



Order under Section 57 Residential Tenancies Act, 2006

Citation: Akdora v Rajarathna, 2026 ONLTB 21795

Date: 2026-03-30

File Number: LTB-T-058682-24-RV

In the matter of: 1013, 23 BRANT ST
TORONTO ON M5V2L5

Between: Iskender Fehmi Eren Akdora Tenant

And

Thilani Rajarathna Landlord

Iskender Fehmi Eren Akdora (the 'Tenant') applied for an order determining that Thilani Rajarathna (the 'Landlord') gave a notice of termination in bad faith.

A review of order LTB-T-058682-24, issued on March 31, 2025, was granted on August 11, 2025. Order LTB-T-058682-24-RV-IN2, issued on August 11, 2025, ordered a de novo hearing for this application. The de novo hearing for this application was heard by videoconference on September 10, 2025. The Tenant's evidence was heard on September 10, 2025; however, there was insufficient time to hear the Landlord's evidence and the matter was adjourned. The adjourned hearing for this application was heard on March 10, 2026. The Tenant's agent, Guney Akdora, the Landlord, and the Landlord's representative, Dan Schofield, attended the hearing.

Preliminary Issue:

1. The Tenant's agent stated that the Tenant received the Notice of Hearing for this hearing; however, he is unable to attend the hearing as a result of work commitments. The agent stated further that the Tenant does not want to adjourn this matter and wishes to proceed with the hearing. The agent remarked that she was fully prepared to participate in the hearing on behalf of the Tenant, as his agent, as authorized by the Tenant.

Determinations:

2. As explained below, the Landlord has succeeded, on a balance of probabilities, in rebutting the presumption of bad faith, pursuant to s. 57(5)(c) of the *Residential Tenancies Act, 2006* (the 'Act'). Therefore, the application is dismissed.
3. On July 23, 2024, the Tenant filed a T5 application (T5) pursuant to s. 57(1) of the Act, alleging the Landlord gave him a notice to end his tenancy in bad faith. I am satisfied that this allegation can be considered as the T5 application was filed within one year of the date that the Tenant vacated the unit on March 30, 2024.

T5 Application – Requirements to Succeed

4. This application is brought pursuant to s. 57(1)(a) of the Act, which reads as follows:

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

- (a) the landlord gave a notice of termination under section 48 in bad faith, the former tenant 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 tenant vacated the rental unit.
5. Thus, in order to succeed on this application the Tenant must lead sufficient evidence to establish it is more likely than not that:
- a) The Tenant received a notice of termination under s. 48 of the Act; **and**
 - b) The Tenant moved out of the rental unit as a result of the Landlord's notice; **and**
 - c) The Landlord did not in fact move into the rental unit within a reasonable time after the Tenant vacated; **and**
 - d) The notice was given in bad faith meaning the Landlord had no intention of moving into the rental unit.

Tenant's Evidence

6. The Tenant testified that he received several N12 Notices of Termination from the Landlord early in February 2024, with termination dates of March 1, 2024, April 1, 2024, and March 31, 2024, respectively. The Tenant submitted copies of these notices. The Tenant stated that these notices indicated that the Landlord required the rental unit for her own personal residential occupation.
7. The Tenant testified further that he vacated the unit on March 30, 2024, on the basis of the last N12 Notice that he had received from the Landlord. The Tenant explained that given his correspondence with the Landlord, he understood that the Landlord required the unit for her occupancy as a result of a separation from her partner. The Tenant stated that at the time he did not understand that he could remain in the unit, and the Landlord would then have to apply to the Board to terminate the tenancy.
8. The Tenant noted that he moved to another residential complex across the street from his previous building, and he could see the unit from his new apartment. The Tenant submitted three photos of his view of the unit. The Tenant stated that he never saw any lights on or living activity in the unit after he moved out, and believed that the Landlord had not moved into the unit. The Tenant acknowledged that he did not monitor the unit continuously and never knocked on the unit door to confirm whether the Landlord was residing in the unit.

