



Order under Section 57 Residential Tenancies Act, 2006

Citation: Swaby v Patel, 2026 ONLTB 19380

Date: 2026-03-10

File Number: LTB-T-081663-23

In the matter of: 441, 3091 Dufferin Street
North York ON M6A0C4

Between: Simone Swaby
Xing You Lee
Tenants

And

Pushpamkumar Patel
Krutiben Patel
Landlords

And

Melissa Gemmiti
Purchaser

Simone Swaby and Xing You Lee (the 'Tenants') applied for an order determining that Pushpamkumar Patel, Krutiben Patel (the 'Landlords') and Melissa Gemmiti (the 'Purchaser') gave a notice of termination in bad faith.

This application was heard by videoconference on December 2, 2025.

The Tenants, the Landlords, and the Purchaser, attended the hearing.

Determinations:

1. As explained below, the Tenants proved the allegations contained in the application on a balance of probabilities. Therefore, the Purchaser must pay the Tenant a total of \$8,539.57 which represents:
 - \$7,594.32 for rent differential
 - \$892.25 for moving and storage fees
 - \$53.00 for the cost of filing the application

Evidence and Analysis

2. Section 57(1)(b) of the *Residential Tenancies Act, 2006* (the 'Act') requires the Tenants to prove each of the following on a balance of probabilities:
 - The Landlords gave the Tenants an N12 notice of termination under section 49 of the Act;
 - The Tenants vacated the rental unit as a result of the N12 notice of termination;
 - No person referred to in clause 49 (1) (a), (b), (c) or (d) or 49 (2) (a), (b), (c) or (d) occupied the rental unit within a reasonable time after the Tenants vacated the rental unit; and
 - The N12 notice was given in bad faith.
3. There is no dispute that on or about May 16, 2023, the Landlords served the Tenants with an N12 notice of termination under section 49 of the Act with a termination date of July 31, 2023, stating that the purchaser intends to move into the rental unit. It was also undisputed that the Tenants moved out in accordance with the notice on July 1, 2023, and returned the unit keys on July 9, 2023. The central factual dispute is whether the Purchaser occupied the rental unit within a reasonable time after the Tenants vacated and whether the N12 notice was served in bad faith.
4. The Tenants testified that they had a good relationship with the Landlords and accepted that the Landlords needed to sell the property. After the Tenants vacated they stated they were shocked to find a listing on "condo.ca" advertising their former unit for rent. The Tenants submitted a copy of this advertisement which shows the unit was listed for rent on September 7, 2023, for \$2,700.00 per month.
5. The Tenants further submitted a copy of the listing history for the rental unit. This document shows that the Purchaser's contact date with her realtor to list the unit for lease was September 7, 2023, and that the unit was leased on October 1, 2023.
6. The Tenants testified that given the very short turn-around time of less than one month from the close date of the sale to the date the unit was listed for rent, they believe the Purchaser never moved in and that the N12 was served in bad faith.
7. The Landlords testified that they were experiencing financial hardship due to the increase in mortgage rates and felt their only option was to sell the rental unit. The Landlords stated they never met or spoke to the purchaser personally and that all communication was through their respective realtors. The Landlords expressly advised their realtor that the unit was tenanted. The Landlords testified that based on the information provided through their realtor, they believed the Purchaser required the unit for her own personal use and because of this belief, they served the Tenants with the N12 notice.
8. Both the Landlords and the Purchaser submitted a copy of the Agreement of Purchase and Sale ("APS") for the rental unit. The close date of the purchase was August 11, 2023. The final paragraph on page 7 of 7 of the APS states:

The Buyer hereby confirms that He/She is buying the Unit for His/Her own personal use as Principal Home and He/She will be staying in the apartment. As the Buyer requires the vacant possession of the Unit, the Seller hereby is advised to go ahead with serving the N12 Notice to the Tenants.

