



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

File Number: LTB-T-099601-24

In the matter of: 711, 5 SHADY GOLFWAY
NORTH YORK ON M3C3A5

Between: Mostafa ElSayed Tenant
Arwa Zourob

And

Youssef Sekal Landlord

Mostafa ElSayed and Arwa Zourob (the 'Tenant') applied for an order determining that Youssef Sekal (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on February 4, 2026.

The Landlord, Landlord's legal representative Syed Hussain, and the Tenants attended the hearing.

Determinations:

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

Evidence of the Tenants

2. On March 28, 2024, the Tenants received an N12 notice from the Landlord indicating a termination date of May 31, 2024. The Tenants requested permission from the Landlord to remain in the rental unit until the end of June, and the Landlord agreed. The Tenants ultimately vacated the rental unit on July 2, 2024.
3. The Tenants testified that they genuinely believed the Landlord intended to move into the rental unit; otherwise, they would not have vacated. In November 2024, they learned that the unit had been re-rented to another individual. When they confronted the Landlord, he confirmed in an email dated December 15, 2024, which was admitted into evidence, that the unit had indeed been rented to a new tenant due to a change in his circumstances.

4. The Tenants' new residence is located a 20-minute drive from the rental unit. It is a three-bedroom bungalow with a monthly rent of \$2,900.00 plus utilities. By comparison, the rental unit was a condominium with parking and access to a gym, rented at \$2,400.00 per month inclusive of utilities.
5. The Tenants are seeking one year's rent differential, general compensation in the amount of \$16,020.00, and an administrative fine. In support of their claim for general compensation, the Tenants testified that they now incur additional monthly expenses, including \$100.00 for a gym membership, \$800.00 for daycare, \$160.00 for a private tutor, and \$250.00 for additional insurance. No documentation was submitted to support these claimed expenses.

Evidence of the Landlord

6. The Landlord acknowledged that he re-rented the rental unit to a new tenant. He testified regarding the circumstances that led him to serve the N12 notice, as well as the circumstances that occurred after the Tenants vacated.
7. The Landlord explained that he resides in Ottawa but technically works out of Toronto. At the relevant time, he was working remotely and required to attend the Toronto office only twice per month. In the summer of 2023, his employer implemented a policy requiring a minimum of three in-office days per week. Although he sought relief from this requirement, he was only granted an extension until the end of 2023. Consequently, he began searching for fully remote work within his industry so that he could continue living in Ottawa full-time. The Landlord submitted job applications into evidence to corroborate this.
8. Believing that he would have to relocate to Toronto, the Landlord began preparing to sell his Ottawa home. On November 27, 2023, he contacted a realtor to initiate the process of listing the property for sale.
9. In January 2024, the Landlord changed jobs. His new position, located in Toronto, required mandatory in-office attendance. Although he understood there might be a limited hybrid option, the flexibility was minimal. The employer's workplace policy was entered into evidence confirming said limited flexibility. The Landlord requested temporary remote work until the end of March to determine how to proceed regarding the rental unit, and this request was approved.
10. On March 21, 2024, the Landlord's employer granted him an extension of temporary remote work until the end of May 2024. On March 28, 2024, the Landlord served the Tenants with the N12 notice. During this period, he continued working with his realtor to prepare for the sale of his Ottawa home and obtained quotes for minor renovations aimed at facilitating a quicker sale of the property.

11. In June 2024, the Landlord commuted daily between Ottawa and Toronto for work. After the Tenants vacated the unit on July 2, 2024, he moved in to establish a base in Toronto. Around this time, his wife became pregnant, which further complicated his plans to relocate permanently.
12. Shortly thereafter, the Landlord spoke with his manager and requested full-time remote work. He remained in the rental unit until August 21, 2024, when his request for full-time remote work was ultimately granted. Unable to maintain both properties, he rented the unit to a new tenant and continues to reside in Ottawa as of the date of the hearing.
13. The Landlord confirmed that the Tenants had offered to pay an increased monthly rent to remain in the unit. He testified that he declined their offer because his decision was not financially motivated, he genuinely intended to move into the unit at the time he served the N12 notice.
14. During cross-examination, the Landlord was asked whether he knew his wife was pregnant when he served the N12 notice. He confirmed that he was aware and testified that his wife planned to move into the rental unit during her second trimester.

Analysis

15. 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.
16. I find that the Landlord served the Tenants an N12 notice, the Tenants vacated the rental unit due to the N12 notice, and that the Landlord re-rented the rental unit to another tenant. These are all not in dispute.
17. Subsection 57(5) of the Act states:

57(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.

18. In *MacDonald v. Richard*, [2008] O.J. No. 6076 (Ont. Div. Ct.), the Divisional Court held that temporary full-time occupancy of a residential unit does not constitute “residential occupation” within the meaning of s. 48(1) of the Act. Accordingly, I cannot find that the Landlord occupied the rental unit for the purposes contemplated by the Act based on his temporary full-time stay.
19. It is undisputed that the Landlord re-rented the unit within one year. As a result, the burden shifts to the Landlord to rebut the presumption set out in s. 57(5) of the Act.
20. In *Elkins v. Van Wissen*, 2023 ONCA 789, the Court of Appeal clarified that, pursuant to s. 202(1) of the Act, the Board must determine the real substance of all transactions and activities relating to the rental unit and assess the good faith of the parties. The Court further held that the Board’s analysis should not be confined solely to the Landlord’s state of mind at the time the notice of termination was served.
21. The Landlord’s evidence was clear, consistent, and straightforward. There is no basis on the record to doubt the credibility or reliability of his oral testimony.
22. Considering the totality of the evidence, on a balance of probabilities, I find that the Landlord genuinely intended to move into the rental unit at the time the N12 notice was served. The Landlord’s evidence about his requirement to work in-office was supported by documentary evidence. Furthermore, the evidence indicates that the Landlord occupied the unit for at least one month after the Tenants vacated while attending his new job in-office. Subsequently, on August 21, 2024, he was approved for full-time remote work. This development allowed him to remain in Ottawa with his wife, particularly in light of her pregnancy, and eliminated the need for a permanent relocation to Toronto. This is a drastic change in circumstance that goes to the heart of the reason the Landlord served the N12 notice, and this was not anticipated at the time the N12 notice was served.
23. For these reasons, I am satisfied on a balance of probabilities that the Landlord has successfully rebutted the presumption of bad faith. I therefore find that the N12 notice was not served in bad faith.

It is ordered that:

1. The T5 application is dismissed.

March 2, 2026
Date Issued

Brett Lockwood
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.