



Order under Section 57 Residential Tenancies Act, 2006

File Number: LTB-T-040840-25

In the matter of: basement, 217 HAMPTON CRT
NEWMARKET ON L3Y6J5

Between: Brittany Vanderkooy Tenant

And

Babak Kashani Landlord

Brittany Vanderkooy (the 'Tenant') applied for an order determining that Babak Kashani (the 'Landlord') gave a notice of termination in bad faith.

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

The Tenant's legal representative Peter Swales, the Tenant and the Landlord attended the hearing.

Preliminary:

Amend application to correct a clerical error

1. The Tenant's legal representative submitted the Tenant's first name is misspelled on the application and requested to amend the application.
2. The Tenant's correct name is Brittany, the application is missing the "a".
3. The Landlord did not object to the amendment.
4. The Tenant's legal representative also submitted that the Tenant's remedy 3 in the application was not checked off although the application has details of the requested remedy filled out.
5. The Landlord did not object to the Tenant's legal representative's submission and stated he was aware of the requested remedy.
6. With the totality of the submissions before me and given the parties submissions, and in accordance with the Board's Rule of Procedure section 15.4 on Amending Applications I

am exercising my discretion and granting the amendment to the application on the day of the hearing, as the clerical amendment is not prejudicial to the Landlord.

7. The request is granted and reflected in this order.

Determinations:

8. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.
9. The Tenant did not prove the following requirement in subsection 57(1)(a). The Tenant did not prove the Landlord did not occupy the rental unit within a reasonable time after the Tenant vacated.

Tenant evidence

10. The position of the Tenant is the Landlord served the N12 notice in bad faith.
11. The Tenant submitted evidence consisting of documents and photographs to support her claim.
12. The Tenant stated that she and the Landlord had communication by email sometime around May 21, 2024 to June 6, 2024. The context of the communication was around the yearly rent increase the Landlord issued the Tenant. The Tenant also informed the Landlord of some maintenance issues in the rental unit, specifically issues with the ventilation, the presence of mice, the rental unit floors and the Tenant's belief the rental unit does not have a required second fire exit.
13. The Tenant also asked about the Landlord's intent to continue with her tenancy after the term of their tenancy agreement had ended in August 2024. The Landlord indicated he would address the maintenance issues, and he intended to keep the Tenant even though the Landlord had indicated he would be occupying the upstairs rental unit.
14. The Tenant does not dispute that the Landlord addressed the maintenance issues in the rental unit in a reasonable time although the Tenant questioned the competency of the Landlord's contractor. The Tenant stated eventually the Landlord had remedied the issues sometime around mid-June 2024 by hiring a professional to fix the ventilation.
15. The Tenant stated that sometime around the end of May 2024 to early June 2024 she issued a complaint with the Town of Newmarket regarding issues with the rental unit.
16. The Tenant claims the Landlord served her with the N12 notice on June 11, 2024 and claims the notice was served in retaliation to her maintenance issues in the rental unit and the complaint to the municipality.

17. The Tenant holds the position that the Landlord's use of the basement rental unit as storage and displacing her family for this purpose is not appropriate. The Tenant also stated that the Landlord could have kept her in the rental unit while the upstairs renovations were taking place.

Landlord evidence

18. The position of the Landlord is he changed his mind to allowing the Tenant to maintain occupancy of the rental unit. Faced with the option of bringing the rental unit into compliance with the municipality or taking occupation of the basement rental unit, the Landlord chose the latter and opted to serve the Tenant the N12 notice for own use as a single family dwelling.
19. The Landlord stated that since the Tenant has vacated and he has taken possession of the single family home, the basement rental unit is not being rented to another Tenant, and he is using the rental unit for occupational purposes.
20. The Landlord submitted a copy of the by-law officer file notes and a copy of the penalty notice.
21. The Landlord stated he performed extensive renovations to the upper rental unit as a result of damage to the rental unit caused by the upper tenant and took occupancy of the entire family home in July 2025.
22. The Landlord submitted documents consisting of his gym membership log for his attendance at the facility, various utility bills in the Landlord's name and address of the rental unit, a CRA statement and insurance for the rental unit starting on July 14, 2025. All the documents show the Landlord's address as the rental unit.

The Act and Analysis

23. 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.

24. On a balance of probabilities means the applicant, in this case the Tenant must show that their version of events is the more probable and should succeed. Saying something is proven on a balance of probabilities simply means that it is more likely than not to have occurred. It means that it is probable, i.e., the probability that some event happened is more than 50%--indeed, 50.1% is sufficient. In all cases, the decision maker must weigh up the evidence and decide which version is most probably true. Consequently, the real truth may never be known. All that can be done is to decide which of the parties has presented the most probable version.
25. The Tenant bases her allegation of bad faith on the fact the allegation the Landlord served the N12 notice in retaliation to the Tenant's request for maintenance repairs and her filing of the complaint to the municipality. The Tenant further alleges the Landlord did not need to evict her for the period the Landlord was undergoing the renovations.
26. The penalty notice states:

*As the owner of this property, it is your responsibility to ensure compliance with the by-laws by having your two-unit house registered with the Town of Newmarket **or converting back to a single-family dwelling by September 26, 2024.***

[emphasis added]

27. I do not find the Tenant has led with sufficient evidence to support her claim the Landlord served the notice in bad faith.
28. I prefer the evidence of the Landlord, and although the Tenant has established the first two parts of the test, I find the Tenant has not proven the Landlord did not occupy the rental unit in a reasonable time.
29. What I believe has occurred here is the Landlord intended on keeping the Tenant in the rental unit after he took occupancy of the upper rental unit, however, the Tenant's filing of the complaint with the municipality forced the Landlord to make a decision to bring the rental unit within compliance or return the rental unit to a single-family dwelling.
30. As such in my view at the time the Landlord served the Tenant the N12 notice his intent was to occupy the rental unit and not bring the rental unit into compliance to re-rent.
31. In order to do this the Landlord was required to serve the Tenant with an N12 notice for the Landlord's own use and occupy the entire residential complex as a single-family home and I do not find this to be inconsistent with the Landlord's intent indicated on the notice to take occupancy for his own residential purposes.
32. Further, I do not agree with the Tenant's position she could have remained in the rental unit while the Landlord performed renovations to the upper rental unit. The penalty notice issued by the municipality gives the Landlord a deadline of September 26, 2024 to bring the rental unit into compliance or convert the residential complex back to a single family dwelling which is what he did by serving Tenant the notice for own use.
33. I find Tenant has not proved the allegations in the application and the Landlord has not served the notice in bad faith.

34. Therefore the Tenant's application must be dismissed.

35. This order contains all reasons for the determinations and order made. No further reasons will be issued.

It is ordered that:

1. The Tenant's application is dismissed.

March 13, 2026

Date Issued

Greg Brocanier

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.