



Order under Section 57 Residential Tenancies Act, 2006

Citation: Galbraith v Weenen, 2026 ONLTB 6083

Date: 2026-01-22

File Number: LTB-T-038277-25

In the matter of: 42 LOGAN AVE
TORONTO ON M4M2M8

Between: Chadwick Galbraith Tenant

And

Mark Weenen Landlord

Chadwick Galbraith (the 'Tenant') applied for an order determining that Mark Weenen (the 'Landlord') gave a notice of termination in bad faith ('T5 application').

This application was heard by videoconference on January 12, 2026. The Tenant attended the hearing and did not speak to duty counsel prior to the hearing. The Landlord and the Landlord's legal representative Roz Bianchi attended the hearing.

Determination on a Preliminary Issue:

1. The Tenant requested to admit three photographs for the hearing which were uploaded to the Tribunals Ontario Portal ('TOP') on May 8, 2025, at the same time the Tenant filed the T5 application. The Tenant states that the photographs were not served on the Landlord and the photographs show new flooring installed at the rental unit after the Tenant vacated, a real estate listing showing the residential complex for sale, and an open house sign on the residential complex property.
2. The Landlord states that he had not reviewed the photographs, nor discussed them with his legal representative prior to the hearing.
3. Other than an N12 notice of termination ('N12 notice') and three photographs, there were no other documents which the Tenant intends to rely on for the hearing. The photographs were taken at the residential complex after the Tenant had vacated the rental unit. Therefore, I accept the Landlord would have some knowledge regarding their content. I determined the prejudice to the Tenant would outweigh the prejudice to the Landlord if the three photographs were disallowed from being admitted at the hearing. However, I stated at the hearing that it would be procedurally unfair to the Landlord to admit the photographs without the Landlord having an opportunity to review them. I stood the matter down and the Tenant emailed the three photographs to the Landlord and the Landlord's legal

representative and allowed the Landlord and their legal representative the opportunity to review and discuss the photographs, which they did. The three photographs were admitted for the hearing and the matter proceeded.

Determinations:

4. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenant the sum of \$11,548.00 (\$10,800 for 12-month rent differential + \$700.00 moving expenses + \$48.00 application filing fee) by February 23, 2026. The Landlord must pay an administrative fine of \$1,000.00 to the Landlord and Tenant Board ('LTB') by February 23, 2026. The Tenant's claim for general compensation in the amount of \$35,000.00 is withdrawn.

T5 application

5. The residential complex is a two-bedroom house.
6. It is undisputed that on December 27, 2024, the Landlord served the Tenant with an N12 notice by email. The N12 notice notes that the Landlord and their child in good faith, require possession of the rental unit for the purpose of residential occupation for a period of at least one year.
7. 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:
 - 1) The Landlord gave the Tenant an N12 notice of termination under section 48 of the Act;
 - 2) The Tenant vacated the rental unit as a result of the N12 notice of termination;
 - 3) No person referred to in subsection 48(1) of the Act occupied the rental unit within a reasonable time after the Tenant vacated; and
 - 4) The Landlord served the N12 notice of termination in bad faith.
8. The parties do not dispute the first two requirements of the legal test set out above. The termination date in the N12 notice is March 30, 2025 and the Tenant vacated the rental unit on March 25, 2025.
9. The Landlord refutes the third and fourth requirements of the legal test above. The Landlord's position is that the Landlord gave the Tenant the N12 notice in good faith and the Landlord and his daughter occupied the rental unit immediately after the Tenant vacated.
10. For the reasons set out below, I find the Tenant has proven of all the requirements in subsection 57(1)(a) of the Act for the reasons provided below.

Was the N12 notice served in bad faith?

11. Based on the totality of the evidence before me, I find it invokes the reverse onus clause under subsection 57(5) of the Act. This section of the Act stipulates that if a notice is given by a landlord under section 48 of the Act and then the landlord places the rental

unit/residential complex up for sale within one year of the tenant vacating, it is presumed the landlord has given the N12 notice in bad faith. The onus then shifts to the landlord to prove on a balance of probabilities that the N12 notice was served in good faith. In this case, the Landlord must establish (on a balance of probabilities) that when he served the N12 notice on the Tenant, the Landlord and his daughter genuinely intended to move into the rental unit.

12. Based on the evidence before me and on a balance of probabilities, I find the Landlord has not met their burden of proof to support that the Landlord served the N12 notice in good faith for the reasons set out below.

