



**Order under Section 57
Residential Tenancies Act, 2006**

File Number: LTB-T-001757-23

In the matter of: 90 CARTIER CRESCENT
RICHMOND HILL ON L4C2N5

Between: ERKAN CUCE
NESIBE CUCE Tenants

And

SAROOSH KATANI Landlord

Erkan Cuce and Nesibe Cuce ('EC' and 'NC' or collectively, the 'Tenants') applied for an order determining that Saroosh Katani ('SK' or the 'Landlord') gave a notice of termination in bad faith. (T5 application)

This T5 application was heard by videoconference on January 27, 2026.

The Tenants, the Tenants' Legal Representative, Berkan Altun ('TTR'), Landlord, and the Landlord's Legal Representative, Sassan Emam ('LLR'), attended the hearing. Negin Shahraki ('WIT') gave witness testimony on behalf of the Landlord.

Determinations:

1. As explained below, the Tenants proved the allegations contained in the T5 application on a balance of probabilities. Therefore, the Landlord is to pay the Tenants certain of the monetary remedies requested in the Tenants' T5 application, as shown in the order below.
2. I note for the record that the T5 application was filed with the LTB on September 2, 2022, which is just less than one year after the Tenants moved out of the rental unit. I find this T5 falls within the time limitation of subsection 57(2) of the Act.
3. Agreement of certain facts:- At the outset of the hearing, the parties agreed on the following: (a) an N12 notice of termination was served on the Tenants by the Landlord (termination date August 31, 2021); (b) the Tenants moved out of the rental unit because of the N12 notice; and (c) the date the Tenants moved out was on September 4, 2021.
4. In order for the T5 application to be successful, subsection 57(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') requires the Tenants to prove each of the following four "tests" on a balance of probabilities, which tests are based on the Landlord having served

an N12 notice of termination under subsection 48(1)(a) in this case – i.e. the Landlord declared he would live live in the rental unit for at least one year:

- i. The Landlord gave the Tenants an N12 notice of termination under section 48 of the Act;
- ii. The Tenants vacated the rental unit as a result of the N12 notice of termination;
- iii. No person referred to in subsection 48(1) of the Act occupied the rental unit within a reasonable time after the Tenants vacated; and
- iv. The Landlord served the N12 notice of termination in bad faith – it is noted that for this T5 application, subsection 57(5) of the Act applies (as set out below).

5. Subsections 57(5) and 57(6) of the Act state:

“(5) For the purposes of an application under clause (1) (a), it is presumed, unless the contrary is proven on a balance of probabilities, that a landlord gave a notice of termination under section 48 in bad faith, if at any time during the period described in subsection (6) the landlord,

(a) advertises the rental unit for rent;

(b) enters into a tenancy agreement in respect of the rental unit with someone other than the former tenant;

(c) advertises the rental unit, or the building that contains the rental unit, for sale;

(d) demolishes the rental unit or the building containing the rental unit; or

(e) takes any step to convert the rental unit, or the building containing the rental unit, to use for a purpose other than residential premises.

(6) The period referred to in subsection (5) is the period that,

(a) begins on the day the landlord gives the notice of termination under section 48; and

(b) ends one year after the former tenant vacates the rental unit.”

6. At the outset of the hearing, the parties agreed on the following facts: (a) an N12 notice of termination was served on the Tenants by the Landlord (termination date August 31, 2021); (b) the Tenants moved out of the rental unit because of the N12 notice; and (c) the date the Tenants moved out was on September 4, 2021.

7. This agreement of facts disposed of (i) and (ii) of the four part “test” under subsection 57(1)(a) of the Act in the Tenants’ favour, leaving “tests” (iii) and (iv) for the parties to present on.

8. In the postscript, the evidence adduced at the hearing by each party is set out.

9. Turning to “test” (iii) of subsection 57(1)(a), the Tenants claimed the Landlord never moved into the rental unit as his residence after they moved out, and their claim was based on their own observations on September 11, 12, 13/ 2021 and a number of times beyond that. They also based their claim on two neighbours who kept them informed – one of those, a “Nancy”, was the one who provided TT#6. While the Tenants’ observations are given their due weight, the neighbours’ information as attested-to by the Tenants is third-party information, and I did not give as much weight thereto as that information could not be validated through examination.