9. The Tenant testified further that the unit was listed for sale on May 13, 2024, and relisted for sale in June 2024; however, the listing was terminated as of August 2, 2024. The Tenant asserted that the listing was terminated in response to his T5 application that he filed with the Board on July 23, 2024. The Tenant submitted a copy of MLS# C8334524 real estate listing for the unit commencing May 13, 2024, and MLS# C8447972 real estate listing for the unit commencing June 17, 2024, with a contract expiry date of September 17, 2024. The second MLS listing is identified as terminated as of August 2, 2024. The Tenant stated further that he spoke with the concierge of the Landlord's residential complex in May 2024, and the concierge confirmed that there were real estate viewings of the unit.
10. The Tenant asserted that FOB entry of the unit was infrequent, an indication that the unit was not being used by the Landlord for her residential occupation. The Tenant submitted a log of FOB entries into the unit from April 2, 2024 to August 10, 2024, indicating that the Landlord's FOB was used to enter the unit on 9 days in April 2024, 16 days in May 2024, 13 days in June 2024, 5 days in July 2024, and on 4 days up to August 10, 2024.

Landlord's Evidence

11. The Landlord testified that in December 2023 she was living with her partner of 10 years, Brian Mac Giolla Ri, at a house they co-owned at 186 Gladstone Avenue in Toronto; however, they were experiencing relationship difficulties and decided to separate in December 2023. She stated that the couple decided that living apart would be best, and that Brian then moved in with his elderly Aunt, while she remained at 186 Gladstone. She confirmed that they co-owned another tenanted property on Dundas Street in Toronto. She stated that she was the sole owner of the furnished rental unit.
12. The Landlord testified further that Brian's living arrangement with his Aunt was not ideal, so she decided to move to the rental unit, allowing Brian to move back to 186 Gladstone. The Landlord stated that she served the Tenant three N12 Notices of Termination in January 2024 for her personal occupation of the unit. She explained that errors in the first two N12s, required her to serve the Tenant a third N12 with a termination date of March 31, 2024. The Landlord submitted copies of all three N12s. The Landlord asserted that she served the N12 Notices in good faith, as a result of her separation from her partner, and her genuine intent when the N12s were served was to move into the unit and live in the unit for at least one year.
13. The Landlord stated that the Tenant vacated the furnished rental unit on March 30, 2024, as a result of the last N12 Notice of Termination, and that she moved into the furnished unit on March 31, 2024, one day after the Tenant vacated the unit. She explained that she decided to move back to the unit, rather than to the Dundas Street property that she co-owned with Brian, given that she was the sole owner of the rental unit.
14. The Landlord confirmed that after moving into the unit, she listed the unit for sale on May 13, 2024, and again in June 2024. The Landlord provided copies of the unit listings. She explained that her intent was to continue to reside in the unit for a period of at least one year; however, a mortgage was coming up for renewal in August 2024 for one of the properties that she co-owned with Brian, and she wanted to determine the market value of the rental unit in case she needed to sell the unit to assist with the mortgage renewal.

financing. The Landlord explained further that the mortgage was successfully renewed in August 2024, and with reduced financial pressure, she removed the unit listing from the real estate market at the end of the summer in 2024.