Chain of events

13. The Tenant testified that he moved out of the rental unit because of receiving the N12 notice.
14. It is undisputed that the Landlord paid the Tenant one month compensation plus an additional \$700.00 for the Tenant to vacate the rental unit by March 25, 2025 which was prior to the termination date in the N12 notice.
15. The Tenant states he moved into a three-bedroom house in the area so his daughter could continue to attend the same school. The Tenant states the new place he moved to is also a house. He states it is larger than the residential complex, has three bedrooms, and more storage space. He states the monthly rent is higher and is \$4,500.00 per month. The Tenant did not produce a copy of the lease agreement for the house he moved to. The Tenant states the monthly rent at the rental unit was \$3,300.00 which the Landlord does not dispute.
16. The Tenant states in mid April 2025, he received a text message from friends who were living near the residential complex. The Tenant states that the text message advises that the residential complex is for sale. The Tenant states he did a search online around April 26, 2025 and found the listing showing the residential complex for sale. The Tenant produced a photograph of the real estate listing which the Tenant states was taken about one month after the Tenant vacated the rental unit. The photograph notes the address of the residential complex for sale and that the property has been listed for 14 days.
17. The Tenant states he attended an open house at the residential complex on April 26, 2025. He states the real estate agent let him into the house. The Tenant states he took a photograph of newly renovated floors at the residential complex when he attended the open house. The Tenant produced a photograph of the open house sign and a photograph of the newly renovated floors.
18. The Landlord states that he and his ex-wife of several years co parent their daughter who was around 17 years old at the time the N12 notice was served. He further states in October 2024, his ex-wife's mother was diagnosed with Cancer and this was after his ex-wife discovered that her father was diagnosed with dementia.
19. The Landlord states that he was living in Vietnam for business and in November 2024, he learned that his ex-wife and their daughter were having significant problems living together at their home located in Vaughan.

20. The Landlord states that around December 15, 2024, his ex-wife's mother was hit by a car and the Landlord was advised that the fighting between his daughter and ex-wife had significantly escalated. The Landlord states the relationship between his daughter and his ex-wife had become beyond what he could have imagined.
21. The Landlord states he decided to move back to Toronto to assist with the situation involving his daughter and his ex-wife with the plan that he and his daughter would live together at the residential complex. The Landlord states that the residential complex is the only residential property that he owns in Canada. The Landlord states on December 27, 2024, the Landlord served the Tenant with the N12 notice which indicates that the Landlord and his daughter intend to move into the rental unit.
22. The Landlord states on March 23, 2025, he arrived in Toronto and stayed with his brother for a few days. He states that he moved into the rental unit on March 25, 2025 which was the same date that the Tenant moved out. He states the rental unit was not furnished but the Landlord purchased some mattresses and had brought some bedding with him.
23. The Landlord states that his daughter was working in Vaughan and would be attending college in the fall 2025 to become a flight attendant. The Landlord produced a copy of the enrolment letter to support she would be attending college in the Fall of 2025.
24. The Landlord states his daughter moved into the rental unit on March 26, 2025. He states she began commuting to Vaughan which took her two hours each way and that she told him after commuting for two days that it was not sustainable. He states that she stayed at the rental unit for a total of two nights and three days before moving back to Vaughan to live with her mother.
25. The Landlord states that a family meeting was held on March 30, 2025 and the solution that he and his family came up with was to put the residential complex up for sale. The Landlord states that the proceeds from the sale would be used to purchase another house in Vaughan where he would live with his daughter which would be closer to his daughter's part-time job and the school she would be attending full-time in the fall of 2025.
26. The Landlord states that he hired a realtor to sell the residential complex in Toronto and to assist the Landlord with finding another house in Vaughan. The Landlord states the realtor advised him that the rental unit needed some "sprucing up". The Landlord states he hired a company to replace the flooring inside the rental unit because the previous flooring was old and worn. The Landlord states that the house at the residential complex was then quickly staged by the realtor.
27. The Landlord states the residential complex is 1,140 square feet and was listed on the MLS site on April 24, 2025. He states that his realtor advised him during the first open house on April 26, 2025 that the Tenant attended the open house.
28. The Landlord states the real estate market softened, and the property never sold. The Landlord states that he lived at the residential complex until May 21, 2025 and then moved back to Vietnam to attend to his business. He states he stayed in Vietnam until November 2025 and then he then moved back to live in the rental unit where he resides today. He states he attended the rental unit once since he moved from there in May 2025. The Landlord produced a copy of an Enbridge gas utility bill in his name in the amount of

\$259.82 dated December 2025. He also produced an Enbridge gas utility bill in the amount of \$142.58, also in his name and dated March 28, 2025. He states this bill was from the time the Tenant resided at the rental unit.