9. The Purchaser does not dispute the rental unit was listed for rent as per the listing submitted by the Tenants and that she still owns the unit and still has tenants living there.
10. The Purchaser testified that she was only 26 years old at the time of purchasing the rental unit and she was very excited to be starting her independent life. Prior to purchasing the rental unit, the Purchaser was living with her parents.
11. The Purchaser stated she moved into the rental unit, but she quickly realized that living on her own made her feel anxious, disconnected from her family and very lonely; she did not enjoy living on her own as much as she thought she would. The Purchaser stated she reached out to her realtor to advise of the issue who encouraged her to give her living situation more time, but she felt she could not do so. The Purchaser testified she lived in the unit for approximately 3 weeks.
12. The Purchaser submitted photos date stamped on August 24, 2023, which she stated are of her family in the unit for a housewarming party. The Purchaser also submitted correspondence with the condo management to properly set up her name on the buzzer for the unit and the "Owner Registration Form" which is required for the condo management.
13. The Purchaser further submitted a letter from her realtor, Silvio Azzinnari (S.A.). The letter outlines S.A.'s opinion on the good faith intention of the Purchaser and her intent to occupy the unit for her own use. It should be noted that S.A. was not present to testify and as such the letter is hearsay evidence. While hearsay evidence is admissible at the Board, it is generally given less weight than credible oral testimony that is subject to cross examination. This is particularly true when the hearsay evidence is opinion based which lacks objective verification and relies on personal bias and limited perspectives. For these reasons I gave this letter very little weight when making my determinations.

Did the Purchaser move in?

14. Based on the evidence and testimony before me, I find on the balance of probabilities that the Purchaser did not move into the rental unit. I say this for the following reasons.
15. The close date of the APS was August 11, 2023, and the listing history confirms the Purchaser contacted her realtor to lease the unit on September 7, 2023, just 21 days later. I find it unlikely that the Purchaser moved in all her belongings, unpacked, and then made the decision to move again in that short time.
16. Additionally, the Purchaser's evidence does not assist me with making a finding that she moved in. The photos of her housewarming party are primarily taken with her family on the balcony looking outward. One photo is at the kitchen counter and none of the photos give any perspective of whether there were furniture or any personal belongings in the unit. The buzzer code information and the Owner registration form would be required even if the Purchaser never moved in as she was the new owner of the unit. The buzzer would need

to be properly named so that potential tenants could be let in for viewings. Finally, the Purchaser testified she did not book the elevator for her move as she moved in over the course of several days and did not require such a service. I find this contradicts the Purchaser's testimony of how excited she was to move into her new unit and start her independent life.

17. Given all of the above, I find the Tenant's have successfully met their burden to prove, on the balance of probabilities, that the Purchaser did not move into the rental unit within a reasonable time after the Tenants vacated.

Was the N12 given in bad faith?

18. The court of appeal for Ontario recently clarified the law regarding bad faith applications when an N12 notice is served pursuant to section 49 of the Act. At paragraph 43 of *Elkins v. Van Wissen*, 2023 ONCA 789 ("*Elkins v. Van Wissen*") the court stated the following:

On a plain reading of ss. 49(1) and 57(1)(b), the landlord's conduct is linked to the Purchaser's good faith. Section 49(1) permits the landlord to, on behalf of the Purchaser, give the tenant a termination notice so long as the Purchaser, in good faith, requires possession of the rental unit for the purpose of residential occupation. Section 57(1)(b) requires the Board to determine, among other things, whether the landlord gave the s. 49 termination notice in bad faith. When ss. 49(1) and 57(1)(b) are read together, it is clear that the object of those provisions is to prevent the sale of a property from being used to unlawfully evict a tenant. Accordingly, **the Board must consider all the evidence before it that is relevant to the landlord's bad faith under s. 57(1)(b). It is an error of law for the Board to restrict its consideration to the evidence at the point in time when the landlord gives the tenant a s. 49 termination notice**.... [emphasis added]

19. The Court further addressed the LTB's jurisdiction to make an order against the Purchaser if it finds that the Purchaser acted in bad faith at paragraph 58:

While s. 57(3) sets out specific orders that can be made against a landlord who acts in bad faith in giving a s. 49 termination notice, it also empowers the Board to make any order it "considers appropriate". Thus, if the Board finds that a landlord did not act in bad faith but the Purchaser did, s. 57(3) gives the Board the power to make appropriate orders against the Purchaser. This "gives teeth" to the good faith requirement on the part of Purchasers in s. 49(1).

20. It is clear from this decision that, depending on the specific circumstances of the case, the landlord, purchaser, or both may be held liable in a bad faith application such as this. It is also clear that the obligation of good faith is ongoing and that it is insufficient to assess only whether the Landlord acted in bad faith in giving the N12 on behalf of the purchaser. The Board must also look at the Purchaser's intention.
21. In this case I find that the Landlords acted in good faith. I accept the Landlords' testimony that they placed the rental unit on the market due to extenuating financial circumstances.

This is not unusual, nor is it uncommon. The relationship between the Tenants and the Landlords was good and the Tenants stated they had no reason to believe that the Landlords were not acting in good faith on behalf of the Purchaser when they served the N12 notice.

