



Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

File Number: LTB-T-010393-24-RV

In the matter of: 1, 147 ELGIN ST
HAMILTON ON L8L4Y1

Between: Henry Dos Santos Tenants
Corina Dos Santos

And

Skylar Dunford Landlords
Spotted Property Management
Edlyn Shih
Canadian Property Management Group Inc

Review Order

Henry Dos Santos and Corina Dos Santos (the 'Tenants') applied for an order determining that Skylar Dunford and Spotted Property Management (the 'Landlord') gave a notice of termination in bad faith.

After the merits hearing, Edlyn Shih and Canadian Property Management Group Inc. were added as named Landlords. This addition was not a subject of review, so all the named Landlords remain named in this order. Edlyn Shih was the purchaser of the rental unit.

This application was resolved by order LTB-T-010393-24 issued on September 9, 2025.

On October 6, 2025, the Landlords requested a review of the order alleging that the order contains serious errors.

On October 8, 2025, interim order LTB-T-010393-24-RV-IN was issued, staying the order issued on September 9, 2025.

This review request was heard by videoconference on November 4, 2025.

The Landlords' legal representative, A. Cassidy, the Tenant, H. Dos Santos and the Tenants' legal representative, A. Wilson, attended the hearing.

Determinations:

1. After the merits hearing held on June 26, 2025, the Vice Chair found the Landlords had served the Tenants with an N12 notice of termination in bad faith, and he ordered them to pay \$9,240.00 increased rent differential, as well as \$13,240.00 general compensation.

He did not apportion the amounts between the Landlords, but rather he found them to all be jointly and severally liable. The N12 notice was served to evict the Tenants for purchaser's own use.

2. The Landlords, who were all represented by the same legal representative at the merits hearing, and at this hearing, requested a review of the order based on a number of alleged serious errors as follows.
3. The Landlords allege that the Vice Chair erred, a) by focusing on the length of time of occupancy of the purchaser, rather than focusing on the genuine intention of the purchaser, b) by rejecting the testimony of the purchaser with respect to closing date and the amount of time they spent living in the rental unit when that testimony of the purchaser was uncontested, c) by awarding general compensation in the absence of evidence of actual loss by the Tenants, d) by imposing joint and several liability on all the Landlords in the absence of any evidence about the liability of Canadian Property Management Group Inc.

Focus on Length of Time of Purchaser's Occupancy in the Rental Unit:

4. I am not satisfied that there is a serious error in the order with respect to the Vice Chair's consideration of length of time of the purchaser's occupancy in the rental unit for the following reasons.
5. The Landlords' legal representative said that the Vice Chair improperly applied the test in section 57 of the *Residential Tenancies Act, 2006* (the 'Act') by imposing a requirement that the purchaser occupy the rental unit for a longer period than 45 days. She submits that the Act does not require the purchaser to live in the rental unit for any length of time in particular, as opposed to a landlord who requires the unit for their own use. Pursuant to subsection 72(1)(a) of the Act, the latter is required to file an affidavit stating that they intend to live in the rental unit for a period of at least one year.
6. I find that the Landlords mischaracterize the Vice Chair's analysis of the purchaser's genuine intention, and his analysis of the 45 day time period the purchaser has, themselves, testified they lived in the rental unit. There was no dispute about the period of 45 days. I find that rather than imposing a minimum period in which the purchaser is required to live in the rental unit, as submitted by the Landlords, the Vice Chair looked at all the context and circumstances of the purchaser's alleged stay in the rental unit to conclude that the purchaser never had a genuine intention to move into the rental unit. In this analysis, the Vice Chair cited the appropriate case law, specifically, *Elkins v. Van Wissen*, 2023 ONCA 789 to conclude that the Court of Appeal has stated that the Board must take a contextual approach to determine genuine intention, and they should not merely look at the date the N12 notice is served. In making the determination that the purchaser never genuinely intended to live in the rental unit, the Vice Chair examined a number of aspects of the purchaser's stay in the unit, not merely the number of days. He considered the purchaser's evidence about their residency in the unit, for example, whether they had changed their driver's licence address, whether they had moving invoices or school registration, and also where they had lived immediately before and after the 45 day period in the rental unit. He even considered the evidence the purchaser did provide about utility bills, and he dismissed them. He determined that any landlord may receive utility bills

without being personally resident in the rental unit. He even went further and considered the evidence that the purchaser continued to receive utility bills even past the period they, themselves, testified that they lived in the unit. When the analysis of genuine intention in the hearing order is considered as a whole, there is no imposition by the Vice Chair of a minimum residency requirement. In fact the Vice Chair concedes, and he specifically states in the order, such a minimum is not imposed by the Act.

Did Board Reject the Purchaser's Testimony about the Closing Date:

