear.

Determinations:

1. This and four related applications in files LTB-T-059493-22, LTB-T-059581-22, LTB-T-061470-22, and LTB-T-014625-23 came before my in the same hearing block. Following case management discussions with the parties, I determined I would hear them one after the other.

2. On hearing submissions and considering the factors identified in Rule 21.8 of the Board's *Rules of Procedure*, I denied the Landlord's request for an adjournment so he might secure the attendance of an agent, officer or employee of the Former Landlord. The Landlord had already been granted an adjournment at the first appearance on May 7, 2024 to investigate and identify the necessary parties. On September 25, 2024, all parties appeared before the Board for a case management conference represented by licensees of the Law Society. They consented to an order releasing the individual respondents associated with the Former Landlord. Under the circumstances, I found the Landlord's

expectation that Phil Pacheco would appear to give evidence was unreasonable given that no one had served him a summons.

3. The Tenant opposed any further adjournments pointing out that the passage of time has been prejudicial. A full day of hearing time had been allocated for this and the companion applications marked peremptory on all parties. Therefore I determined that no further adjournment was required to permit an adequate hearing.

Position of the Parties

4. The Former Landlord sold the residential complex to the Landlord. Before closing, the Former Landlord gave the Tenant two N12 notices of termination under section 49 of the *Residential Tenancies Act, 2006* (the 'Act') requiring him to vacate the rental unit claiming a purchaser in good faith requires possession of the unit for residential occupation.
5. The Tenant says he was evicted in bad faith as the purchaser did not move in and in fact never had any intention of using the unit for residential occupation.
6. The Landlord agrees that he did not take possession of the rental unit for residential occupation. The Landlord takes no position on whether the termination was in good faith or bad faith. He submits that it in either case it was not done at his behest and he disavows any knowledge of or involvement in the Former Landlord's actions or responsibility for their consequences.

Law

7. Subsection 57(1)(b) of the Act requires the Tenant to prove each of the following on a balance of probabilities:
    - The Former Landlord gave the Tenant an N12 notice of termination under section 49 of the Act;
    - The Tenant vacated the rental unit as a result of the N12 notice of termination;
    - 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; and
    - The Former Landlord served the N12 notice of termination in bad faith and/or the Landlord acted in bad faith.

Findings

8. The Landlord signed an agreement of purchase and sale ('APS') agreeing to buy this five-unit residential complex from the Former Landlord knowing that at least some of the units were tenanted. But the parties had agreed that the Former Landlord would deliver vacant possession on closing. As it happened, the Former Landlord was unable to deliver vacant possession because some tenants chose not to vacate in response to notices of termination and also declined offers to terminate. The APS was amended to reflect the Landlord's agreement to take title with two of the units tenanted in exchange for a discount in the purchase price. He understood that he would then become the landlord of the unit with all the responsibilities that entails.

9. The was not told when the APS was signed. The cover page of a solicitor's reporting letter was produced showing the sale closed on April 27, 2022.

10. The parties agree that before closing, the Former Landlord gave the Tenant two N12 notices of termination declaring a purchaser intended to move into the rental unit. Both N12 notices purport to be signed by Phil Pacheco on behalf of the Former Landlord. The first was dated December 16, 2021, appointed March 31, 2022 as the date of termination and has marked Reason 2, stating the Former Landlord has entered into an agreement to sell the unit and that the purchaser requires it for himself. The other one was dated January 26, 2022, appointed March 1, 2022 as the date of termination and has also marked Reason 2, without identifying the intended occupant of the unit.

11. This Tenant vacated the unit on February 28, 2022. He testified he did so as a result of the N12 notices and I find on a balance of probabilities that he did because there was no evidence to contradict it.

The Former Landlord acted in bad faith

12. The only disputed issues are whether the Former Landlord gave the N12 notices in bad faith and whether the Landlord has any responsibility. In cases of this sort, the Board is faced with two related issues: (1) did the Landlord in good faith require possession of the rental unit for residential occupation? And (2) did the Former Landlord give the N12 notice in bad faith?

