



Order under Section 4 of the Statutory Powers Procedure Act and Section 57 of the Residential Tenancies Act, 2006

Citation: BARBER v CHURCHILL, 2025 ONLTB 90387

Date: 2026-01-20

File Number: LTB-T-024234-23

In the matter of: 51 NORLAND CIR
OSHAWA ON L1L0A7

Between: WILLIAM BARBER
CAROLYN VINCENT
JONATHAN RHEAD
Tenants

And

JAMIESON CHURCHILL
Landlords

WILLIAM BARBER, CAROLYN VINCENT and JONATHAN RHEAD (the 'Tenants') applied for an order determining that JAMIESON CHURCHILL (the 'Landlord') gave a notice of termination in bad faith.

The application was heard by videoconference on December 13, 2023, and concluded on November 14, 2024. The member who presided at the hearings is no longer a Member of the Landlord and Tenant Board. The Associate Chair of LTB determined that the Member is unable to issue a decision in this matter. The matter has therefore been reassigned to me on the Associate Chair's own initiative under the authority of subsection 4.4(1) of the *Statutory Powers Procedure Act*. The audio recording of the hearing held on December 13, 2025, was unavailable. As the reassigned adjudicator, I have in accordance with the authority of subsection 4.4(6) of the *Statutory Powers Procedure Act* elected to hear the application *de novo*.

This application was heard *de novo* by videoconference on January 8, 2026. The Landlord and the Tenants attended the hearing.

When the capitalized word "Tenant" is used in this order, it refers to all persons identified as a Tenant at the top of the order.

Determinations:

Preliminary Issue:

1. At the hearing, Tenants wished to introduce items into evidence, several of which were audio files of some length. The Tenants submitted they would be satisfied if I reviewed this evidence following the hearing.
2. The Landlord did not object to this audio evidence being reviewed after the conclusion of the hearing.
3. Therefore, the evidence (Doc-2399331, 2399320, 2399322, 2399271, 2412847, 2604879) was reviewed following the hearing, but before making my decision in this matter.

Tenants' T5 Application

4. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.

Background

5. On or about January 15, 2022, the Landlord gave the Tenants an N12 notice of termination ('N12') for the personal use of the Landlord's spouse (Doc-2399364 & Doc-2399366). The notice stated the termination date of March 31, 2022. The Landlord filed an L2 application with the Board (LTB-L-017067-22). However, as the Tenants had vacated by the date of the hearing, the application for eviction was moot and the Landlord sought costs only on the L2 for damage-related claims.
6. The Tenants vacated the rental unit on or about May 21, 2022. However, the Tenants had rented rooms at the property. An unauthorized occupant named "Zeke", and another female remained in the rental property. The Landlord states that Zeke and the female did not vacate the rental unit until June 11, 2022.
7. The parties agree that the rental unit was put on the MLS and sold (Doc-7083137). The property was listed for sale on May 24, 2023. The Landlord's evidence is that the property closed on July 21, 2023.

Applicable Law

8. Subsection 57(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') requires the Tenant to prove each of the following on a balance of probabilities:
 - The Landlord gave the Tenant an N12 notice of termination ('N12') under section 48 of the Act;
 - The Tenant vacated the rental unit as a result of the N12 notice of termination;
 - No person referred to in subsection 48(1) of the Act occupied the rental unit within a reasonable time after the Tenant vacated; and
 - The Landlord served the N12 notice of termination in bad faith.
9. When the first three elements of the test found in s. 57(1)(a) of the Act are made out, which I find they are in this matter, the onus then shifts to the Landlord to rebut the presumption that the notice was given in bad faith.

10. Section 202(1) of the Act, states: “In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so, (a) may disregard the outward form of a transaction or the separate corporate existence of participants; and (b) may have regard to the pattern of activities relating to the residential complex or the rental unit.”

Landlord's Evidence

11. The Landlord does not contest that neither he, nor his spouse, moved into the rental property. However, his position is that there was a material change in circumstances which necessitated a change of plans.
12. I note the N12 indicates only his spouse would be moving into the rental unit. He explained that he inadvertently did not check off himself on the N12 notice because he thought it was self-explanatory that he was moving as well. Section 212 of the Act indicates that Board forms, even if there is an error on the form, are substantially compliant with the Act provided they do not significantly prejudice a party. Thus, I do not make a finding that this error invalidates the notice.
13. The Landlord owned a house in another city some distance away but have family in the Oshawa area where the rental unit is situated. The Landlord is a 50% owner of the property; the other owner is his brother. The Landlord was going to use the proceeds from the sale of his home to buy his brother out.
14. The Landlord states that the plans for the family changed in about June 2022. The termination date on the N12 was March 31, 2022, which would give the Landlord time to clean and update the rental property so that the family could move in, in either July or August. However, the Landlord learned that Zeke remained in the rental unit past the termination date. He did not regain possession of the rental unit until June 11, 2022.
15. This caused several issues. First, the Landlord was unable to begin the clean-up and upgrading process to prepare the rental unit for occupation by his family. Second, Zeke, upon learning that he would have to leave, attempted suicide. It is not clear whether this took place inside the rental unit. Regardless, the Landlord's children became aware of this and began to call the rental unit the “murder house.” The Landlord states he did not tell his children about the situation. Rather, they likely overheard the conversation between him and his wife. The children then became adamant that they did not want to move into the “murder house.”
16. In addition, while visiting the rental property, the Landlord and the Landlord's father had an altercation with Zeke. The Landlord states that he believed his father was going to be assaulted that day. This incident led to further concerns because the Landlord's wife and family were concerned about the family's safety overall should they move in.
17. The Landlord's family had a camping trip planned in August. Between the delays getting possession and the extensive clean-up required, he was unable to get the property ready before the camping trip. By the time he was able resume work on the rental unit, it was too late to enrol the children into school for September.

