



Order under Section 57 Residential Tenancies Act, 2006

Citation: Hesam v Mikhmel, 2026 ONLTB 15232

Date: 2026-02-24

File Number: LTB-T-101344-23

In the matter of: Main Level, 217 Stonebriar Drive
Maple ON L6A4A3

Between: Mona Hesam Tenant

And

Anna Mikhmel Landlords
Konstantin Lopatin

Mona Hesam (the 'Tenant') applied for an order determining that Anna Mikhmel ('AM') and Konstantin Lopatin ('KL') (the 'Landlords') gave a notice of termination in bad faith.

This application was heard by videoconference on February 12, 2026. The Landlord, Anna Mikhmel, Represented by Anna Bon, and the Tenant, Represented by Naseer Ahmed, attended the hearing.

As of 1:17 p.m., Landlord KL was not present nor represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only AM and the Tenant's evidence.

Determinations:

Preliminary Issue:

1. The Landlord requests the application be amended to reflect the correct legal name from Anna Lopatina to Anna Mikhmel as it is now.
2. There was no objection from the Tenant to this requested amendment.
3. As there is no objection to the amendment, I consented to the requested amendment. The style of cause has been updated to reflect this amendment.

Tenant's T5 Application

4. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.

5. By way of background, the tenancy began in 2018 and terminated on July 15, 2023. The rental unit was a single-family dwelling occupied by the Tenant, her spouse, and young child. The Tenant's rent was \$2,000.00 monthly.
6. The Tenant alleges that the Landlord gave her an N12 Notice of Termination ('N12') in bad faith (Doc-3336382). It is not disputed that the Tenant was given a N12 notice of termination on May 1, 2023, for the use of AM and the AM's child. It is also not disputed that the Tenant vacated the rental unit on July 15, 2023.

Tenant's Evidence

7. The Tenant submits that the Landlord did not move into the rental unit in a reasonable amount of time. The Tenant provided a copy of advertisements which show the Landlord advertised rooms in rental unit for rent (Doc-3336459, pgs. 12,13,14). These advertisements indicate that the rental unit was advertised for rental occupation effective December 1, 2023.
8. Submitted into evidence were a series of text message exchanges between the parties dated May 16, 2023 (Doc-3336438, pg. 2). In this message, AR asks the Tenant if she would be interested in purchasing the property. AM responded that it would help her, because then she would have "money". The Tenant submits this is evidence of AM's bad faith because why would AM be looking for a buyer if she had intended to move into the rental unit.
9. Also submitted into evidence, by the Tenant, is a copy of text message exchange between AM and the former basement tenant, identified as "JR" (Doc- Doc-3336459, pg. 5). JR was not called to testify. The text message exchange is undated. However, the message appears to be sometime around September 7, 2023. Regardless, JR inquires, with AM, how much she is asking to rent the upstairs unit (the Tenant's rental unit). AM replies that she is asking \$3,000.00 for the upper floor.
10. The Tenant also submitted a copy of an N12 notice which had been provided to JR (Doc-2532403). It identifies KL as the Landlord and states that the basement unit is for use of the Landlord and their child. The Tenant submits that this does not make sense for two reasons. First, KL had told her during a conversation that AM was the actual owner of the property as the property had been signed over to her in 2021. Second, AM had told her she was escaping abuse at the hands of KL. It does not make sense that AM would be moving into her unit, while KL would then occupy the basement unit, if AM was trying to escape abuse at the hands of KL. The Tenant also raises that she did not understand why KL was still giving notices of termination if AM is the owner of the property; therefore, she is the lawful Landlord.

Landlord's Evidence

11. AM's evidence is that she had been in an abusive relationship with her ex-spouse. She gave the Tenant an N12 notice so that she could move into the rental unit. A redacted copy of her separation agreement was submitted into evidence dated April 1, 2023 (Doc-7314904, pgs. 3,4). AM confirmed that the rental property had been put in her name in

2021 and that the Landlords had determined that KL would keep the matrimonial home, while AM would be the owner of the rental unit.

12. While living in the matrimonial home, AM lived on one floor of the home while KL lived on another. However, she states this situation was untenable because she and KL were fighting in front of their son.
13. The intention, AM states, is that AM would move into the rental unit with her young child and the child's nanny. She had moved most of her belongings and furniture into the rental unit on July 17, 2023. AM submitted into evidence a declaration from Igor Gassanov ('IG') dated June 18, 2024 (Doc-7314904, pg. 17). The declaration states that IG provided moving services to AM and had moved furniture and belongings from AM's matrimonial home to the rental unit at on July 17, 2023.
14. AM states that it had been her intention all along to move into the rental unit. It is her evidence she wanted to offer the Tenant a chance to purchase the rental property because she thought she may want to buy it. However, AM states she had not been feeling well then and had been under a lot of pressure because of the abusive relationship and subsequent separation from KL. AM says she does not have any family in Canada for support.
15. In early June, AM had a medical appointment and was diagnosed with a serious, life-threatening illness by June 27, 2023 (Doc-7314904, pgs. 18-31). The diagnosis necessitated multiple surgeries with lengthy recovery times. AM decided to remain in the matrimonial home because KL's family lived very close by and were able to assist in taking her back and forth to medical appointments. AM also says it would be too difficult, between the ongoing medical issues, and caring for her son, to be living on her own at the rental unit. Her son's nanny was living with KL and AM, but only provided transportation services to her son in exchange for free room and board. The nanny would not provide care services to AM unless she was paid, and AM states she was not financially able to pay the nanny particularly given that she was unable to work while dealing with her illness.
16. After several months of trying to manage financially, AM finally decided to put the rental unit up for rent. She had no income and the mortgage payments on the property were significant. She was worried she would lose her home by foreclosure if she did not. However, she states the rent she received was far less than the mortgage payment. When AM finally completed her medical treatments, she moved into the rental unit in July 2024 and resides there currently. She no longer rents any part of the home.
17. With regard to the second N12 given to JR, AM states she was aware that KL would be giving JR an N12 but had not seen it. She says because she had been feeling unwell, she had KL deal with issues pertaining to the tenancies at the rental unit. However, she believed that the N12 that JR received was not for KL to move into the rental unit, but for her, despite the N12 listing KL as the Landlord. She agrees that KL was acting as her agent.

