



Order under Section 57 Residential Tenancies Act, 2006

Citation: Mitchell-Barlow v Bejnar, 2026 ONLTB 15692

Date: 2026-02-24

File Number: LTB-T-033763-25

In the matter of: 2 BIRCH ST
LONDON ON N6C3G8

Between: Shanda Mitchell-Barlow Tenant
Tyler Mitchell-Barlow

And

Richard Bejnar Landlord
Julia Robinson

Shanda Mitchell-Barlow and Tyler Mitchell-Barlow (the 'Tenant') applied for an order determining that Richard Bejnar and Julia Robinson (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on February 9, 2026.

The Landlord, the Landlord's witnesses, Aidan Bejnar, Kristine Crncich, and the Tenant attended the hearing.

Preliminary issue:

At the outset of the hearing, the parties consented to amend the application to add Julia Robinson as second respondent Landlord. The application is amended accordingly, and the correction is reflected in this order.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. The application is granted, and the Landlord must pay to the Tenant a total of \$18,524.46.
2. 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.
3. There is no dispute that the Landlord served the Tenant with an N12 notice in February 2024 in accordance with section 48 of the Act. In the N12 notice, the Landlord stated that vacant possession was required for the residential occupation of the Landlord's sons. The termination date on the notice was May 31, 2024. The Tenant vacated the rental unit on May 31, 2024, in response to the N12 notice.
 4. The remaining issues are whether the N12 notice was served in bad faith and whether the Landlord's sons occupied the rental unit within a reasonable time after the Tenant vacated.

Bad Faith:

5. The Tenant testified that they discovered the rental unit was advertised for sale in February 2025 and again on April 4, 2025, within nine months after they vacated. The Tenant submitted two listing advertisements as evidence.
6. The Landlord did not dispute that the rental unit was listed for sale in February 2025 and again in April 2025. The Landlord testified that the N12 was served for the Landlord's two sons, David and Aiden, who were approximately 18 and 19 years old at the time and were attending college. The Landlord testified that the decision to list the property was driven by uncertainty about whether the sons could manage the costs of a larger home without roommates and by the possibility of downsizing to a smaller property closer to their school. The Landlord described the listings as an effort to test the market and stated there were no offers. The Landlord also testified that, after the Tenant moved out, the condition of the house required more extensive cleaning and renovation work than anticipated, that renovation work occurred from June to July 2025, and that the sons moved in mid July 2025.
7. Kristine Crncich, the Landlord's real estate agent, also testified. Ms. Crncich stated that the Landlord approached her about selling the property in or around December 2024 and that the property was listed in February 2025. Ms. Crncich testified that the Landlord told her the sons could not find suitable roommates to share costs and that the Landlord was considering a sale, with a potential closing in the summer of 2025. Ms. Crncich further testified that renovations were underway and that the plan depended, at least in part, on whether the property could be sold and on the financial feasibility of the sons continuing to live in a larger home.
8. Aiden Bejnar, one of the Landlord's sons, also testified. He stated that he and his brother intended to move into the rental unit by the time the N12 was served. He testified that there were no roommates living at the rental unit during the time he lived there and that, from January to March 2025, he was going back and forth to the rental unit.
9. The evidence before me is undisputed that the rental unit was advertised for sale in February 2025, which is less than one year after the Tenant vacated. Therefore, pursuant to subsection 57(5) of the Act, there is a presumption that the N12 notice was given in bad

faith. The onus shifts to the Landlord to rebut that presumption by establishing, on a balance of probabilities, that the notice was not served in bad faith.

10. I find that the Landlord has not met that onus. In the Court of Appeal's recent decision in *Elkins v. Van Wissen*, 2023 ONCA 789, the court held that the LTB should consider all relevant evidence when determining whether the N12 was served in bad faith and should not restrict itself to consideration of whether there was good faith at the time the N12 was served.
11. In this case, the Landlord's explanation was that the sons could not secure roommates and that the house was not financially manageable without shared costs. However, there is no persuasive evidence of concrete efforts to secure roommates at the time the N12 was served. On the Landlord's own evidence, affordability without roommates was a known issue rather than a material and unanticipated change arising after the Tenant vacated.
12. I have also considered the Landlord's conduct after the Tenant vacated. The evidence indicates that the Landlord contacted a real estate agent about selling in or around December 2024 and then listed the property in February 2025, with open houses and price changes. The evidence also indicates that significant renovation work was undertaken after the Tenant vacated. Taken together, these steps to actively market the property for sale within a relatively short time after the Tenant vacated are inconsistent with a genuine intention. Even if the sons stayed at the unit for some period, I am not satisfied on this record that the arrangement reflected a genuine intention to reside there as their home for at least one year, rather than a temporary arrangement while the Landlord explored sale options. I therefore find, on a balance of probabilities, that the N12 notice was served in bad faith.

Did the Landlords occupy the rental unit?

