



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

Citation: COLAFRANCESCHI v NUSSBAUM, 2026 ONLTB 23938

Date: 2026-03-23

File Number: LTB-T-079222-24-RV

In the matter of: Main Floor, 10 CASTLEVIEW AVE
TORONTO ON M5R1Y9

Between: LISA COLAFRANCESCHI Tenant

And

AARON NUSSBAUM Landlord

Review Order

LISA COLAFRANCESCHI (the 'Tenant') applied for an order determining that AARON NUSSBAUM (the 'Landlord') gave a notice of termination in bad faith.

This application was resolved by order LTB-T-079222-24 issued on August 25, 2025

On September 24, 2025, the Tenant requested a review of the order.

On October 3, 2025, interim order LTB-T-079222-24-RV-IN was issued.

The review request was heard by videoconference on October 23, 2025.

The Tenant's review request was granted, in part, and an interim order issued on November 17, 2026.

The limited *de novo* hearing was held by videoconference on March 17, 2026.

The Tenant, the Tenant's legal representative Marshall Reinhart, the Landlord's agent Gayle Nussbaum and the Landlord's legal representative David Ciobotaru attended the October 23, 2025 and March 17, 2026 hearings.

Determinations:

1. By way of background, the Tenant brought an application related to the N12 notice of termination and their belief that the Landlord gave the notice in bad faith. The presiding Member ultimately dismissed the Tenant's application as per the August 25, 2025 Order.

2. The Tenant's review request was granted, in part, as a result of the Member's failure to consider subsections 57(5) of the *Residential Tenancies Act, 2006* (the 'Act') and by not addressing the Tenant's evidence that the unit was advertised for rent.
3. The other reasons claimed in the Tenant's review request were addressed at paragraph 4 of the November 17, 2025 interim order.
4. The parties attended the *de novo* hearing prepared to address the rebuttable presumption test, where the Board must consider the mandatory reverse onus provision as set out in the act.
5. Section 57(5) of the Act states:

(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.
6. For clarity, s.57(5) of the Act is triggered where the Landlord undertakes various activities as described in paragraph 5, within one year after the former tenant vacates the rental unit. Specifically, the legal test sets out that when a landlord does any of the activities described in s.57(5), the reverse onus clause applies; meaning the landlord bears the burden of proof to establish that they did not serve the notice of termination in bad faith.
7. In the present case, the Tenant asserts that the Landlord advertised the rental unit for rent within one year after she vacated.
8. The Tenant's disclosure includes: advertisements and photographs (DOC5657426, DOC5696715).
9. The Landlord's disclosure includes: advertisements, floor plans and photographs (DOC7218263).
10. Although this order does not specifically address each piece of evidence individually or reference all of the testimony, I have considered all of the evidence and oral testimony when making my determinations.
11. The residential complex consists of two similar units. The Tenant's unit was the main level and there is a second upper unit.

The Tenant's Evidence

12. To summarize, the Tenant takes the position that the Landlord advertised her unit for rent on Facebook Marketplace on September 5, 2024. She moved out on October 1, 2023. She said the details in the ad describe her rental unit and the photos used are her rental unit.
13. The Tenant said that when she noticed the ad, she had a friend contact the Landlord to inquire and was advised that it was the main floor unit, the Tenant's unit, which was available to rent. I note, the Tenant did not call any witnesses to testify in support of this claim.
14. The Tenant also said that her friend told her that the Landlord had a number of showings for the main floor unit.
15. The Tenant believes this triggers the reverse onus provision and the Landlord is presumed to have given the N12 notice of termination in bad faith unless the contrary is proven on a balance of probabilities.

The Landlord's Evidence

16. To summarize, the Landlord's agent confirmed that the photographs used in the Facebook Marketplace ad showed the Tenant's unit. The reason for this is that both upper and main floor units at the complex were under renovation and the main floor was further along. To her, it made sense to use photos of the main floor unit as both upper and main have an identical floor plan. She said, at no time was the main floor unit available to rent. The ad stated neither the main nor upper as she understood to use "upper" may limit prospective tenants.
17. The Landlord's agent said that the residential complex photograph, used in the ad, was taken during the nicer weather, when trees were full. As a result, you can see the main floor unit, the upper being partial obstructed by the trees. However, the For Rent sign was in the upper unit window as it was the only available unit for rent.
18. The Landlord's agent confirmed she showed the main floor unit. She said that her friend was interested in the upper unit and came to see it with a family member who had physical limitations. Because the main and upper units are essentially identical, she showed the main unit due to the mobility issues. It was made clear that the main unit was not available.
19. The Landlord's representative relied on the Tenant's own evidence where photographs of the rental units show a building permit in the window on the main floor and a For Rent sign in the upper unit. At no material time was the For Rent sign placed in the main floor window.

Analysis

20. The wording of s.57(5) is clear, the rebuttable presumption provision is triggered by the actions of the Landlord. While the Tenant believes the Landlord listed her unit for rent, the evidence to the contrary is overwhelming. At no material time was the main floor unit for rent. The signage was placed in the upper unit exclusively.

21. I found the Landlord's agent's testimony to be credible and consistent even under the scrutiny of cross examination. I accept that that while the Facebook Marketplace ad showed photos of the former Tenant's unit, I am satisfied that they were done so for convenience and to accommodate the state of renovations. I do not find it was the main floor unit available for rent. The Landlord's and the Tenant's evidence support the proposition that it was the second floor unit that was available to rent at all material times.
22. Given the evidence before the Board and on a balance of probabilities, I cannot find the rental unit was advertised and available for rent and as a result, s.57(5) is not triggered.
23. The balance of the order issued on August 25, 2025 remains unchanged.
24. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The order LTB-T-079222-24 issued on August 25, 2025 remains unchanged.
2. The Tenant's application is dismissed.

March 23, 2026
Date Issued

Dana Wren
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.