Applicable Sections of the Act

18. 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.

19. Section 57(5) of the Act creates a rebuttable presumption that a notice of termination given under s. 48(1) of the Act was given in bad faith if the property is advertised for sale or rent. A rebuttable presumption means that the landlord is assumed to have acted in bad faith unless the landlord can provide an explanation that satisfies the Board as to what changed after the tenancy terminated that affected the landlord's ability to move in or remain in the rental unit.

Analysis

20. Although I find that the Tenant proved that the Landlord gave her an N12 notice under section 48 of the Act, and that she moved out as of a result of the notice, I do not find that the remainder of the requirements under s. 57(1)(a) were satisfied on a balance of probabilities.

21. I find AM's evidence for the reason she did not move into the rental unit until July 2024 to be both credible and reliable. Her evidence was backed up by medical documentation which shows that AM was diagnosed at the end of June 2023 and that she underwent medical treatment for about one year. I also accept her testimony that it would have been difficult to care for herself and her young son without the support and assistance of KL's family.

22. I do not make a negative inference that AM had no intention to move into the rental unit because AM chose to remain in the matrimonial home even where there was a potential for abuse. In my view, it is reasonable that having KL's family's support to care for her son and take her to medical treatments may have trumped AM's need for security given the length and severity of the medical treatments she faced.

23. I accept the Landlord's evidence that she thought the Tenant may want to purchase the property and that is why she offered the rental unit to the Tenant on May 16, 2023. I am not of the view that this singular offer negates the intention over the entire period.

24. I also find that AM's evidence about why she put the rental unit back on the market, because of financial pressures, to be credible. She was not working and had applied for ODSP. However, this amount was insufficient to hold onto the rental property given the mortgage costs. In my view, it is logical that AM would have been gravely concerned about losing her home if she defaulted on the mortgage.

25. Additionally, the first reference to re-renting the unit was around September 7, 2023, in the text message to JR. This was about seven weeks after the termination of the tenancy, which correlates closely to AM's recovery after her first surgery in August 2023.
26. Further, the only evidence that supports the unit was advertised shows that the intended date of occupation was December 1, 2023. In my view, had AM intended to immediately re-rent the unit for more money, she would not have waited to do so until December 1, 2023. There is also the declaration from IG stating that he assisted AM in moving her belongings into the rental property just a couple of days after the unit was vacated.
27. Although the Act does not define "reasonable", however, reasonable is generally defined as being sensible or rational. Legislature specifically chose not to specify a timeframe in s. 57(1)(a) of the Act but chose the word "reasonable" instead. This suggests to me that I must determine whether I am satisfied, on a balance of probabilities, that the timeframes in the case before me is reasonable. In my view, AM's actions were sensible and rational given the circumstances AM faced.
28. AM's evidence is that as soon as she finished her treatment regime, she did move into the rental property as she had always intended. Again, if AM's goal was to simply re-rent the unit for more money, or sell the rental unit, then it does not accord that as soon as she was feeling better, she moved into the rental property.
29. Although I would agree that KL was acting as AM's agent in giving the second N12 to JR, I am not persuaded that because KL indicated he was the Landlord on the form, this is indicative of bad faith on behalf of the Landlords. From the evidence before me, both KL and AM traded duties and responsibilities for the tenancies throughout the tenancy. It was clear to me, during the hearing, that AM did not even realize that KL had put his name on the second N12, rather than hers. What was clear about AM's oral testimony was though that it was not KL who would be moving in, but her. Given that KL and AM were going through a tumultuous time in their marriage, I find it credible that AM had not seen the second N12 and assumed it was the same as one given to the Tenant. Further, as JR was not called as a witness, I am unable to assess what JR's understanding behind the notice.
30. AM's evidence was provided in a straightforward manner; was internally consistent; and was not contradicted by any other evidence before me. In the circumstances, I am obligated to apply, to AM's testimony the principle from *Maldonado v. M.E.I.*, [1979 CanLII 4098 \(FCA\)](#), [1980] 2 F.C 302 (C.A.) at 305, that when a witness swears to the truth of certain allegations, a presumption is created that those allegations are true unless there are reasons to doubt their truthfulness.
31. The Tenant also raised the issue that she believes she was coerced into signing an N11 Agreement to Terminate the Tenancy by the Landlords. However, even if I accept this submission, I still find that the Landlord rebutted the presumption that she acted in bad faith when giving the Tenant the N12 notice.
32. The Tenant submits that pursuant to s.202 of the Act, I am required to consider the real substance of all transactions and activities relating to the residential complex when making my determinations. I agree with this submission. The case of *Elkins v Van Wissen*, 2023 ONCA 789, stands for the proposition that I must consider the Landlord's conduct before, during, and after the notice of termination was given. In this matter, I am satisfied that

AM's conduct is consistent with her stated intentions. She gave the N12 notice to the Tenant. She moved in when she was physically able to do so and continues to live in the rental unit to this day.

33. This order contains all of the reasons within it. No further reasons shall issue.

It is ordered that:

1. The Tenant's application is dismissed.

February 24, 2026
Date Issued

Jane Dean
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.