22. The Landlords were provided with information that the Purchaser wanted to occupy the unit for their own use and had no reason to think otherwise. The APS contained a clause with respect to the unit being tenanted. I do not find that the Landlords could have done anything further to ascertain the true substance of the Purchaser's intentions and as such, I find the Landlords at all material times acted in good faith.
23. However, for the reasons that follow and on the balance of probabilities, I find the Purchaser did not act in good faith.
24. The Purchaser testified that she would have kept the Tenants had her intention been to use the unit as a rental property. However, during cross-examination, she stated she could not recall whether she contacted the Tenants to offer the unit back and later clarified that she made no attempt to reach out once she realized she could not remain in the unit. This inconsistency undermines her credibility. Given that less than a month passed between the Tenants vacating the unit and it being listed for rent, the Purchaser could easily have asked her realtor to help contact the former Tenants and offer them the opportunity to return.
25. I find the Purchaser's testimony that she did not remember if she contacted the Tenants was disingenuous and reflective of a possible awareness of wrongdoing.
26. The unit was listed for rent at a rate approximately \$800.00 more per month than what the Tenants had been paying. The Purchaser's failure to consider contacting the former Tenants, combined with her testimony that she never contemplated selling the unit, supports the conclusion that her intention was always to use the property for rental income. Evicting the Tenants enabled the Purchaser to secure a higher rent than what the Tenants were paying to the previous owners.
27. Since the Tenants have proven all the required elements of section 57(1)(b) of the *Act* the application must be granted. In accordance with the Court's findings in *Elkins v. Van Wissen*, pursuant to section 57(3), and for the reasons set out above, I find that the apportionment of liability should be placed solely at the feet of the Purchaser.

Remedies

28. In their application the Tenants sought the following remedies:
 - Costs relating to the difference in rent between the Tenants old unit and their new rental unit.
 - Costs associated with moving and storage
 - Administrative fine.

29. At the outset of the hearing the Tenants submitted they are no longer seeking the administrative fine.

Rent differential

30. The Tenants resided in the rental unit for 2 years. They moved into the unit in April 2021 and had intended on living there indefinitely.
31. The Tenants testified they found a new unit close to their previous rental unit that was the same size and number of bedrooms and also had parking as their previous unit had. However, the Tenants' old unit included a storage locker and their new unit did not.
32. The Tenants testified their previous rent was \$1,867.14 and their new rent was \$2,500.00 per month. The Tenants submitted a copy of their new lease agreement to substantiate the rent differential they are claiming.
33. In considering a rent differential, the Board must consider whether the rental units are comparable, although they need not be exact. The units in this case are very comparable in size and parking amenities. The Tenants lost the use of a storage locker that was included with their monthly rent. The Tenants had lived in the rental unit for more than a full year and therefore I find it reasonable that they should be awarded one full year of rent differential. The Purchaser shall be ordered to pay a rent differential in the amount of \$632.86 per month for 12 months totalling \$7,594.32.

Moving and storage costs

34. The Tenants are seeking reimbursement of \$892.25 which consists of their costs to rent a moving truck and 1 year of storage locker fees.
35. The Tenants submitted receipts for their moving truck rental from U-Haul in the amount of \$52.25 and also submitted their storage locker rental agreement. As stated above, the Tenants previously had use of a storage locker with their former rental unit that was not included when they had to find a new rental unit. The rental agreement states that the Tenants paid \$70.00 per month for the storage locker. The rental agreement was for a fixed term from July 1, 2023, to June 30, 2024.
36. I am satisfied that the Tenants incurred reasonable moving and storage costs. In the circumstances, I find it appropriate to award the Tenants the full amount of out of pocket storage costs for 1 year. An order will issue for the Purchaser to reimburse the Tenants \$892.25 for their moving and storage expenses.
37. As the Tenants were successful in proving their application, the Tenants are also entitled to the cost of filing their application in the amount of \$53.00.

It is ordered that:

1. The total amount the Purchaser shall pay the Tenants is \$8,539.57. This amount represents:

- \$7,594.32 for increased rent the Tenants have incurred for the one-year period from July 1, 2023, to June 30, 2024.
 - \$892.25 for the reasonable moving, storage and other like expenses that the Tenants have incurred as a result of having to move out of the rental unit.
 - \$53.00 for the cost of filing the application.
2. The Purchaser shall pay the Tenants the full amount owing by April 10, 2026.
 3. If the Purchaser does not pay the Tenants the full amount owing by April 10, 2026, the Purchaser will owe interest. This will be simple interest calculated from April 11, 2026, 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.

March 10, 2026
Date Issued

Melissa Anjema
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.