



**Order under Section 57
Residential Tenancies Act, 2006**

File Number: LTB-T-084273-24

In the matter of: 2417, 150 EAST LIBERTY ST
TORONTO ON M6K3R5

Between: ROBERT SEAN FOX Tenant

And

SHIDAN BATENI Landlord

ROBERT SEAN FOX (the 'Tenant') applied for an order determining that SHIDAN BATENI (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on May 29, 2025, at 09:00 am. The member who presided at the hearing is on leave. The Associate Chair of the Landlord and Tenant Board has determined that the Member who heard the application 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. As the reassigned adjudicator, I have in accordance with the authority of subsection 4.4(6) of the Statutory Powers Procedure Act elected to make a decision on the basis of the existing evidentiary record.

The Landlord Representative Sassan Emam, the Landlord, and the Tenant attended the hearing.

Preliminary issues:

1. At the outset of the hearing the Landlord Representative requested an adjournment submitting they were only retained three days prior, after the Landlord out of anxiety consulted a friend, who they had previously represented. They also submitted they had not had an opportunity to review all of the Tenants 100 plus pages of disclosure, and although a declaration was provided the Landlord's daughter was not available to give direct testimony as they had a school project that was due. The Landlord Representative also submitted that they had a medical appointment that was previously scheduled.
2. In response The Tenant was opposed to the request submitting the Notice of Hearing (NOH) was sent 4 months prior, giving the Landlord ample time to retain counsel, and that the daughter was a student and believed was not in class today whereas in later date which would be more difficult to accommodate.

3. Having considered both parties submissions the member denied the request without providing reasons. Having reviewed the recording and submissions made, I am satisfied as to the reasonableness of the members decision.
4. Specifically, given the NOH had been sent out four months prior, and the main reason the Landlord Representative was requesting the adjournment was accommodate their schedule even though they were not obligated to take the Landlord on as a client, I am satisfied to have grant the adjournment would have been prejudicial to the Tenant.

Determinations:

5. The rental unit was a 634 square foot bedroom plus den condo with one bathroom. The lawful monthly rent was \$2,024.00.
6. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities.
7. It was the Tenant's uncontested submission that after receipt of the N12 Notice to terminate the tenancy they vacated the rental unit on March 14, 2024, and following which the rental unit was re-listed for rent September 12, 2024, and leased as of October 16, 2024.

Landlord gave N12 for own use in bad faith

8. Subsection 57(5) of the Act states for the purposes of an application under clause (1) (a), it is presumed, unless the contrary is proven on a balance of probabilities, that a landlord gave a notice of termination under section 48 in bad faith, if at any time during the period described in subsection (6) the landlord,
 - advertises the rental unit for rent;
 - enters into a tenancy agreement in respect of the rental unit with someone other than the former tenant;
 - advertises the rental unit, or the building that contains the rental unit, for sale;
 - demolishes the rental unit or the building containing the rental unit; or
9. The Landlord testified that their daughter moved into the rental unit on March 28, 2024, after purchasing and moving in furniture on March 27, 2024. They also testified to taking over responsibility for the hydro and internet on behalf of their daughter. This was all supported by receipts and the elevator booking entered in evidence.
10. They then testified that their daughter received an oral offer for a co-op in Windsor Ontario, which required her to begin screening to include a medical which in turn required her to move there, renting a room on October 10, 2024, with the assistance of her father. They also testified that they entered into a three-month short-term rental agreement for the rental unit, to cover this cost, wherein they kept the utilities in their name as they expected their daughter to return. They entered a job offer, dated November 15, 2024, from the City of Windsor and a copy of the lease for the short-term rental agreement from October 16, 2024, until January 16, 2025, in evidence to support this.

11. The Landlord Representative then entered in evidence a declaration from the Landlord's daughter dated May 21, 2025, a scan of her driver license and another declaration from the mover who moved the daughter on October 10, 2024, dated September 21, 2025.
12. The Landlord then testified that the short-term rental agreement was extended and still ongoing as their daughter had not returned and was still attending university in Waterloo, where she was attending at time of serving the N12 Notice, enrollment paperwork entered in evidence in support. They then testified that their daughter wanted to live downtown for the off period before the co-op was supposed to start either in September 2024 or January 2025 with the intent of securing a co-op in Toronto, wherein the co-op would last four months, and her daughter intended to extend working for one year while living in the rental unit.
13. On cross examination they testified they did not know when their daughter started applying for the co-op in Windsor. They also testified that their daughter started the co-op on January 6, 2024.
14. In response the Tenant testified that they believed the N12 Notice was served in bad faith given the unit would only be occupied for four months at a time and the fact that it was re rented at a rate of \$700.00 higher than they were renting it.
15. They then testified that as a result of the N12 notice they were initially required to move back in with their parents in Mississauga, commuting by car vice walking thereby temporarily increasing the commute time. As of June 2024, they moved into and are sharing 1,000 square foot two-bedroom condo, with their girlfriend, whom they split the rent of \$3,900.00. They also changed work locations reducing the initial difference in distance.
16. On cross examination they refuted that their situation had improved since vacating the rental unit or that they still had a dedicated workspace in the home.