13. Section 48(1) of the Act outlines the requirement that the person seeking possession must do so in good faith for residential occupation purposes, with the intention of occupying the unit for a period of at least one year.
14. The Tenant's position is that the Landlord's sons did not occupy the rental unit after the Tenant vacated. The Tenant testified that after moving out the unit appeared to be under major renovation, that there were few signs of regular occupancy, that lights were rarely on, that cars were rarely in the driveway, and that snow was not disturbed for extended periods.
15. The Landlord testified that both sons moved into the rental unit in July 2024, approximately one and one-half months after the Tenant moved out, and that they slept there Monday to Friday. The Landlord testified that the sons remained in occupation until August 2025. The Landlord referred to photographs of bedrooms taken in September 2024, a photograph showing Aiden at the property in December 2024, and a photograph from February 2025 described as a party photo. The Landlord also referred to documents relating to services and deliveries at the property, including an internet invoice dated January 1, 2025, showing payment in Aiden's name.

16. Ms. Crncich testified that at open houses in February 2025 she observed that the sons were living in the rental unit and that she asked them to leave during open houses to allow for showings.
17. Aiden testified that he moved into the rental unit in July 2024 and stayed there on weekdays from Monday to Friday. He testified that he did not change the address on his driver's licence and that the address on his G1 remained unchanged. He also testified that he did not communicate with the real estate agent. It was put to him that the bedroom photographs did not show personal belongings.
18. Having considered the evidence as a whole, I find on a balance of probabilities that the Landlord's sons did not occupy the rental unit for the purpose contemplated by section 48(1) within a reasonable time after the Tenant vacated. While the Landlord and the witnesses testified that the sons moved in and stayed during the week, the supporting evidence is limited and does not persuasively establish genuine residential occupation as a home. The photographs are of limited assistance and do not show the ordinary indicia of settled living. The internet invoice is one item of evidence but standing alone it is insufficient to establish occupation for the required purpose and duration. I also place limited weight on Ms. Crncich's evidence on day-to-day occupation, as her attendances were tied to open houses and showings rather than routine living patterns across the relevant period.
19. In contrast, the evidence of active marketing for sale, including open houses requiring the sons to leave the property for showings, supports the inference that the primary objective was to sell the property rather than to occupy it for the stated purpose. For these reasons, I find that the Tenant has established that the sons did not occupy the rental unit within a reasonable time after the Tenant vacated within the meaning of subsection 57(1)(a)
20. I therefore find that all of the elements of the legal test in section 57 of the Act have been satisfied, and the Tenants are entitled to a remedy.

Remedies

21. The Tenants request the following remedies:

- Rent differential, totaling \$18,165.75.
- Moving expenses, totaling \$308.46.
- The Landlord must pay a fine to the Board.

Rent Differential:

22. The Tenant rented a three-storey single detached house with four bedrooms and one bathroom, and the third floor included a large loft and a second full bathroom with a shower. The Tenant moved in during 2009 and vacated on May 31, 2024. The last rent charged was \$1,486.00 per month. The Tenant's new rental unit is in the same area and is also a single detached house with five bedrooms and two bathrooms. The Tenant pays \$3,000.00 per month for the new unit.
23. I find that the two units are comparable for the purpose of rent differential, and I accept that the increased rent reflects current market conditions compared to the rent the Tenant

paid after a long tenancy. I find that the Tenant is entitled to rent differential for a twelve-month period. Based on the evidence before me, I award rent differential in the amount of \$18,168.00.

Moving expenses

24. The Tenant claims \$308.46 for moving costs. The Tenant submitted three U Haul invoices totalling \$308.46. I am satisfied that this is a reasonable moving expense, and I award \$308.46.

Administrative Fine

25. The Board's Interpretation Guideline 16: Administrative Fines suggests that the purpose of a fine is to encourage compliance with the Act and to deter Landlords from engaging in similar activities in the future. It goes on to say, "this remedy is most appropriate in cases where the Landlords have shown a blatant disregard for the Act and other remedies will not provide adequate deterrence and compliance."

26. I find that the actions of the Landlord in this case do demonstrate a blatant disregard for the Act. However, I find that the remedies already awarded should provide adequate deterrence from engaging in similar acts. As such, no fine shall be ordered.

27. This order contains all of the reasons intended to be given; no further reasons shall issue.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$18,524.46. This amount represents:
 - \$18,168.00 for increased rent the Tenant has incurred for the one-year period from June 1, 2024, to May 31, 2025.
 - \$308.46 for the reasonable moving, storage and other like expenses that the Tenant has incurred as a result of having to move out of the rental unit.
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by March 8, 2026.
3. If the Landlord does not pay the Tenant the full amount owing by March 8, 2026, the Landlord will owe interest. This will be simple interest calculated from March 9, 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.

February 24, 2026
Date Issued

Joy Xiao
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.