15. The Landlord asserted that she lived in the unit for more than a year, from March 31, 2024, to mid-April 2025, and that she did not sell the unit during that period. She acknowledged that the unit was recently sold in 2026. The Landlord noted that during her residence in the unit she often used candles rather than the unit lights for lighting. She remarked that on some weekends she would not leave the unit, and when she did enter the building, often the concierge would “buzz” her in or another resident would hold the door open. She explained, for these reasons, she did not always need to use her FOB to gain access to the residential complex. The Landlord submitted a detailed 9-page listing of the daily FOB use at the residential complex for the period from March 29, 2024 to August 10, 2024.
16. The Landlord explained that during her separation from Brian, they were attending on-line couple’s therapy, and by mid-April 2025 they had made sufficient progress that they decided to move back together and reside as a couple at 186 Gladstone. The Landlord submitted a copy of a letter from her therapist, Velma Jones, dated September 4, 2025. In the letter, Ms. Jones identifies the relationship problems between the Landlord and Brian that resulted in their separation in December 2023, the motivation of the Landlord to move into the unit as a result of this separation, and the desire of the couple to live together at 186 Gladstone after their reconciliation in April 2025.
17. Brian Mac Giolla Ri, the Landlord’s partner, testified that he was the Landlord’s partner for approximately 10 years in December 2023 when they decided to separate as a result of strife in their relationship. He noted that in December 2023 he temporarily moved out of 186 Gladstone and moved in with his elderly Aunt, and then moved back to 186 Gladstone at the end of March 2024 when the Landlord moved into her unit at 23 Brant Street in Toronto. He stated that he helped the Landlord move her possessions into the unit. Mr. Mac Giolla Ri stated further that he and the Landlord reconciled their differences in 2025, and she moved back to 186 Gladstone to live with him in April or August 2025; he was not sure of the exact month.
18. Mr. Mac Giolla Ri confirmed that both he and the Landlord co-own the residence at 186 Gladstone Avenue in Toronto, and another residence on Dundas Street in Toronto. He also confirmed that one of these properties has a mortgage that was renewed in August 2024. He explained that no other N12 Notices were served on tenants on the Dundas Street property, and the Landlord served the N12 Notice to the Tenant of the rental unit at 23 Brant Street because the Landlord was the sole owner of the rental unit and she wanted to reside in her unit.
19. Kokila Rajarathna, the Landlord’s sister, testified that when her sister separated from Brian, her sister moved into the rental unit at 23 Brant Street, and she often stayed with her sister when she visited Toronto from her hometown in Cambridge, ON. She remarked that her sister resided in the unit until she reconciled her relationship with Brian, and that her sister listed the unit for sale as a result of financial concerns.
20. Abdul Akim Humad, a concierge at the residential complex at 23 Brant Street, testified that the Landlord moved back into the rental unit in April 2024, and lived in the unit for about one year before moving out again. He stated that he would often see the Landlord at the

residential complex on Fridays when she worked from home. He stated that residents often do not use their FOB to gain access to the residential complex. He explained that he and the other concierges at the residential complex often “buzz-in” residents into the building, residents can also use their cell phone to gain access to the property, and many times residents let each other into the residential complex.

21. Mr. Humad testified further that he was aware that the unit was listed for sale while the Landlord was residing in the unit. He noted that after the Landlord moved into the unit, the Tenant approached him to question whether the Landlord had moved back in, and he had advised the former Tenant that the Landlord was living in the unit.

Analysis

22. Both the Tenant and the Landlord agreed that the Tenant vacated the unit on March 30, 2024, as a result of the last N12 Notice of Termination under s. 48 of the Act that was served to the Tenant. On the basis of the evidence provided, I am satisfied that the Tenant received an N12 Notice of Termination under s. 48 of the Act, and moved out of the rental unit on March 30, 2024, as a result of the Landlord’s N12 Notice.

Presumption of Bad Faith

23. 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.

24. Section 57(6) of the Act states:

(6) The period referred to in subsection (5) is the period that,

- (a) begins on the day the landlord gives the notice of termination under section 48; and
- (b) ends one year after the former tenant vacates the rental unit.

25. Both the Tenant and the Landlord agreed that the Landlord listed the unit for sale on May 13, 2024. On the basis of the evidence provided, I am satisfied that the Landlord listed the unit for sale on May 13, 2024, a date after the Landlord served the last N12 Notice of Termination under s. 48 of the Act to the Tenant, but before March 30, 2025, a date one year after the Tenant vacated the unit. Accordingly, I find that pursuant to s. 57(5)(c) of the Act, it is presumed that the Landlord gave the Tenant an N12 Notice of Termination under s. 48 of the Act in bad faith, unless the contrary is proven by the Landlord on a balance of probabilities.
26. The Landlord therefore has the burden to rebut the presumption of bad faith. On the basis of the evidence provided, and on a balance of probabilities, I am satisfied that the Landlord has succeeded in rebutting the presumption of bad faith, raised as a result of her listing of the unit for sale on May 13, 2024. I am satisfied that at the time that the Landlord had served the N12 Notice of Termination to the Tenant in February 2024, the Landlord in good faith genuinely intended to move into the unit and reside in the unit for at least one year for her personal residence. I say this for the following reasons:

Requirement for the unit

27. On the basis of the evidence provided, and on a balance of probabilities, I find that the Landlord genuinely required the unit for her personal residence as a result of a separation from her partner in December 2023. The Landlord's partner, sister, and therapist all confirmed the relationship strife and separation. Under these circumstances, I find it reasonable and appropriate for the Landlord to want to move into the rental unit, owned solely by her, to allow her estranged partner to move back into the residence at 186 Gladstone, a property that they co-own.