13. In *Elkins v. Van Wissen* (2023), the Court of Appeal for Ontario observed that an agreement of purchase and sale involves two parties. The legislation expressly links the conduct of the vendor and purchaser. The purpose of clause 57(1)(b) of the Act is to ensure that the sale of a rental unit cannot be used to unlawfully evict a tenant. So in deciding an application under subsection 57(1)(b) the Board must consider both the landlord's and the purchaser's good faith.[1]

14. In this case, there can be no question that the Landlord did not in good faith require the unit for his own use. And I agree with the Landlord that he did not act in bad faith because I accept that he had no knowledge of how the Former Landlord planned to secure vacant possession to fulfil his obligations under the APS. He testified that he never advised the Former Landlord that he required the unit for his own use and he did not deliver the affidavit required by subsection 71.1(1) of the Act. He also testified he had no communication with the Tenant. I accept the Landlord's evidence because the Tennant led no evidence, and elicited no concessions in cross-examination, that would cast doubt its veracity.

15. On considering the totality of the evidence and guided by section 202 of the Act, I find the Tenant has proven on a balance of probabilities that the Former Landlord acted in bad faith because he delivered two N12 notices under section 49 falsely declaring that the Landlord wished to move in when it is obvious that he did not. I can also infer bad faith from the fact that the Former Landlord had a self-interest in perpetrating this ruse: he was

[1] *Elkins v. Van Wissen*, 2023 ONCA 789 at paras. 42-43, 56-57.

at risk of breaching the APS if he could not remove the Tenant. But I cannot find that the Landlord acted in bad faith or was otherwise complicit in the Former Landlord's bad faith.

The Landlord did not act in bad faith

16. As explained in *Elkins v. Van Wissen* (2023), whether the vendor and purchaser colluded or independently acted in bad faith turns on the facts of each particular case.[2] The bad faith of one cannot be imputed to the other without evidence. In this case, I find there is insufficient evidence that would allow me to infer the Landlord acted in bad faith.

17. No one produced the APS. The only documentary proof surrounding the circumstances of the sale was filed by the Landlord. It consisted of an excerpt from his conveyancing solicitor's reporting letter showing the sale transaction closed on April 27, 2022 and fragments of correspondence with his solicitor leading up to closing. The Landlord tendered this evidence to show that he had negotiated a holdback where a portion of the purchase money would be forfeited to himself as a penalty if the Former Landlord failed to deliver vacant possession. Whatever else may have transpired between the parties is not in evidence. As far as the Landlord was concerned, he had never communicated an intention to take the rental unit for his own residential use and he had never asked the Former Landlord to give N12 notices.

18. The Tenant did not challenge the Landlord on his failure to produce the APS and did not ask about its particulars such as the clause providing for vacant possession, assignment of rent from the sitting tenants, indemnity provisions if any nor the exact terms of the amendment that was eventually agreed. Without this circumstantial evidence, I have no basis for inferring wrongdoing on the part of the Landlord. All that has been proven is that the offending N12 notices given by the Former Landlord were closely connected in time to the Landlord's purchase.

19. Instead, the Tenant submitted I should infer bad faith on the part of the Landlord because by his own admission, he is a sophisticated real estate investor. The Landlord testified he is fairly knowledgeable about real estate matters but not necessarily about the law or LTB processes. The Tenant challenged the Landlord's evidence by pointing to blogs on social media and on his company's website where he dispenses advice about buying and renovating real estate with a view to maximizing rental income. The Landlord also tells his readers that in event of conflict about parking spaces, one may need to resort to the LTB. The Tenant argued this evidence shows the Landlord is in the business of renovating rental units and that he is familiar with LTB processes. From that the Tenant asked me to infer that the Landlord is also knowledgeable about the law of residential tenancies. Therefore, the argument goes, having contracted to buy a residential complex with sitting tenants, the Landlord knew that the Former Landlord could not deliver vacant passion without abusing N12 notices. Or, at a minimum, the Landlord had an obligation to satisfy himself that the Former Landlord would not be breaking the law in his efforts to deliver vacant possession. Also, the Landlord stood to benefit from the Former Landlord's deception. His choice to remain silent suggests bad faith.

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[2] *Elkins v. Van Wissen*, 2023 ONCA 789 at para. 55.

20. Also, the Landlord’s social media postings confirm that he stood to gain by taking vacant possession so he could remodel and earn more rental income. .

21. I cannot make the inferential leaps the Tenant asks because they are not supported by evidence or logic. I cannot accept that the Landlord had the legal education the Tenant would impute to him. And even if he did, there is no evidence that the Landlord was aware of anything suspicious in the dealings and transactions triggering an obligation to make enquiries.