10. Having stated this, I was more persuaded by the direct evidence given by the Landlord's testimony and that of WIT, who testified separately and consistently that the Landlord and WIT both moved into the rental unit a few days after the Tenants moved out. They both testified they brought in only a small number of necessary items into the house, and they lived there permanently until they moved out toward the end of November 2021.
11. I find on a balance of probabilities that the Landlord did move into the rental unit shortly after the Tenants moved out on September 4, 2021, but the Landlord failed to live in the rental unit for at least one year, as his declaration had set out, and as the statutes required him to do. It was also quite evident from the Landlord's and WIT's own testimonies that the Landlord did not return to live permanently in the rental unit after the two of them moved out in November 2021. As such, I find this third "test" was met by the Tenants under this T5 application.
12. Turning to "test" (iv) of subsection 57(1)(a), there was no dispute that within one year of the Tenants moving out of the rental unit, the Landlord placed the rental unit property on sale --- in fact, he accepted an offer to purchase on July 21, 2022 (LL#10), which reportedly closed/merged on September 16, 2022. I find, therefore, subsections 57(5) and 57(6) of the Act apply in this case, meaning that it is presumed the Landlord served the N12 notice on the Tenants in "bad faith". The effect of this is the onus or burden rests on the Landlord to prove good faith. To be clear, the time period the Landlord has the onus to prove good faith starts when the N12 notice was served and ends one year after the Tenants moved out.
13. In this regard, both the Landlord and WIT testified separately, giving very similar accounts about what had happened. Their testimonies are reduced into a consolidated summary as follows. The Landlord was initially living with friends in another place and WIT was living with her family. When the Tenants moved, the Landlord and WIT viewed the rental unit on September 5, 2021 and WIT was "upset" with the paint colours in the unit, and with some minor maintenance issues they had found (e.g. walls marred, kitchen cabinet drawer missing). "Before tenancy" photos (LL#3) and "after Tenants vacated" photos (LL#4) were led to support their testimonies. They said they only brought in a small number of items when they moved in (air mattress, some chairs, clothing), but as the Landlord started to experience respiratory problems, the Landlord went to his doctor who asked him whether his living arrangements had changed – it was then the Landlord determined it was the rental unit that created his medical issues. In support of his testimony, LL#5 and LL#6 were led into evidence. Instead of buying furniture for the rental unit, they said they decided to start renovations in the hope of removing any suspect areas that might be leading to the Landlord's respiratory problems. Starting in October 2021, they stated they started buying small things for the unit (LL#7), but in November 2021, the Landlord and WIT decided to move out, back to their respective families – renovations were placed on hold for a short while, but then the Landlord "*dug into all of his savings*", and ended up completing renovations through his H&Y Contractor (LL#8). The rental unit 5-year term mortgage was going to come due in September 2022 (LL#9), which would substantially increase the Landlord's mortgage payments. The Landlord explained that WIT ended up going to Ottawa in June 2022 to article with a law firm and he realized he could not hold onto the unit, so he ended up listing it and selling it (LL#10).