Remedies sought.

17. The remedies sought pursuant to the Tenant's application are:

- a. The Landlord pay a fine;
- b. \$165.03 in out-of-pocket expenses for moving and storage, supported by invoices entered in evidence both at time and post hearing;
- c. \$24,341.00 in General compensation representing 12 months of rent they were paying less the key deposit.
- d. The cost of filing the application.

Final submissions

18. The Tenant submitted that the Landlord never served the N12 Notice in good faith given the unlikelihood of occupation for a period of 12 months as required. They also submitted

as determined in TSL-80318-16, the temporary occupation does not meet the intent of the Act.

19. In response the Landlord Representative submitted that the Landlord was forthright, reiterating previous testimony and submissions made and that the daughter did move in but due to change of circumstances was required to move out.
20. In regard to the remedies sought, it was their submission that the alleged inconveniences incurred were only for three months, as such did not believe the general compensation sought is reasonable, and \$1,000.00 to \$2,000.00 would be more appropriate. They also stated they would differ to the Member's discretion regarding post hearing submissions by the Tenant.

Analysis

21. As noted above, pursuant to Subsection 57(5) of the Act, wherein the Landlord has served a Notice of termination and within one year advertises the rental unit for rent or enters into a tenancy agreement in respect of the rental unit with someone other than the former tenant, it creates a presumption of bad faith.
22. Having considered the above testimony, evidence, and for the reasons that follow I am not satisfied on the balance of probabilities the Landlord has rebutted that presumption.
23. Firstly, although the Landlord submitted a declaration and gave testimony of their daughter's intent, in the absence of direct testimony that could be crossed, I give this less weight.
24. Secondly, the documentary evidence provided does not support the Landlord's narrative. For one they testified to moving their daughter into the rental unit on March 28, 2024, whereas the daughter's declaration states she moved in April 2024. Then there is the co-op offer, it is dated November 15, 2024, approximately a month after her daughter moved out and two months after they began advertising the rental unit.
25. Furthermore, the offer does not provide the start date, in fact it appears to have been redacted. In response to this question the Landlord testified it was personal and not want it shared, but then goes on to testify that it started in January 2025. This is illogical and doesn't support the reason for the redaction
26. It also clearly states that the placement is contingent on the completion of the screening requirements including a medical that the Corporation "City of Windsor" would arrange and pay for". Indicating it had not been completed yet. This contradicts the Landlord's own testimony that this, as part of the screening, necessitated the move in October 2024, again a month prior to receipt of November 15, 2024, offer. Accordingly, for these reasons and that above I have serious concerns with the credibility of the Landlord's evidence and testimony.
27. Then there is the issue regarding genuine intent. Specifically, the Landlord testified that the co-op placement could have started in September 2024 or January 2025 and there was no guarantee of their daughter receiving a placement in Toronto. As such the daughter could not have been certain they would be able to reside in the rental unit beyond either date or

therefore could have genuinely intended to occupy the rental unit for 12 months as required by the Act. The drivers license and elevator booking do give credence that they did move in for a time, however, as cited in TSL-80318-16, temporary and or occasional occupation is not contemplated in subsection 48 of the Act. As such for this reason and those above I am not satisfied on the balance of probabilities the Landlord rebutted the presumption, as such they did serve the N12 notice in bad faith and the Tenant has proven their case.

Remedies

28. Prior to the conclusion of the hearing the Member directed they would reserve on whether not to accept the evidence provided by the Tenant post hearing. The Landlord Representative also stated they would differ to Member's discretion. Accordingly, I shall consider the Tenant's post hearing submissions when determining the remedies awarded.
29. Based on the invoices provided both at time of hearing and after I am satisfied the Tenant is entitled to \$245.62 representing the truck rental and TaskRabbit moving help. in out-of-pocket expenses for moving and storage, supported by invoices entered in evidence both at time of and post hearing
30. I am also satisfied that the Tenant is entitled to general compensation in the amount of \$6,072.00. I calculate this amount as representing three months rent, they would have paid for the period of March to June 2024 along with the factoring the inconvenience of the additional commute time and the necessity to pay first and last on their new rental property.
31. I am also satisfied that the Tenant is entitled to be reimbursed the cost for filing the application.
32. As to the request that the Landlord be ordered to pay a fine, a fine is meant to be a deterrent against behaviour that is contrary to the Act. Given the remedies already awarded I am not satisfied it is warranted in this case.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$6,381.77. This amount represents:
 - \$245.62 for the reasonable moving, storage and other like expenses that the Tenant have incurred as a result of having to move out of the rental unit.
 - \$6,072.00 for general compensation.
 - \$64.15 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by February 7, 2026.
3. If the Landlord does not pay the Tenant the full amount owing by February 7, 2026, the Landlord will owe interest. This will be simple interest calculated from February 8, 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.

January 27, 2026
Date Issued

Kelly Delaney
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.