



Order under Section 57 Residential Tenancies Act, 2006

Citation: GUTTA v YAN, 2026 ONLTB 9062

Date: 2026-01-29

File Number: LTB-T-034927-25

In the matter of: 103 The Queensway 2003
Toronto ON M6S5B3

Between: FRANCO GUTTA Tenant

And

DAN YAN Landlord

FRANCO GUTTA (the 'Tenant') applied for an order determining that DAN YAN (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on January 7, 2026.

The Landlord and the Tenant attended the hearing.

Determinations:

1. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.
2. The residential unit is a condo located at #2003, 103 The Queensway, Toronto, Ontario.
3. The Tenant commenced his tenancy in October of 2017 and the Tenant vacated the rental unit on February 28, 2025 in accordance with LTB-L-024276-24.
4. This application alleges that the Landlord served the N12 notice of termination in bad faith.

Tenant's Evidence – Franco Gutta (FG)

5. The Tenant stated that after he vacated the rental unit on February 28, 2025, he remained in the building and moved into another condo. He stated that he has a good friend who lives on the 20th floor where he used to live and he often visits his friend. He stated that despite all of his visits to the 20th floor, he did not see the Landlords entering or exiting their condo.

6. FG testified that he did not believe that the Landlords were residing in his previous rental unit, #2003. His friend who resides on the 20th floor was supposed to attend today as his witness but she did not attend for some reason.
7. FG stated that there were notices given by the condo management that there would be ongoing renovations on the 20th floor and those renovations were being completed by the Landlords.
8. He stated that he brought a T6 application against the Landlord while being a Tenant and the Landlords were ordered to make certain repairs by January 1, 2025. FG stated that when he left the rental unit on February 28, 2025 those ordered repairs were not yet completed.
9. The Tenant brought my attention to his Evidence Brief, Evidence ID#7024530 which included pictures of the Landlords' parking spot which was empty from March until May of 2025 and then where a black car was parked and did not seem to move for a period of time. The Tenant stated that the Landlords used to live in a 7 bedroom home with 5 bathrooms which they sold and now they are living in a one bedroom condo with a den with their daughter. Again, the Tenant does not believe that the Landlords are residing in the rental unit as he never sees them in the elevator or the common areas, including the gym, pool or main floor of the building.
10. The Tenant noted on April 11, 2025 that renovations were being completed by workers and he took pictures of the renovation materials and the workers on the 20th floor.
11. FG stated that his friend who lives on the 20th floor had noted months of renovations from the Landlords' condo.
12. FG testified that he attended at the Landlords' door on December 17, December 18 and December 19, 2025 and knocked and each time, and no one answered the door.
13. The Tenant believes that the Landlords are not residing in the condo unit and just wanted to evict him as a Tenant.
14. The Tenant is requesting a rent differential of \$6,600.00, 12 months of compensation for his last year as a Tenant in the rental unit totalling \$22,812.00, \$1,000.00 for his moving expenses and he wants the Board to order a fine against the Landlord due to the stress the move caused his daughter who was in her Grade 12 year.

Landlord, Dan Yan (DY)

15. DY testified that he, his wife and his teenage daughter moved into the rental unit on May 3, 2025 and provided a copy of a confirmation with property management whereby they booked the elevator for their move-in. This document was in the Landlords' Brief, Evidence ID #7040331.
16. DY stated that they sold their large house as they are downsizing as their other children are now adults and they only have their daughter living with them.

17. DY provided an assortment of hydro bills showing that hydro was being used from May of 2025 and to the end of December of 2025. He also provided copies of their internet bills which showed that they have been using the internet in the condo. He further provided communications on various dates with the property management company regarding various requests.
18. DY stated that when the Tenant attended at his condo door on those 3 days in December, 2025 and he did not want to answer the door. DY stated that he does not trust the Tenant and he believes that the Tenant may wish him harm.
19. DY testified that on Christmas Day, the Tenant attended at this condo again and brought the Landlord chocolates. He said that he has seen the Tenant in the common areas a few times and of course on December 25, 2025.

Analysis

20. 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 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.
21. There is no question that the first and second criteria have been met as the Landlords served an N12 notice on the Tenant and the Tenant vacated the rental unit as a result of the N12 notice of termination. I am not persuaded that the Landlords are not residing in the rental unit.
22. Based on the evidence that I have heard from the Landlord including the hydro invoices showing how one month's use compares to a previous month's use, the internet invoices from May 2025 and forward and the communications with the property management company, I am satisfied that the Landlords are residing in the rental unit. The Landlords' booking of the elevator on May 3, 2025 confirms that they moved in on that day.
23. The Tenant proved the first two criteria of subsection 57(1)(a) of the Act but did not prove the last two criteria of the Act. Based on this result, the Tenant's application is dismissed.

It is ordered that:

1. The Tenant's application is dismissed.

January 29, 2026
Date Issued

Carrie Bertrand
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.