14. The Tenant NC testified that in April 2020, the Landlord informed the Tenants he was thinking of selling the rental unit building, but then decided to wait about six months to decide on that possibility (TT#1). NC testified that in early May 2021, the Landlord told her about his financial issues and that he would need to move into the rental unit himself, serving the Tenants on June 29, 2021 with the N12 notice (TT#2) that is the basis of this L2. In August 2021, NC stated that the Landlord's realtor entered the picture, and tried to have them sign an N11 agreement to terminate, which they refused to do. She said she thought the Landlord was living with friends during this period. As the Tenants' family comprises five members, NC described the large effort given to accommodate the Landlord's N12 notice. She also identified expenses of the Tenants such as moving expenses (TT#3), and the higher rent under a new lease (TT#4). NC stated the new home is situated about 8 or so kilometres away from the rental unit, making it longer for her to get to work in Toronto. NC spoke about other impacts to her family, such as to her children, but no evidence was adduced thereto.
15. Based on the testimonies and evidence of both parties, I find the Landlord did not meet the onus under subsection 57(5) of the Act, which means I find the finding of "bad faith" was not disproven successfully.
16. I say this because it was evident the Landlord had respiratory health issues well before the N12 was ever served. Exhibit LL#5 is a doctor's note written on April 24, 2023 which states: "...Mr. Katani came to the clinic several times in 2020/2021 complaining of Upper Respiratory infections and breathing issues". First, this tells me the Landlord had issues at least as early as 2020. Second, the note provided no diagnosis of the Landlord's complaints and merely noted them as complaints. Third, the doctor made no connection of the Landlord's complaints to anything about the rental unit. Exhibit LL#6 is a Hospital Report dated June 25, 2021 when the Landlord went the local hospital's ER department and was discharged on the same day for "chest pains". No diagnosis was presented in that report but it is clear the date of his ER visit was days before he served the N12 on the Tenants.
17. For this L2, I accept the Landlord experienced a continuing of his respiratory issues when he moved into the rental unit, but there was nothing presented to evidence any connection whatsoever between his ongoing breathing issues and the rental unit itself. The photos of the rental unit after the Tenants moved out (LL#4), in my view, did not present the rental unit as being at all dirty, dusty, mouldy or even damp looking. I note the Landlord tried to point out areas in the photos that supported his claim, but I was not convinced by the photos of what he claimed to have been there. Moreover, the Landlord did not present any evidence of air-borne dust, dampness or mould that could have been documented from a standard test done by a third-party company specializing in such issues. All I was given to consider are testimonies of the Landlord experiencing more respiratory issues while he lived in the rental unit, which could have resulted from other sources just as easily (environmental -outside or at work for example).
18. Going further, I can accept the Landlord decided to move out, and then conduct repairs and renovations to the rental unit, but I do not view the nature of the work as being primarily done to ameliorate the Landlord's respiratory issues. In cross-examination, the Landlord was asked to explain what was actually done in the unit. He stated the unit was painted, kitchen cabinets were changed, the floors sanded/revarnished, windows were

“fixed”, etc. (LL#8). In my view, as equally possible that some of the work would freshen up the unit to address the Landlord’s breathing issues as he claimed, the work appeared to be a freshening up of the unit for another purpose, which I believe was likely aimed to sell the unit. I say this because after the repairs/renovations were completed, the Landlord never moved back into the unit to live there, between mid-May 2022 to September 2022 when he sold the rental unit property.

19. While WIT did not move back to the rental unit in June 2022 because she went to Ottawa, this in my view did not change any requirement for the Landlord to move into the unit on his own after the repairs/renovations were completed. When he served the N12, it was to have the Landlord move into the unit for one year, not anyone else such as WIT.
20. As far as the mortgage renewal was concerned, this was a 5-year closed term mortgage that was to come due for renewal in September 2022. I believe the Landlord was well aware of this coming renewal deadline. I also note his financial institution included several options to renew, including a 1-year closed term option that would have increased his then-current monthly P&I payment of \$3,185.36 to a new amount of \$3,799.84. Apart from stating he had “run out of money” after the repair/renovation work, the Landlord did not present any evidence to support his testimony, that is to show the extent to which he claimed to have fallen into financial difficulty.
21. As such, I was not persuaded by the Landlord on a balance of probabilities that his decision to sell was really because of financial difficulties. No doubt there were financial pressures – I can agree there were – but that is the case for anyone who takes on a large mortgage.
22. All taken together, I find the Landlord was unable to discharge the onus to prove there was no “bad faith” and as such, the finding of “bad faith” remains.
23. With all four “tests” of subsection 57(1)(a) of the Act having been proven true, I find the Landlord gave a notice of termination, an N12 notice, in bad faith.

Remedies

24. It was established at the hearing that the Tenants moved into 4-bedroom home about 8 or so kilometres away, paying a new monthly rent of \$3,000.00 (TT#4). This represents a \$900.00 increase in rent per month. However, the rental unit was a 3-bedroom home so I believe an equitable difference in rent should be adjusted to \$600.00 (33% reduction) to account for the larger home the Tenants decided to rent.
25. Therefore, I find that the Landlord must pay the Tenant \$7,200.00 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.
26. In addition, I find the \$3,390.00 invoice paid by the Tenants for moving to their new home as reasonable and valid (TT#3)
27. Therefore, I find that the Landlord must pay the Tenant \$3,390.00 for the reasonable out-of-pocket moving that the Tenants have incurred as a result of having to move out of the rental unit.