22. Furthermore, the inference the Tenant invites relies on an assumption that is wrong as a matter of law: there are lawful ways a vendor can secure vacant possession in anticipation of a sale. The Landlord’s unchallenged evidence is that had bargained for and expected to receive vacant possession on closing and that he never indicated an intention to live in the rental unit. That the Former Landlord would give bad faith notices of termination, and that Landlord ought to have known he would, are not inferences I am prepared to make on this evidentiary record. I cannot find that the Landlord’s sophistication in combination with his profit motive leads to the inference that he was deliberately blind to the Former Landlord’s bad faith and therefore complicit in it.

23. Guided by section 202 of the Act 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, and considering the totality of the evidence presented, I find the Tenant has not proven on a balance of probabilities that the Landlord acted in bad faith.

Remedies

24. Having proven the grounds for his application, the Tenant is entitled to those remedies that he can prove on a balance of probabilities.

General Compensation

25. The Tenant seeks $9,000 for general compensation. This head of damages is intended to compensate the Tenant for mental distress, inconvenience and other intangible non-pecuniary losses arising from this unlawful eviction.

26. The Tenant gave detailed evidence of the hardships endured since he was unlawfully evicted from his home. He testified that he could not afford another rental unit and has been relying on friends to give him shelter. He has lost the only stable housing that was realistically available to him. Although he is not sleeping rough, he is effectively homeless in the sense that he has no realistic prospect of securing housing of his own given his modest income and his irregular participation in the workforce. His alcohol use has increased. The Tenant did not suggest that this unlawful eviction has caused his addiction but described it as the “tipping point”. I accept that being evicted has aggravated the Tenant’s already fragile mental health which is a compensable loss.[3]

27. The Tenant has proven on a balance of probabilities that his quality of life has been significantly diminished by this unlawful eviction. His losses are substantial. Based on the

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[3] *Taft v. Whitesands Apartments*, [2009] O.J. No. 3198 at para. 28 (Div. Ct.).

evidence presented and my knowledge of similar cases decided by the Board, I find $9,000.00 is fair and reasonable compensation.

Abatement

28. The Tenant also requested an abatement equal to 100% of his rent for one year. Abatement of the rent is intended to refund tenants that portion of the rent they have paid in exchange for a package of goods and services but have not received.

29. The Tenant says receiving the bad faith notices reduced his enjoyment of the rental unit. He acknowledged there is no evidence of actual interference with his right to reasonable enjoyment but submitted that because he did not incur a rent differential, and because he can’t afford another rental unit, it is only fair that the respondents refund him a year’s worth of rent.

30. I accept that the spectre of being evicted from his home caused the Tenant fear and anxiety that interfered with his enjoyment of the unit from December 16, 2021, when he was given the first N12 notice to when he vacated on February 28, 2022. I find this claim sounds in general damages and I have accounted for it in the general compensation awarded. No claim for abatement of rent has been proven on a balance of probabilities.

Administrative Fine

31. The Tenant requested the Board order the respondents to pay an administrative fine for breaching the Act. The Board’s Interpretation Guideline 16 dated December 15, 2018 states that an administrative fine is a remedy to be used to encourage compliance with the Act and to deter landlords from engaging in similar activity in the future. This Guideline is not a binding statement of the law but I accept it as the correct interpretation of the discretion contained in paragraph 3 of subsection 57(3) of the Act.

32. This remedy is not normally granted unless a landlord has shown a blatant disregard for the Act and other remedies will not provide an adequate deterrence and compliance. The objectives of deterrence involve both specific and general deterrence. I must consider the nature and severity of the breach, the effect of the breach on the tenant, and any other relevant factors.

33. On considering the totality of the evidence, I am not persuaded that an administrative fine is needed in this case to encourage compliance with the Act. I find the substantial remedies ordered against the Former Landlord in this and the companion cases are sufficient to bring home to this respondent and to landlords generally that trampling on tenants’ rights to advance their own financial interests carries severe consequences.

<u>Miscellaneous</u>

34. I have considered what order to make against the respondents and I have determined that remedies granted shall be payable by the Former Landlord alone because the claim against the Landlord has not been proven on a balance of probabilities.

35. The Tenant did not renew his request for costs originally made at the first appearance on May 7, 2024.

36. The Tenant did not incur a fee for filing the application.

It is ordered that:

1. The total amount the Former Landlord shall pay the Tenant is $9,000.00 for general compensation.
2. The Former Landlord shall pay the Tenant the full amount owing by January 17, 2026.
3. If the Former Landlord does not pay the Tenant the full amount owing by January 17, 2026, the Former 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

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