7. I am not satisfied that there is a serious error in the order with respect to the Vice Chair's consideration of the purchaser's testimony for the following reasons.
8. The Landlords submit that the Vice Chair's findings with respect to the purchaser's testimony about the closing date and residence in the unit was uncontested, and it was therefore a serious error for the Vice Chair to discount this evidence.
9. I find that the Landlords' have again mischaracterized the Vice Chair's analysis of the purchaser's testimony. The Vice Chair was concerned that the purchaser provided a completely different date for the closing and subsequent move-in to the property than they had provided in a previous Board order, LTB-L-021782-22 issued on April 17, 2023, that terminated the tenancy as of May 31, 2023. In that order, which was not the subject of review, paragraph #4 of the Determinations states that as of the date of the hearing on February 3, 2023, the "sale of the property had closed and therefore the purchaser was now the Landlord." At the hearing for this application, on June 26, 2025, the purchaser testified that the sale closed on June 19, 2023.
10. The Vice Chair did not "reject" the uncontested testimony of the purchaser about the sale date. Rather, he found the contradiction in the dates of closing between the order of April 2023 and the testimony of the purchaser in this hearing led to a concern about the credibility of all of the purchaser's testimony. He specifically writes, in paragraph #47 of his Determinations, "They did not provide anything to explain this contradiction." By considering a later date of closing, as testified to by the purchaser himself, that merely served to make the purchaser's occupancy in the rental unit shorter than it otherwise would have been if the occupancy had commenced on April 17, 2023. The purchaser was asserting that the shortness of their occupancy was not an indication of bad faith, so it would have been in their own interest to emphasize a longer period of occupancy, if that had been the case. Therefore, a concern by the Vice Chair about the closing date would not have changed the outcome with respect to any of the findings about the purchaser and their testimony. As it happens, the Vice Chair was entitled to make a finding of credibility based on overtly contradictory evidence provided by one of the parties from one hearing to the next.
11. Where the exact date of closing became a significant issue was with respect to the Vice Chair's finding of joint and several liability as follows.

Was it a Serious Error to Attribute Joint and Several Liability on all the Landlords:

12. I have already found above that the Vice Chair did not err in finding that the N12 notice was served in bad faith, because he determined that the purchaser did not have a genuine intention to live in the rental unit for their own use.
13. It is then open to the discretion of the adjudicator to apportion the liability for the finding of bad faith. That is, the adjudicator is entitled to find that the Landlord who served the notice is wholly liable for bad faith, **or** that the purchaser was wholly liable for bad faith, or to find that both the Landlord who served the notice of termination **and** the purchaser were in bad faith.
14. In this case, only the purchaser testified at the merits hearing, and the Vice Chair found that they were in bad faith. Thus, the Tenants had proved their application, and they were entitled to a remedy. When then determining apportionment of liability for the purposes of who was liable to pay the remedy, and when considering the vendor and their potential liability, the Vice Chair noted, at paragraph #82 of his Determinations, that none of the vendors sent an agent or representative to testify at the hearing, and he had no evidence upon which to exonerate the vendor from liability or to determine that it was solely the purchaser who was in bad faith. Additionally, in paragraph #81 of his Determinations, he considers the contradictory evidence about the closing date that was presented for the hearing of LTB-L-021782-22 issued on April 17, 2023, at which hearing there was an agent of the vendor, to make an adverse reference about the vendor's role in the sale, and their credibility. At that hearing there was a completely different date of closing provided, the vendor was present, and that order was never the subject of review. The agent of the vendor never contested the date of closing provided in that hearing, that is April 2023. On the basis of all of those factors, the Vice Chair determined that there is no evidence before him to exonerate the vendor, nor to consider that the bad faith service of the notice was not a joint enterprise between the vendor and the purchaser. If it had not been a joint enterprise, there would have been an agent of the vendor to testify at either the merits hearing for this application, or even the review hearing, and there was not. The Landlords chose to have the same legal representative representing all of them, so there was no reason for the Vice Chair, or for me, to conclude that whatever events happened, and whatever determinations were arrived at, did not apply to all the named Landlords (including purchaser).

Award of General Compensation in the Absence of Evidence of Loss:

15. I am not satisfied that there is a serious error in the order with respect to the Vice Chair's consideration of the general compensation for the following reasons.
16. General compensation is a non-pecuniary, subjective compensation for intangible loss. It is discretionary, and it is awarded specifically for intangible types of loss. Providing reasons for this type of remedy award is therefore tricky, but it is ultimately discretionary. Consequently, it will only rise to the level of a serious error if it constitutes an "unreasonable exercise of discretion" which results in an order outside the usual range of remedies or results, and where there are no reasons explaining the result.
17. In this case, the Vice Chair cited the correct provision of the Act about general compensation, subsection 57(3)1.1 which provides that it is before an adjudicator to award

up to 12 months of the last rent charged to the former tenant. The provision also specifically states that the award can be made “regardless of whether the former tenant has incurred any actual expenses...” Hence, the Act overtly gives the adjudicator discretion to award an amount equivalent to up to 12 months of the last rent. It appears that all the Tenants’ evidence to support an award of general compensation was testimonial. That is, there were no psychological evaluations, medical reports or other documents to support the Tenants’ testimony about humiliation, anxiety, depression, turmoil in the family, a close family member’s battle with cancer, the move forcing the Tenants to move farther away from family. The Vice Chair cited all these factors in his considerations in paragraphs #73 and #74 of his Determinations. Further, he cited a number of other factors in his consideration, such as length of tenancy, size of family, the frustration in finding suitable alternative housing. He specifically acknowledges the lack of medical records. I find that he gave ample reasons to support his discretionary award of general compensation. He heard the witnesses, and he was in the best position to assess their testimony, so I defer to his determination.

18. On the basis of the above, I find that the Vice Chair’s award of general compensation was not an unreasonable exercise of discretion. He considered a number of factors, it was open to him to award up to a year of the last rent, and he provided his reasons for the award. He was also under no obligation to base it on documentary evidence alone, or even at all, as specifically outlined in the Act.
19. Since the Landlords have been unable to prove, on a balance of probabilities, that there was a serious error in the merits hearing decision, their request for a review will be denied.

It is ordered that:

1. The request to review order LTB-T-010393-24 issued on September 9, 2025, is denied. The order is confirmed and remains unchanged.
2. The interim order LTB-T-010393-24-RV-IN issued on October 8, 2025, is cancelled. The stay of order LTB-T-010393-24 is lifted immediately.

March 3, 2026
Date Issued

Nancy Morris
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.