29. The Tenant asked the Landlord if he was aware that serving an N12 notice which results in Tenant vacating and the Landlord not living in the rental unit for a period of one year constitutes bad faith. The Landlord's response was that he is not a "forms guy" and he served the N12 notice upon being advised by his property manager. The Landlord states he checked off the boxes and completed the N12 notice and there was no ill intent when the Landlord served it on the Tenant.
30. The Landlord states the N12 notice was not served in bad faith because at the time he served it on the Tenant, it was the Landlord's intention to live at rental unit with his daughter but her travel commute time became unreasonable. The Landlord states it was this change in circumstance that caused the Landlord and his daughter to discontinue living in the rental unit. The Landlord states "a family needs what family needs and he put his family's needs first". He states the situation between his daughter and her mother still exists but his daughter continues to live with her mother in Vaughan as it is close to her part-time job and the school she attends full-time.
31. The Landlords ex-wife, I.V. testified. She testified that the Landlord is her ex-husband and the father of their daughter. She states that she was aware that her ex-husband served the Tenant with an N12 notice in December 2024. She testified that both her parents were experiencing health issues around that time and that she was having problems with her daughter who was 17 years old at the time. She testified that she cannot recall when her ex-husband returned to Canada from Vietnam and if the Tenant was still residing in the rental unit. She testified that that she believes her ex-husband intended to move into the rental unit with their daughter.
32. The Landlord requests a dismissal of the application on the basis that at the time the N12 notice was served, it was served in good faith and the unforeseen, intervening circumstances which occurred do not constitute a finding of bad faith. The Landlord relies on two Divisional Court decisions. The first decision, *Feeney v. Noble*, 1994 CanLII10538 (ON SC) in which the Court determined the test of good faith is a genuine intention to occupy the rental unit/residential complex. The second decision relied upon by the Landlord is *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC). In the second decision, the Court determined that it is not important what the landlord's motive is to occupy the rental unit, rather it is the reasonableness of the landlord's intention.
33. The Landlord also relies on an Ontario Court of Appeal decision, *Elkins v. Van Wissen*, 2023 ONCA 789. This decision addresses the Divisional Court's dismissal of an appeal of an LTB decision which dismissed a tenant's T5 application. The LTB determined the vendor landlords did not act in bad faith when they issued the N12 notice under section 49 of the Act (for purchaser's own use). The Court of Appeal determined that the LTB "artificially narrowed the assessment of bad faith" to when the N12 notice was given under s. 49 of the Act. The Court of Appeal found that it is an error of law for the LTB to restrict its consideration to the evidence at the point in time when the landlord gives the tenant a s. 49 termination notice and not consider all the evidence before it which is relevant to the landlord's bad faith under s. 57(1)(b) of the Act.

Analysis

34. The Landlord's daughter did not testify at the hearing. I find this to be concerning as she was one of the individuals who was to be moving into the rental unit as indicated on the N12 notice and confirmed by the Landlord's testimony. While the Landlord testified to the reasons why his daughter was to be moving into the rental unit and the reason why she did not remain at the rental unit, none of this information was corroborated by the Landlord's daughter. Further, there was no opportunity to explore the intentions of the Landlord's daughter moving into the rental unit by putting questions to her and being able to assess her evidence. As a result, I draw an adverse inference resulting from the Landlord's daughter not testifying at the hearing.
35. I afford little weight to the testimony of the Landlord's ex-wife, I.V. This is because she was not the person who was to be moving into the rental unit. I.V. testified that she could not recall when the Landlord returned from Vietnam to move into the rental unit, and if the Tenant was still living in the rental unit. Based on this information, I find that I.V. was not able to provide relevant detail to corroborate the Landlord's testimony as it relates to what was occurring at the rental unit around the time the Tenant vacated and the time that the Landlord states he and his daughter moved into the rental unit.
36. I do not find the Landlord's testimony persuasive in supporting that both he and his daughter had a genuine intent to move into the rental unit. The Landlord states that he moved into the rental unit on the same day that the Tenant moved out, March 25, 2025. The Landlord states that he purchased a few mattresses and brought some bedding with him. There were no other items the Landlord mentioned that he brought when moving into the rental unit. I find this odd because usually when people are moving into another place to live that is vacant, they will bring other household items with them such as pots/pans, dishes, kitchen utensils, and furniture. The Landlord made no mention of moving any such items into the rental unit or mentioned any steps he took to purchase these items. He testified that he was moving from Vietnam and his daughter was moving out of the house where she was living with her mother. Therefore, it would have been reasonable that would have needed to have obtain these items and have them when moving into the rental unit.
37. Further, the Landlord made no mention of setting up any utilities or services when he moved into the rental unit in March 2025, other than referencing an Enbridge gas bill. The Landlord produced copies of two utility bills, both from Enbridge Gas. One of the utility bills is dated March 28, 2025 and according to the Landlord's testimony, this bill represents the gas usage when the Tenant lived in the rental unit. The other Enbridge gas bill is dated December 24, 2025 which aligns with the Landlord's testimony that he moved back into the rental unit in November 2025. The Landlord testified that his daughter only stayed at the rental unit from March 26, 2025 until March 29, 2025 but he remained there until May 21, 2025. There were no other utility bills produced, or copies of any other bills for services such as internet which would have supported that the Landlord was living at the rental unit from March 2025 - May 2025. The Landlord only referenced the March 28, 2025 Enbridge gas bill and states that it represents the time period when the Tenant lived in the rental unit.

