



Order under Section 57 Residential Tenancies Act, 2006

Citation: Flynn v Skwierawski, 2026 ONLTB 10925

Date: 2026-02-02

File Number: LTB-T-056911-25

In the matter of: 297 WARDEN AVE
SCARBOROUGH ON M1N3A3

Between: Vanessa Flynn
William Robinson Tenants

And

Jesse Skwierawski
Monika Gugu Landlords

Vanessa Flynn and William Robinson (the 'Tenants') applied for an order determining that Jesse Skwierawski and Monika Gugu (the 'Landlords') gave a notice of termination in bad faith.

This application was heard by videoconference on January 29, 2026.

The Landlords, and the Tenants attended the hearing.

Determinations:

1. The Tenant claimed the Landlord gave an N12 notice of termination in bad faith because they did not move into the rental unit in a reasonable period of time.
2. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.
3. 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 s. 48 of the Act;
 - The Tenant vacated the rental unit as a result of the N12 notice of termination;
 - No person referred to in ss. 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.

4. There is no dispute the Landlord gave the Tenant an N12 notice of termination under section 28 of the Act on June, 2024 with a termination date of August 31, 2024. The Notice stated that the Landlords, their child and their parent would occupy the rental unit.
5. There is also no dispute that the Tenant's vacated the rental unit as a result of receiving that notice. The Tenants testified they moved out on July 21, 2024.
6. The central issues for me to determine is did *no person* referred to in subsection 48(1) of the Act occupied the rental unit within a reasonable time after the Tenant vacated, and was the notice served in bad faith?
7. After they moved out, the Tenants have no knowledge of the property until February of 2025. On that date, the property looked unoccupied because the driveway and sidewalk were not shoveled. The Tenants monitored the property after that point and it seemed no one lived there regularly. In early July, the Tenants took photos and a video showing the renovations being undertaken on the main floor and to the porch. The yard was unkempt. There were no photos of the basement.
8. The Landlord provided uncontradicted evidence that their mother moved into the rental unit shortly after the Tenant's vacated. She lived mostly in the basement after the carpet had been changed. She lived there until December 31, 2024 when she suffered stroke and needed to live with her daughter. She continued to go to the rental unit and the family continued to renovate as they could afford. They acknowledge they did their own renovations throughout the year, but mostly in June and July, 2025.
9. I am satisfied based on the testimony of the Landlords, and the documents provided, that the Landlord's mother was living there for the first five months on a full-time basis, and periodically afterwards. Certainly, the Tenants did not rebut that evidence on a balance of probabilities. The Tenants did not drive by every day, and produced photos take several months apart.
10. Evidence was provided by the Landlords that they and their young child stayed in their own rental unit until the renovations were completed. They did not move in immediately because the damage repair was more extensive than they expected and more costly. They did not inspect the unit before giving the N12 notice. If this were the only explanation and if no one had moved in, bad faith is the obvious conclusion. However, that is not the case here. Someone did move in.
11. In *Salter v. Belijinac*, 2001 CanLii 40231 (ON SCDC), the Divisional Court determined that a Landlord satisfied the "good faith" requirement to terminate a tenancy where the person identified in the notice of termination genuinely intends to occupy the rental unit for residential purposes.
12. In *Elkins v. Van Wissen*, 2023 ONCA 789, the Court of Appeal for Ontario found that the Board must consider all the evidence before it that is relevant to the landlord's bad faith under s. 57(1). It is an error of law for the Board to restrict its consideration good faith to the evidence at the point in time when the landlord gives the tenant the termination notice.
13. Section 48(1) does not, in my view, mean *all persons* named in the N12 have to occupy for good faith to be made out. The Landlord's mother falls within the category of people

referred to in subsection 48(1), and is a person mentioned in the N12 as one person who was to occupy. She did in fact move into the rental unit.

14. I am also satisfied that a reasonable change in circumstances caused her to have to live elsewhere for a period of time to recover from her stroke.

15. I have considered that in the end, everyone ultimately moved into the rental unit, which combined with the mother moving in, and the change in circumstances, demonstrates their genuine intention to occupy for residential purposes.

16. Based on the facts before me, I find the Tenant did not prove, on a balance of probabilities that no person referred to in subsection 48(1) of the Act occupied the rental unit within a reasonable time after the Tenant vacated, or that the Landlord served the N12 notice of termination in bad faith.

It is ordered that:

1. The Tenant's application is dismissed.

February 2, 2026

Date Issued

Julie Broderick

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.