



Order under Section 57 Residential Tenancies Act, 2006

Citation: Lee v Shen, 2026 ONLTB 21812

Date: 2026-03-12

File Number: LTB-T-084148-24

In the matter of: N1109, 116 GEORGE ST
TORONTO ON M5A3S2

Between: Austin Lee Tenant

And

Carlin Shen Landlord

Austin Lee (the 'Tenant') applied for an order determining that Carlin Shen (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on January 21, 2026.

The Landlord, the Landlord's Legal Representative Ian Shemesh and the Tenant attended the hearing.

Determinations:

1. At the commencement of the hearing the parties agreed that the property Landlord to the action was Carlin Shen.
2. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay to the Tenant the sum of \$1,995.18.

Landlord gave N12 for own use in bad faith

3. 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.

4. The parties agree that the Landlord served an N12 Notice of Termination on the Tenant with a termination date of April 30, 2024, indicating that the Landlord personally required the rental unit for residential occupation for a period of at least one year.
5. The parties further agree that the Tenant vacated the rental unit on April 15, 2024, as a result of receiving the N12 Notice of Termination.
6. The Landlord does not dispute that the rental unit was listed for sale within one year of the tenant vacating.
7. The facts trigger the reverse onus clause in subsection 57(5) of the Act. That provision says that if a landlord gives a notice under subsection 48 and then puts the unit up for sale or rent within one year of the tenant vacating, the landlord is presumed to have given the notice in bad faith “unless the contrary is proven on a balance of probabilities”.
8. The Landlords’ position is that there was a material change in circumstances after the Tenant vacated the rental unit.
9. The Landlord testified that he had previously resided in the rental unit until 2019 when he moved overseas for work at which time he rented the unit to the Tenant.
10. The Landlord further stated that he was residing in London England and that in January, 2024 he received notice from his employer that he was being transferred back to Toronto Canada.
11. The Landlord testified that he and his wife who were expecting their first child moved into the rental unit in May, 2024.
12. The Landlord testified that shortly after moving into the rental unit he and his wife determined that both the unit and the area had changed dramatically since previously residing there in 2019, and that the area would not be good for raising a child.
13. The Landlord stated that the area around the unit had extensive cannabis users and a number of cannabis stores had opened in the area since the Landlord had resided in the unit.
14. Additionally, the Landlord’s wife had been aggressively asked for money while out in the neighbourhood after moving into the rental unit.
15. A new 40 storey building was also scheduled for construction in the area, which the Landlord believed would create a lot of dust and noise which would not be ideal with a new baby on the way.
16. The Landlord didn’t realize how noisy the unit was as the bedrooms had glass sliding doors and were only two floors from a noisy common balcony in the residential complex.
17. The Landlord testified that as a first time parent he hadn’t previously considered these things.
18. The Tenant submits that there was no material change in circumstances as the Landlord knew he was expecting his first child prior to providing the Tenant with the N12 Notice of Termination. The Cannabis stores and planned construction in the area were things the

Landlord ought to have known about or could have found out about prior to the Landlord giving the N12 Notice of Termination. Additionally the Tenant submits and the Landlord agreed that there had been no change to the rental unit or residential complex since the landlord had previously resided in the unit.