38. While the Landlord testified that his daughter could no longer live at the rental unit because of the round trip daily 4-hour commute back and forth from Toronto and Vaughan and after two days of her doing this, it was no longer sustainable. I find it odd that prior to the Landlord arranging to move from Vietnam to Toronto and arranging for his daughter to move from Vaughan to downtown Toronto, that no mention was made by the Landlord at the hearing that a search had been conducted via the internet to estimate the approximate travel time required for his daughter's daily commute. I find it would have been reasonable to commence this step prior to putting the chain of events in place which led to serving the Tenant with the N12 notice, the Tenant vacating the rental, the Landlord and his daughter moving in, and then the Landlord's daughter moving back to live with her mother within 72 due to the commute being unsustainable.
39. Based on the Landlord's testimony that his daughter only stayed at the rental unit for three days and two days, and the items inside the rental unit only consisted of some mattresses and bedding, I find that the Landlord's daughter did not really move into the rental unit, rather she stayed there temporarily for a few days. As a result, I find that she did not occupy the rental unit.
40. I also find the timing when the Landlord decided to put the residential complex up for sale supports that the Landlord did not genuinely intend to move into the rental unit. The Landlord states that the family decided on March 30, 2025 that the best solution would be to put the residential complex up for sale which was within 24 hours of his daughter leaving the rental unit to move back in with her mother. Based on both the testimony of the Landlord and I.V., the relationship between I.V. and their daughter was stressful and was beyond what the Landlord could have imagined. Therefore, I find it odd that the Landlord's daughter would move back in with her mother right away when there had been significant steps taken by the Landlord to enable him and his daughter to move into the rental unit in the first place.
41. The Landlord states he hired a realtor and someone to replace the flooring at the residential complex as the floors were worn. The Landlord testified the house was staged quickly by the realtor and was listed on MLs on April 24, 2025 which is less than 30 days after the Tenant vacated. The Landlord does not contest that the Tenant attended the first open house on April 26, 2025. While the Landlord testified that the residential complex was put up for sale due to a change in circumstances, I am not persuaded by this. The Landlord made the decision to sell the residential complex within 5 days of the date he states he moved into the rental unit and it was listed on the market less than one month after the Tenant vacating. I find the significant change in the Landlord's plans and the rate at which the Landlord quickly put the steps in place to list the residential complex all support that the Landlord and his daughter did not genuinely intend to move into the rental unit.
42. The Landlord states that he remained in the rental unit until May 21, 2025 before deciding to move back to Vietnam. I note in April 2025 and May 2025, the residential complex was listed on the market for sale. I find it would be reasonable for the Landlord to have an interest in awaiting to see if the property sells. I accept the Landlord's testimony that it did not sell. As I noted that the Landlord did not produce any corroborating evidence to support that he moved into the rental unit such as further utility bills or internet bills for April 2025 and May 2025. I find this supports that the Landlord more likely than not, did not

move back into the rental unit at this time. Therefore, I find he was not occupying the rental unit. While the Landlord states he has moved back to the rental unit and has been living there since November 2025, I find this is not a reasonable timeframe for him to occupy the rental unit since the Tenant vacated in March 2025.

