



Order under Section 57 Residential Tenancies Act, 2006

Citation: Jain v Zaman Khan, 2026 ONLTB 19180

Date: 2026-03-25

File Number: LTB-T-032615-25

In the matter of: 3157 BETHUNE AVE
RIDGEWAY ON L0S1N0

Between: Sanjive Jain Tenant

And

Mohamed Zaman Khan Landlords
Waheeda Ali

Sanjive Jain (the 'Tenant') applied for an order determining that Mohamed Zaman Khan and Waheeda Ali (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on January 5, 2026.

The Tenant, and the Landlords attended the hearing.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlords must pay the Tenant \$4,992.67.
2. This application is brought by the Tenant pursuant to s. 57(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') which reads as follows:

57 (1) The Board may make an order described in subsection (3) if, on application by a former Tenants of a rental unit, the Board determines that,

(a) the landlord gave a notice of termination under section 48 in bad faith, the former Tenants vacated the rental unit as a result of the notice or as a result of an application to or order made by the Board based on the notice, and no person referred to in clause 48 (1) (a), (b), (c) or (d) occupied the rental unit within a reasonable time after the former Tenants vacated the rental unit.

3. What this provision means is that to succeed on this application the Tenant must lead sufficient evidence to establish it is more likely than not that: the Tenant got a notice of termination under s. 48; they moved out of the rental unit as a result of the Landlords' notice; the notice was given in bad faith meaning the Landlords had no intention of moving into the rental unit; and the Landlords did not in fact move into the rental unit within a reasonable time after the Tenant vacated.
4. The Tenant testified that Landlord, Mohamed Khan (MK), met with him in January 2024, to tell him that maintenance costs and rapidly increasing mortgage interest rates associated with his variable interest rate mortgage on the residential unit, was making it unaffordable for him to keep the unit. He told the Tenant that he must voluntarily agree to pay a significantly higher monthly rent or to buy the residential unit or he would be selling it. The Tenant refused both options and further refused to sign an N11 Agreement to End a Tenancy MK presented to him, telling MK that he had no desire to vacate the rental unit.
5. On January 30, 2024, MK served the Tenant a N12 Notice of Termination with a termination date of April 15, 2024, and it specified on the Notice that the Landlords required possession of the rental unit for the purpose of their residential occupancy for at least 12 months.
6. At the request of the Tenant, MK extended the termination date until to May 2, 2024, and the Tenant vacated the rental unit on that date because of the N12 notice.
7. The Tenant later saw an MLS advertisement dated August 18, 2024, offering the rental unit for sale. The Tenant filed a T5 application the same day alleging that the Landlord had served him his N12 Notice of Termination in bad faith,
7. Section 57. (5) of the Act that states:

For the purpose 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....

...(c) advertises the rental unit, or the building that contains the rental unit, for sale....

8. The time period in subsection 57 (6) is the period that begins on the day the andlord gives the notice of termination under section 48 and (b) ends one year after the former tenant vacates the rental unit. The Landlords do not dispute that they advertised the rental unit for sale during the prescribed period. As such, the Landlords must prove on a balance of probabilities that the notice of termination was given in good faith.
9. In this regard, the evidence establishes that the Landlords' principal residence is located in Scarborough, Ontario, and that MK works full time there. MK confirmed that he never moved into the residential unit for residential occupancy after the Tenant vacated the rental unit, but he visits the rental unit on weekends and holidays when the weather is good.

10. The issue of defining “residential occupancy” was dealt with by the Divisional Court in *MacDonald v. Richard*, 2015 CanLII 34322 (ON LTB), 2008 Carswell Ont 638 (“*MacDonald*”). In that case, the Court stated that temporary full-time occupancy (which in that case was to be for four months) does not constitute residential occupation as contemplated in subsection 48(1) of the Act. *MacDonald* is binding on me. I am not aware of any other relevant binding authorities. I find that living in a rental unit temporarily and on occasion, in this case weekends and holidays in good weather, does not constitute residential occupation as contemplated in subsection 48(1) of the Act.
11. The Landlords did not submit any evidence to prove that they were forced to sell the residential unit after the Tenant left and confirmed at the hearing that the residential unit continues to be advertised for sale with vacant possession. MK admitted that he had not read the N12 Notice before serving it to the Tenant and had not sought legal advice regarding the use and process for serving the Notice.
12. Based on the material evidence in this application, I find the Landlords have failed to sufficiently establish the N12 was given in good faith.

Remedies:

13. The Tenant asked the Board to levy a fine against the Landlords but did not indicate an amount. The Board’s Guideline 16 suggests that the purpose of a fine is to encourage compliance with the Act and to deter landlords from engaging in similar activities in the future. It goes on to say, “this remedy is most appropriate in cases where the landlord has shown a blatant disregard for the Act and other remedies will not provide adequate deterrence and compliance.” The rental market is a governed industry and landlords ought to know what they legally can and cannot do under the Act. By his own admission, MK did not bother to read the N12 notice of termination and did not seek legal advice. I find this unreasonable, particularly given his failure to do so negatively impacted the Tenant. However, I feel that the money that the Landlords have been ordered to pay the Tenant will adequately serve to deter further non-compliance with the Act. Therefore, no fine will be levied against the Landlords.
14. The Tenant claims moving and storage expenses in the amount of **\$944.67**. These expenses are reasonable and are supported by receipts and the Landlords will be ordered to pay this amount to the Tenant. The Tenant seeks compensation for the cost of cleaning the unit but provided no receipt confirming the amount or which rental unit was cleaned. As a result, this claim is not considered.
15. The Tenant seeks general compensation of \$33,600.00 (12 months x \$2,800 rent per month) which, according to subsection 57.3 1.1 of the Act., is the maximum sum possible that can be claimed. The Tenant testified being forced out of the residential unit was stressful for his family as the move was in the middle of a school year, rents were very high, and the Tenant’s fiancée had to deal with the stress of being required to change custody arrangements affecting the children. The Tenant added that a tenant occupies the basement and reduces their privacy.

16. In my opinion, the Tenant's request for the maximum general compensation is not supported by his evidence. There was no compelling evidence before me to establish that the forced move had an extraordinary impact on the health or well-being on any member of the family confirmed by a medical practitioner or health service provider. It is appreciated that the move was inconvenient and stressful for all family members and worthy of a general compensation award. Considering all of the evidence in this application, I feel that **\$4,000.00** is fair and appropriate compensation and the Landlords will be ordered to pay this amount to the Tenant.
17. The Tenant incurred costs of \$48.00 for the application filing fee and is entitled to reimbursement of these costs.
18. Taking all the evidence into consideration, I find based on a balance of probabilities that the Landlords served their N12 notice to the Tenant in bad faith as they had no intention of moving into the rental unit when they served their N12 to the Tenant. Therefore, the Landlords will be ordered to pay the Tenants \$944.67 in moving and storage expenses, \$4,000 for general compensation and the \$48.00 filing fee for a total of \$4,992.67.

It is ordered that:

1. The total amount the Landlords shall pay the Tenant is \$4,992.67. This amount represents:
 - \$944.67 for the reasonable moving, storage and other like expenses that the Tenant incurred as a result of having to move out of the rental unit.
 - \$4,000.00 for general compensation.
 - \$48.00 for the cost of filing the application.
2. The Landlords shall pay the Tenant the full amount owing by April 5, 2026.
3. If the Landlords do not pay the Tenant the full amount owing by April 5, 2026, the Landlords will owe interest. This will be simple interest calculated from April 6, 2026, at 4.00% annually on the balance outstanding.

March 25, 2026

Date Issued

Douglas Malanka

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.