



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

File Number: LTB-T-050876-24

In the matter of: 4 BANNER RD
NEPEAN ON K2H5T2

Between: BARNEY WEISTCHE Tenant
REBEKAH TAYLOR

And

DEREK MACLEAN Landlords
FIONA MARTIN

BARNEY WEISTCHE and REBEKAH TAYLOR (the 'Tenant') applied for an order determining that DEREK MACLEAN and FIONA MARTIN (the 'Landlords') gave a notice of termination in bad faith.

This application was heard by videoconference on February 10, 2026.

The Landlords, the Landlord's Legal Representative, Marvin Dillon, the Tenant and the Tenant's Legal Representative, Martez Jones, attended the hearing.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlords must pay to the Tenant \$11, 682.51.

Landlords gave N12 Notice for own use in bad faith:

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. The parties agreed that the Landlords served the Tenant an N12 notice for personal use on February 27, 2022. The parties also agreed that they entered into a consent eviction order in October 2022 that resolved the Landlords' L2 application based on the N12 notice (LTB-L-015950). It was further undisputed that the Tenant vacated the rental unit as a result of the N12 notice on or about June 30, 2023, which was also required by the consent order.
4. The Tenant alleged that the Landlords did not occupy the rental unit after the Tenant vacated, and the house was listed for sale on August 9, 2023. The Landlords did not dispute that the house was listed for sale on August 9, 2023.
5. Accordingly, s. 57(5)(c) of the Act applies and "it is presumed, unless the contrary is proven on a balance of probabilities, that [the] landlord gave a notice of termination under section 48 in bad faith."
6. The Landlord Derek Maclean (DM) testified that when the N12 notice was served on the Tenant, he intended to move into the rental unit as he was separating from his wife and needed a house to live in. DM further testified that the hearing for the N12 notice occurred on October 28, 2022, and by that time he had bought and closed on a new house, which occurred in September 2022. When asked if DM still intended to reside in the rental property after purchasing a new house, DM testified that at that time he no longer intended to reside in the rental property as he did not want to sell the house he had just purchased.
7. DM testified that the N12 hearing was not withdrawn, even though he no longer had the intention to reside in the rental property, as it had taken 8 months to get to the hearing, and the Tenant consented to vacate the rental property on or before June 30, 2024.
8. DM testified that the rental property had to be sold and it was court ordered. When asked to clarify, DM clarified that there was not a court order mandating the sale, rather there was an agreement between the parties' lawyers that the property would be liquidated.
9. DM and Landlord Fiona Martin (FM) submitted that the good faith intention at the time the N12 notice was served is the only relevant consideration, not the Landlords' intention at the time of the N12 hearing. I disagree. In *Elkins v. Van Wissen*, 2023 ONCA 789, the Court of Appeal for Ontario held that limiting the analysis of good faith to the time the notice was served constituted an unduly narrow interpretation of the Act that did not give effect to its tenant-protection purpose. While that decision was in the context of an N12 given for purchaser's own use, I see no reason why the reasoning would not apply to a case involving the landlord's own use.
10. Based on the evidence provided by DM, I find on a balance of probabilities that by October 2022 at the latest, the Landlords no longer intended to move into the rental unit for the purposes of residential occupation. This finding is supported by DM's own testimony. Despite this, the Landlords proceeded with their L2 application as if they still required the unit, which was resolved via a consent order with the Tenants. That order indicated that the Landlords required the rental unit, and nowhere did it indicate or otherwise suggest that the Landlords no longer did. In these circumstances, the Landlords failed to notify the Tenant that they no longer required the rental unit and obtained an eviction order on that basis. They listed the rental unit for sale shortly thereafter. I am satisfied that the Tenant

has established on a balance of probabilities that the Landlords gave an N12 notice in bad faith.

Remedies

Rent Differential:

11. I am satisfied that the Landlords should pay the \$234.00 difference in rent for the 10 months claimed from September 1, 2023 until June 30, 2024 pursuant to section 57(3)1 of the Act. The total amount owing is \$2,434.00. I base this amount on the new lease that the Tenant submitted that confirmed he signed a new lease commencing August 22, 2023 for \$2,434.00.