18. Given all of these circumstances, the family determined that it would not be a good choice to move into the rental property. The Landlord continued working on the repairs and upgrades and listed the property in May 2023.
19. The Landlord agreed, in cross-examination, that he had underestimated the length of time it would take to clean the rental unit. His evidence was that he removed 2 tonnes of garbage from the home and that it smelled significantly of pet urine. The Landlord also admitted that his family members had warned him it would take much longer than his initial 8-to-10-week estimate. I do not make findings of bad faith because the Landlord underestimated the time to repair and restore the rental unit. The Landlord testified he had taken some vacation and thought he would be able to manage it in the timeframes he had in mind, and I accept this explanation.
20. The Landlord also agreed, in cross-examination, that he had provided a key to the Zeke. The Tenants suggest that doing so implied a tenancy agreement with Zeke. The Landlord explained that he gave Zeke a key because he mistakenly believed he could be found accountable for locking Zeke out.
21. I am not of the view that simply issuing a key to Zeke implies that a tenancy was formed. First, the Landlord had already told the Tenants he would not approve an assignment of the tenancy to Zeke. Second, there was no “meeting of the minds” between the parties. In other words, there was no agreement on important terms of the contract.

Tenants' Evidence

22. In considering s. 202(1) of the Act, I considered the evidence the Tenants pointed me to Doc-2399331, which is an audio file the Tenants in May 2021. The Landlord approached the Tenants about terminating the tenancy by way of an N11 form. The Tenants suggest that audio recording demonstrates bad faith on behalf of the Landlord.
23. The Landlord, by way of explanation, states that this May 2021 conversation arose from the fact the rental unit's roof needed to be replaced. However, when he applied for a loan to pay for this repair, the loan application was denied in-part because of the state of the property. I accept the Landlord's evidence that this was a part of a larger discussion which he broached with the Tenants because of repairs needed.
24. Regardless, I do not find that this audio file demonstrates a bad faith intention of the Landlord because the Landlord does not agree with the statements the Tenants put to him. Many of the statements that imply bad faith are made by the Tenants, not the Landlord. For example, at 07:15, the Tenants ask the Landlord if he plans to sell the rental unit, and he responds “long-term, yeah.” The Tenant goes on to state how the Landlord wants the maximum he can get, and this is a “greedy-greedy grab-grab” in light of housing prices during the pandemic. However, the Landlord denies this and explains there are other people involved.
25. Additionally, the Tenants state that the Landlord made threats to them, and this evidence was to be found in Doc-2399320, 2399322, and 2399271. In reviewing this evidence, I find that these conversations arose from settlement discussions which are privileged and should not be considered in my findings.

26. Doc-2604879 is a 60-page document with the text messages between the parties going back to 2015. I was not referred a specific page(s) to review. The Tenants submit this is evidence of the “attacks” on the Tenants and that these attacks became personal. I reviewed entries from 2020 onwards as these seem to concern the timeframe in contention. The evidence records numerous conversations many of which the Landlord is asking to be reimbursed for past-due rent and requesting to see the property. Although there are numerous messages, I do not find that the Landlord’s messages attacked the Tenants. Rather, I find the Landlord was trying to get a sense of what was transpiring since the Tenants had not left the rental unit and were not responsive to many of his questions.
27. Finally, the Tenants asked me to review “move-out” photos (Doc-24212847). I assume the Tenants submitted this evidence to demonstrate that they had left the rental unit in a significantly tidier state than the Landlord claimed. Thus, the clean-up should not have affected the Landlord’s timelines. However, the photos showed only one washroom and the kitchen. I am unable to find that these photos demonstrate that the Landlord’s statements about the extent of the clean up was less significant than claimed given they show only two rooms.
28. After considering all of the evidence and testimony, I am persuaded that the Landlord discharged his onus of proof on a balance of probabilities that there was a material change in circumstances which is why the Landlord did not move into the rental property. I find the Landlord’s evidence to be credible. For example, the reference to “murder house”. In my view, this is consistent with how children would view an attempted suicide in the context of a house. I also find that this would have been off putting to impressionable children. This, coupled with the delays resulting from the overholding unauthorized occupants, which the Landlord had not intended, caused the change in the Landlord’s plans.
29. I note that in Order LTB-L-017067-22 issued October 12, 2022, which was the hearing of the Landlord’s L2 application pursuant to the N12 notice of hearing, the Landlord is noted to have stated that the tenancy ended June 11, 2022. This correlates to the time period that the unauthorized occupants remained in the rental unit. However, the Tenants’ T5 application states that the Tenants moved out of the rental unit on May 21, 2022. The Tenants’ evidence shows that the rental property was not listed until May 24, 2023. This is beyond the one-year limitation period pursuant to s.57(6)(b) of the Act although this was not raised during the hearing. As I have already given reasons above, it is not necessary to determine the applicability of the limitation period to this application.
30. This order contains all of the reasons within it. No further reasons shall issue.

It is ordered that:

1. The Tenants’ application is dismissed.

January 20, 2026
Date Issued

Jane Dean
 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.