43. While the Landlord testifies that he is not a “forms guy” and was unaware when he completed the N12 notice regarding the requirement to occupy the rental unit for a period of at least one year, this does not excuse the Landlord from following the requirements set out within the Act.
44. I do not accept the Landlord’s argument that the focus needs to be on the Landlord’s intentions at the time the N12 notice was served and that intervening acts do not support a finding of bad faith. This is not consistent with *Elkins* which stipulates that s. 49 of the Act (s. 48 is applicable in the case before me) must be considered together with s.57(1) of the Act. I find *Elkins* requires that the LTB consider all relevant evidence to the Landlord’s bad faith under subsection 57(1) and that it would be an error in law for the LTB to only consider the evidence as it relates to the point in time when the Landlord served the N12. *Elkins* notes that in doing so it precludes the LTB from ascertaining the true substance of the transaction (required under s. 202 of the Act) and conducting a fair assessment of good faith.
45. *Salter and Feeney* both reinforce that the test of good faith is the genuine intent to occupy a rental unit/residential complex. For the reasons, I address above, I find the Landlord and his daughter did not genuinely intend to occupy the rental unit.
46. Based on the above reasons, I find that the Tenant has established all of the elements of the legal test required under s 57(1)(a) of the Act.

Remedies

47. The T5 application claims an administrative fine, a 12-month rent differential of \$14,400.00 (\$1,200.00 per month x 12 months), and \$2,350.00 for moving expenses.
48. The T5 application claims \$35,000.00 for general compensation but at the hearing the Tenant withdrew their claim for general compensation.
49. The Landlord must pay a fine of \$1,000.00. This is to deter the Landlord from engaging in similar action in the future. It is unknown if the Landlord will continue to reside in the rental unit or if he will not try to re-rent it.
50. The Landlord must pay to the Tenant a 75% rent differential in the amount of \$10,800.00 for the increased rent that the Tenant will incur for a one-year period after the Tenant moved out of the rental unit. While the Tenant did not produce a copy of the new lease agreement, I accept the Tenant’s oral testimony that the monthly rent for the house he moved into is \$4,500.00 per month as it is a three-bedroom house, and has more storage space compared to the rental unit. I find the Tenant to be credible based on the Tenant answering questions and providing details during the hearing in a manner which was straight forward and consistent. I accept the uncontested evidence that the rental unit was a two-bedroom house and the monthly rent was \$3,300.00. The rent differential calculation is based on \$4,500.00 per month for the new rent minus \$3,300.00 per month for the old

rent = \$1,200 rent differential/month x 12 months = \$14,400.00. As I determined that the Tenant is entitled to 75% of the rent differential for a period of 12 months, this amount totals \$10,800.00 (75% of \$14,400.00).

51. The Tenant claims a total of \$2,350.00 for moving, storage and other like expenses. I find that the Landlord must pay the Tenant \$700.00 for the reasonable out-of-pocket expenses for moving, storage and other like expenses that the Tenant has incurred because of having to move out of the rental unit. The Tenant provided a breakdown of the expenses as follows: \$1,600.00 for garbage/junk removal arranged through the company 1-800 Got Junk, \$200.00 for boxes, and \$500.00 for moving supplies. The Tenant did not produce any receipts for the hearing. I accept the Tenant's oral testimony and I accept that it would have been reasonable that the Tenant incurred some expenses for moving. Therefore, I award the Tenant \$700.00 for the claimed costs relating boxes and moving supplies. I do not find the expense of disposing of garbage and junk should be a cost paid by the Landlord as the disposal of items was a choice made by the Tenant and not a requirement of having to move. Therefore, the Tenant is not entitled to its claimed cost of \$1,600.00 for garbage/junk removal.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$11,548.00. This amount represents:
 - \$10,800.00 for increased rent the Tenant will incur for the one-year period from March 2025 to March 2026;
 - \$700.00.00 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; and
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by February 23, 2026.
3. If the Landlord does not pay the Tenant the full amount owing by February 23, 2026, the Landlord will owe interest. This will be simple interest calculated from February 24, 2026 at 4.00% annually on the balance outstanding.
4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.
5. The Landlord shall pay to the Landlord and Tenant Board an administrative fine in the amount of \$1,000.00 by February 23, 2026.

January 22, 2026
Date Issued

 Kimberly Parish
 Vice Chair, 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.

Payment of the fine must be made to the LTB by the deadline set out above. If not paid, the outstanding amount may be sent to a collection agency and/or the party owing the money may not be permitted to file a new application until it is paid in accordance with section 196 the Act.

The fine can only be paid by money order, bank draft or certified cheque payable to the "Minister of Finance". The payment can be mailed or couriered to the LTB at 25 Grosvenor Street, Ground Floor, Toronto, ON M7A 2G6 or dropped off at most Service Ontario locations.