Out-of-Pocket Expenses:

12. I am also satisfied that the Tenant incurred \$1,200.51 in moving costs when he vacated the rental unit, as supported by the receipts entered evidence for a truck rental on August 29, 2023, and a u-haul rental on June 30, 2023 and August 23, 2023. I find these were reasonable out-of-pocket moving expenses incurred as a result of the Landlords' breach, and should be awarded pursuant to section 57(3)1.1 of the Act.
13. The Tenant sought reimbursement for an Airbnb rented for July 2023 and August 2023 in the amount of \$13,858.00 and for storage rental from Dymon Storage unit and Box-me-up self storage in the amount of \$1,438.71. I am not satisfied that these were reasonable costs. During the 8 months between the N12 hearing and June 30, 2023, the Tenant testified that he did not apply to more than 10 rental units during this time. The Tenant testified that this was because he was looking for a rental unit close to his children's school and daycare and he wanted a house where his 4 children would have their own rooms. I find that the actions of the Tenant were not reasonable, and I am not satisfied that the Tenant attempted to mitigate his costs, therefore I am not awarding the costs for the Airbnb and the storage.

General Compensation:

14. The Tenant requested general compensation in the amount of \$16,058.26.
15. Section 57(3)(1.1) of the Act authorizes the Board to pay general compensation in the amount of up to 12 months rent the Tenant last paid should it be determined that the Landlords gave an N12 notice in bad faith.
16. The Tenant testified that they had lived in the rental unit for almost 7 years, so the move was very stressful and inconvenient as he had to utilize storage pods and move items to his home in Northern Quebec until he found a new rental unit. The Tenant also testified that the rental unit had a garage in which he was able to harvest wild game from hunting, and the house was over 2,000 square feet with 4 bedrooms. The Tenant testified his new rental unit does not have a garage, so he must go to his primary residence in Northern Quebec, about 860 kilometers away, to be able to harvest now. The Tenant further testified that the new rental is only 1,500 square feet and has 1 less bedroom and bathroom. The Tenant testified that he was seeking general compensation as he pays

more in rent for a rental unit that is smaller and lacks a garage that is needed for his harvesting.

17. I accept the Tenant's evidence that the Landlords' actions had a significant impact on the Tenant. His new home does not have a garage, which has had an impact on his ability to harvest as part of his First Nation culture. The Tenant had lived in the unit for 7 years and he found it difficult to find a comparable rental unit. I also accept that the Tenant has been impacted by paying more rent for a smaller and less-suitable rental unit. Considering the impact on the Tenant due to the N12 having been served in bad faith, I find it appropriate to award the Tenant \$8,000.00 in general compensation.

Administrative Fine:

18. An administrative fine is a remedy used by the Board to encourage compliance with the Act, and to deter a landlord from breaching the Act in the future, if other remedies will not provide adequate deterrence and compliance. The Landlords demonstrated a blatant disregard for the Act and the good faith requirement. In this matter, I am satisfied that the general compensation remedy provided to the Tenants is sufficient to deter the Landlords from breaching the Act with similar activity in the future. I therefore find that an administrative fine is not required to encourage the Landlord's compliance with the Act. Accordingly, the Tenants' request for the Board to issue an administrative fine to the Landlords, pursuant to s. 57(3)3 of the Act, is denied.

Filing Fee:

19. As the Tenant's application is successful, the Tenant is entitled to reimbursement for his costs of filing the application in the amount of \$48.00.

It is ordered that:

1. The total amount the Landlords shall pay the Tenant is \$11,682.51. This amount represents:
 - \$2,340.00 for increased rent the Tenant has incurred for the one-year period from September 1, 2023 to June 30, 2024.
 - \$1,200.51 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.
 - \$8,000.00 for general compensation.
 - \$48.00 for the cost of filing the application.
2. The Landlords shall pay the Tenant the full amount owing by March 15, 2026.
3. If the Landlords does not pay the Tenant the full amount owing by March 15, 2026, the Landlord will owe interest. This will be simple interest calculated from March 16, 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.

March 4, 2026
Date Issued

Allana McComb
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.