



Order under Section 57 Residential Tenancies Act, 2006

Citation: Marion v Brown, 2026 ONLTB 8665

Date: 2026-02-09

File Number: LTB-T-048442-23

In the matter of: 280 WESTDALE AVE
KINGSTON ON K7L 4S7

Between: John S Marion
Tina L Benson Tenants

and

Sommar Brown Landlord

John S Marion and Tina L Benson (the 'Tenants') applied for an order determining that Sommar Brown (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on December 16, 2025.

The Tenants, the Landlord and the Landlord's legal representative Shasta Pearson attended the hearing. The Landlord called Nancy Genge to testify.

Determinations:

1. The Tenants say the Landlord dispossessed them in bad faith when she gave a notice of termination stating her mother N.G. and her caregiver intended to move into the rental unit for a period of at least one year. The Landlord responds that this was her plan when she gave the notice, but it changed in light of subsequent events.
2. To succeed on this application, the Tenants must prove each of the requirements of paragraph 57(1)(a) of the Act on a balance of probabilities:
 - (a) The Landlord gave the Tenants a notice of termination under section 48 of the Act;
 - (b) The Tenants vacated the rental unit as a result of the notice;
 - (c) No person referred to in subsection 48(1) of the Act occupied the rental unit within a reasonable time after the Tenants vacated; and
 - (d) The Landlord gave the notice in bad faith.

3. The Act also contains a reverse onus in subsection 57(5) that says if a landlord gives a notice under section 48 and then advertises the unit for sale within one year of the tenant vacating, the landlord is presumed to have given the notice in bad faith “unless the contrary is proven on a balance of probabilities”. The Landlord conceded this was the case which means that the Landlord carried the burden to prove on a balance of probabilities that she was not acting in bad faith in giving the notice of termination.
4. The parties agreed that the Tenants vacated the unit as a result of the notice of termination on the date set out in the notice and that no person identified in the notice ever occupied the rental unit. The only live issue in this case is whether the Landlord has rebutted the presumption of bad faith.
5. The Landlord made a thorough, well-documented and cogent presentation, corroborated by the testimony of N.G., to show that she gave the Tenants the notice of termination because N.G. was constructing her home elsewhere. But the Landlord also feared construction delays anticipating shortages of materials and labour during the COVID-19 pandemic. It was an uncertain time and there was a real risk that construction of N.G.’s house might take a very long time in which case she would find herself with nowhere to live, possibly for as long as 12 months.
6. To guard against that risk, the Landlord removed the Tenants from their home and began to renovate to bring it to standards required by N.G. in case she would need to use it while waiting for her own house to be built. In the event, that risk did not materialize, and the Landlord’s careful contingency planning proved unnecessary. By the time the Tenants had vacated, N.G.’s own house was ready so the Landlord no longer required the rental unit for use by N.G. and her caregiver. So she sold it.
7. The Landlord’s theory of the case is incapable of rebutting the presumption of bad faith. This Board has consistently held, on the strength of binding authority, that temporary occupation is not sufficient to meet the “for the purpose of residential occupation for a period of at least one year” test in section 48 of the Act. I would venture to add that dispossessing a tenant as a precaution in case a landlord may need the unit to temporarily house a family member also does not show a genuine intention to occupy the rental unit for residential purposes for at least one year and is inconsistent with the Landlord’s duty of good faith.
8. The question is not whether the Landlord had a genuine contingency plan, but whether, at the time the notice was served, she in good faith required the unit for residential occupation for at least one year.
9. Guided by section 202 of the Act, I find the application must be granted because the Landlord has failed to rebut the presumption of bad faith on a balance of probabilities. The Landlord’s evidence shows that she did not in good faith require possession of the rental unit for the purposes of residential occupation for a period of at least one year by any of the persons identified in subsection 48(1) of the Act. At most, she was concerned she might require it.

Remedies

10. Having established the grounds for their application, the Tenants may be awarded those remedies listed in subsection 57(3) that they have proven on a balance of probabilities.

Difference in Rent

11. The Tenants moved from the rental unit into another that costs \$1,350.00 more per month.
12. The Tenants described their new unit in comparison with their old unit and I accept their unchallenged evidence that the two units are substantially similar.
13. Therefore, I find that the Landlord must pay the Tenants \$16,200.00 for the increased rent that the Tenants have incurred or will incur for a one-year period after the Tenants moved out of the rental unit because this claim has been proven on a balance of probabilities.

Moving costs

14. The Tenants seek to recover rent and utilities for the period when their two tenancies overlapped. This claim must be denied because it is not an out-of-pocket moving, storage or like expense within the meaning of paragraph 1.2 of subsection 57(3).

Abatement of Rent

15. The Tenants seek to recover 100% of the rent paid for the last 6 months of the tenancy stating that the search for a new place to took a lot of time and effort and was emotionally taxing.
16. Abatement of the rent is intended to refund tenants a portion of the rent paid in exchange for the bundle of services contracted for if they have not received those services. The bundle of services includes quiet enjoyment of a rental unit fit for habitation free from interference. There was no evidence that the use or enjoyment of the rental unit was in any way reduced or interfered with in the three months between June 1, 2022 when the Tenants were given the notice of termination and August 31, 2022 when they vacated.
17. The Tenants' evidence and pleadings in respect of this claim—time and effort spent organizing their move, stress and anxiety, etc.—sound in general compensation. That remedy is available under paragraph 1.1 of subsection 57(3) where it is proven on a balance of probabilities, but it has not been claimed in this application. No request to amend the application was presented.
18. I find the claim for abatement must be dismissed because it has not been proven on a balance of probabilities.

Administrative Fine

19. The Tenants make a compelling argument for imposition of an administrative fine. They submit the Landlord is a retired realtor and a sophisticated real estate investor who owns several properties and undertakes renovations of her properties with a view to maximizing rental income. That alone, of course, is not illegal and there is nothing wrong with acting on a profit motive. Evicting tenants in bad faith to further that objective however is a breach of the *Residential Tenancies Act, 2006*.

20. The Board's Interpretation Guideline 16, *Administrative Fines*, dated December 15, 2018 states that an administrative fine is a remedy to be used to encourage compliance with the Act and to deter landlords from engaging in similar activity in the future. This Guideline is not binding on me but I accept it as the correct interpretation of paragraph 3 of subsection 57(3) of the Act.
21. This remedy is not normally granted unless a landlord has shown a blatant disregard for the Act and other remedies will not provide adequate deterrence or ensure future compliance. The objectives of deterrence involve both specific and general deterrence. I must consider the nature and severity of the breach, the effect of the breach on the tenant, and any other relevant factors.
22. On considering the totality of the evidence, I am not persuaded that an administrative fine is needed in this case to encourage compliance with the Act or to deter future breaches. I find the substantial rent difference awarded should be sufficient to bring home to this Landlord and to landlords generally that subjugating tenants' rights to their own financial interests carries severe consequences. Those who breach the Act in pursuit of profit can expect that the cost of doing business will involve not just recompense for those they have wronged but administrative fines as well.
23. The Tenants incurred costs of \$48.00 for filing the application and are entitled to be reimbursed those costs.

It is ordered that:

1. The total amount the Landlord shall pay the Tenants is \$16,248.00. This amount represents:
 - \$16,200.00 for increased rent the Tenants have incurred.
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenants the full amount owing by February 20, 2026.
3. If the Landlord does not pay the Tenants the full amount owing by February 20, 2026, the Landlord will owe interest. This will be simple interest calculated from February 20, 2026 at 4.00% annually on the balance outstanding.

February 9, 2026
Date Issued

Nersi Makki
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.