Analysis

19. The reverse onus provisions of subsection 57(5) are engaged and the N12 notice is presumed to be given in bad faith. Accordingly, the Landlord must lead evidence sufficient to rebut the presumption—to establish on the balance of probabilities—that it was more likely than not—that the N12 notice was delivered in good faith.
20. The relevant considerations on an application under section 57 based on an N12 delivered under section 48 is whether: (a) the landlord genuinely intended that the person identified on the N12 would occupy the unit; and (b) the person identified on the N12 genuinely intended to occupy the unit. [See *Feeney v. Noble*, [1994 CanLII 10538 \(ON SCDC\)](#) and *Salter v. Beljinac*, [2001 CanLII 40231 \(ON SCDC\)](#)]
21. The fact that the person identified as wanting to occupy the rental unit did not occupy the unit for a period of one year and that the Landlord listed the rental unit for sale are not the sole considerations when determining the Landlord's good faith. A landlord may be able to establish that an unforeseen change in circumstances resulted in the person identified on the N12 being unable to occupy the unit. All other things being equal, this would be sufficient to rebut the presumption of bad faith arising under subsection 57(5) and (6). [See, for example, *Al Richan v Mirza*, [2021 CanLII 141438 \(ON LTB\)](#)].
22. The Landlord's position is that at the time the N12 notice was served he had a good faith intention to reside in the rental unit for his own residential use. The decision to vacate and list the rental unit for sale was based on an alleged change in circumstances as the Landlord had been out of the country and was not aware that the neighbourhood had changed and had not previously considered the noise of the rental unit as a new parent welcoming his first child.
23. My determination about the Landlord's intentions must be made on a contextual basis, in consideration of the circumstances, events and decisions which followed the service of the N12 notice. While the Act describes the test in section 57 as being bad faith in the issuance of the notice, I must also consider the purposes of the Act, which includes to balance the rights and responsibilities of residential landlords and tenants. More specifically, in interpreting and applying sections 48 and 57 of the Act, I must balance the rights of landlords to in good faith take occupancy of a unit for their own residential occupation for a period of at least one year with the rights of tenants to security of tenure. This latter includes tenants' right to pursue a remedy at the Board if the landlord obtained the unit in bad faith and does not live in the unit for at least one year.
24. Limiting the question of good faith to an exploration of the mind of the Landlord at the instant of serving the N12 notice, and to ignore all the surrounding circumstances, would lead to results inconsistent with the objects of the Act. To require the Tenant to establish what was in the mind of the Landlord at the instant of the N12 notice being served, without regard to the surrounding circumstances and to the behaviour of the Landlord subsequent

to the service of the N12 notice, would upset the balance of interests which the Act aims to achieve (Refer *CET-67272-17 (Re)* and *TST-914-18 (Re)*)

25. A number of Board decisions have found that an unforeseen change in circumstance that prevents the person listed in the N12 notice of termination from taking possession may result in a finding that it was not served in bad faith. (Refer *TST-08803-19 (Re)*, *CET25233-12 (Re)* and *TST-63837-15 (Re)*). The key question in the circumstances of the application before me, however, is whether the change in circumstance prevented the Landlord from maintaining possession for one year as required under section 48, further to the requisite intent behind the N12 notice. That is to say, did new, unanticipated, circumstances compel the Landlord to leave the unit – and so not maintain possession for a year?
26. I find that the Landlord's change in circumstances did not constitute the type of change which compelled him to move from and sell the Unit. I find that his actions were inconsistent with a finding that he was committed, in good faith, to living in the Unit for at least one year. I find that his testimony in that regard is refuted by his own actions as he had decided to list the property shortly after moving in, and find that he has failed to establish the requisite good faith to rebut the bad faith presumption set out in subsection 57(1)(a) of the Act.
27. The Tenant proved all of the requirements in subsection 57(1)(a).

Remedies

28. The Tenant seeks the Board to impose a fine on the Landlord. Although I do not find the actions of the Landlord to show that he was committed in good faith, to living in the rental unit for one year, his actions also do not warrant the imposition of a fine by the Board.
29. The Tenant seeks \$1,947.18 in rent differential for one year being the period of May 2024 to April 2025. The rent differential is calculated at \$162.27 x 12 months being the difference in his new rent and the rent he was paying at the rental unit.
30. Therefore, I find that the Landlord must pay the Tenant \$1,947.18 for the increased rent that the Tenant has incurred or will incur for a one-year period after the Tenant moved out of the rental unit.
31. The Tenant seeks general compensation in the amount of \$28,597.44 being the amount of one year's rent at the rental unit. The Tenant is being compensated the rent differential between his previous unit and his current rental unit for a period of one year. Regardless of where the Tenant is residing they would have been responsible to pay for their housing and in the circumstances the Tenant is not entitled to 100% of one year's rent as compensation.
32. The Tenant seeks \$3,354.84 as his new rental unit is 70 square feet smaller than the previous rental unit. Although the Tenant explained how he calculated the amount being sought based on the difference in square footage, I am not satisfied on the evidence submitted by the Tenant that an additional amount of compensation based on square foot differential is appropriate.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$1,995.18. This amount represents:
 - \$1,947.18 for increased rent the Tenant has incurred for the one-year period from May 2024 to April 2025.
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by March 30, 2026.
3. If the Landlord does not pay the Tenant the full amount owing by March 30, 2026, the Landlord will owe interest. This will be simple interest calculated from March 31, 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 19, 2026
Date Issued

Sean Ramage
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.