28. With regard to the other requested remedies, that is a full year's rent under subsection 57(3)(1.1) and \$6,410.00 under general damages, I have considered the testimonies of the parties, especially having regard to the oral testimony of NC about the impact on her and her family. I note that nothing was adduced into evidence to actually show any physical, mental or other issues NC alluded to in her testimony (such as child bed-wetting or children distraught about leaving the rental unit, or issues with having to travel a little longer into work). In my view, the move-out of the Tenants due to the Landlord's N12 notice was certainly an unwanted and unplanned disruption to their lives. I believe that to adequately address this remedy in a meaningful yet measured way, a \$5,000.00 amount under subsection 57(3)(1.1) is to be ordered.
29. At the hearing, the Landlord did submit that if an order were to issue against him, he would be able to pay \$1,000.00 per month. The Tenants requested a higher per month payment should such an order issue. The order below is the result of my having considered their submissions.

It is ordered that:

1. The total amount the Landlord shall pay the Tenants is \$15,643.00. This amount represents:
 - \$7,200.00 for increased rent the Tenants have incurred for the one-year period from September 4, 2021 to September 3, 2022;
 - \$3,390.00 for the reasonable moving expenses that the Tenants have incurred as a result of having to move out of the rental unit.
 - \$5,000.00 for general compensation.
 - \$53.00 for the cost of filing the T5 application.
2. The Landlord shall make the following payments to the Tenants in respect of the **\$15,643.00** owing under paragraph 1 of this order:
 - **\$1,000.00** on or before **March 15, 2026** and every month thereafter on/before the **15th** day of each corresponding month for a total of 15 months, up to and including **May 15, 2027**; and
 - **\$643.00 (balance)** on or before **June 15, 2027**.
3. If the Landlord fails to make any one of the payments set out in paragraph 2 of this order, in full and on time, the full balance owing at the time of failed payment becomes due and payable immediately and the Landlord will start to owe interest. This will be simple interest calculated from the date of the missed payment at 4.00% annually on the balance outstanding.
4. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

February 26, 2026**Date Issued****Alex Brkic**

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.

Tenants' Evidence Led at Hearing

Exhibit No.	Evidence description
TT#1	Apr 4/2020 text exchange between TTs & LL- re selling and realtor's contact #
TT#2	Copy of N12 notice the TTs received
TT#3	Copy of HALE moving invoice – Sept 4/2021
TT#4	Copy of Nantucket, Richmond Hill new lease for TTs
TT#5	Photo of 'For Sale' sign at rental unit property (undated)
TT#6	Copy of Dec 7/2021 text from neighbour "Nancy" re 'For Sale' put up, rental unit empty
TT#7	Aug 20/2021 text exchange between LL & TTs re why LL's realtor needs to talk to TTs
TT#8	Aug 14, 17/2020 text exchange between LL & TTs re rent increase & LL's rationale

Landlord's Evidence Led at Hearing

Exhibit No.	Evidence description
LL#1	Photo of 'For Rent' sign, taken by TTs, undated
LL#2	Undated text exchange between LL & TTs – LL replied to TTs – Mar 2023 'For Rent'
LL#3	Colour photos of rental unit in June 2018
LL#4	Colour photos of rental unit after TTs moved out
LL#5	Dr. Kodosi's Apr 24, 2023 letter re LL's health issues in 2020/21
LL#6	Copy of hospital registration/discharge of LL on Jun 25/2021
LL#7	Copy of "Archive Order" items purchased Oct 2021 to Mar 7/2022
LL#8	H&Y Reno invoice -May 13.2022
LL#9	Aug 24/2022 CIBC mortgage renewal notice- new term start Sep 25/2022
LL#10	Copy of Purchase/Sale Agreement – to close Sep 16/2022
LL#11	Aug 24/2021 text message from Beenish Imran to LL