Moved into the unit

28. On the basis of the evidence provided, and on a balance of probabilities, I find that the Landlord moved into the rental unit on March 31, 2024, within a reasonable time after the Tenant vacated the unit on March 30, 2024. The Landlord's partner, therapist, and the concierge at the residential complex, all confirmed that the Landlord moved into the unit at the end March or early April 2024. The Landlord's partner, sister, and therapist all remarked that the Landlord's move into the unit was prompted by of her separation from her partner.
29. I accept that the FOB logs for the residential complex, submitted both by the Tenant and the Landlord, show no FOB entry using the Landlord's FOB on Sunday March 31, 2024, only two FOB entries on Tuesday April 2, 2024, and 16 FOB entries on Friday April 5, 2024 with access through the front door as well as the North elevator. I find that the FOB use is not determinative of the Landlord's move in date for the following reasons:
- a) The Landlord could gain access to the residential complex, as testified by Abdul Akim Humad, by the concierge "buzzing in" the Landlord through the front door, by another resident allowing access for the Landlord, or by the Landlord using their cell phone to gain access; and

- b) The unit was rented furnished and therefore did not require significant moving of possessions and multiple residential complex entries for the Landlord to reside in the unit immediately after the Tenant vacated the unit.

30. For the reasons provided in paragraphs 28 and 29, on the matter of whether the Landlord moved into the unit within a reasonable amount of time after the Tenant vacated the unit, I find the Landlord's evidence more compelling than the Tenant's evidence. The Landlord established, on a balance of probabilities, that she moved into the rental unit on March 31, 2024.

Duration of residence in the unit

31. On the basis of the evidence provided, and on a balance of probabilities, I find that the Landlord lived in the unit for her personal residence at least one year, from March 31, 2024 to mid-April 2025. The Landlord's partner, therapist, and the concierge at the residential complex, all confirmed that the Landlord resided in the unit from April 2024 to April 2025. The Landlord's partner, sister, and therapist confirmed that the Landlord moved out of the unit and returned back to living with her partner at 186 Gladstone after the couple reconciled their differences.

32. I accept that the FOB logs for the residential complex, submitted both by the Tenant and the Landlord for the period of April 2, 2024 to August 10, 2024, indicate that the Landlord's FOB was used to enter the unit on 9 days in April 2024, 16 days in May 2024, 13 days in June 2024, 5 days in July 2024, and on 4 days up to August 10, 2024. I find that this sporadic FOB use is not determinative that the Landlord was not residing at the unit, for the following reasons:

- a) The Landlord could gain access to the residential complex, as testified by Abdul Akim Humad, by the concierge "buzzing in" the Landlord through the front door, by another resident allowing access for the Landlord, or by the Landlord using their cell phone to gain access; and
- b) Landlord extended absences from the unit, working from the unit on Fridays, or remaining in the unit on occasional weekends would result in sporadic FOB use.

33. Similarly, the Tenant's assertion that the Landlord was not residing in the unit given his occasional observation of no lights in the unit, as observed from his nearby new rental unit, and his submission of three photos showing no lights on in the unit, is not determinative that the Landlord was not residing in the unit, for the following reasons:

- a) The Tenant only observed the unit occasionally, not daily;
- b) Three photos of an unlit unit is not sufficient to establish the degree to which the unit was lit over a period of one year; and
- c) Candlelight, used by the Landlord in one room, may not be observed by the Tenant who is exterior to the unit.

34. For the reasons provided in paragraphs 31, 32 and 33, on the matter of whether the Landlord resided in the unit for her own personal use for a period of at least one year, I find the Landlord's evidence more compelling than the Tenant's evidence. The Landlord established, on a balance of probabilities, that she resided in the rental unit from March 31, 2024 to mid-April 2025.

Reason for listing the unit for sale

35. On the basis of the evidence provided, and on a balance of probabilities, I am satisfied that the Landlord listed the unit for sale on May 13, 2024, and relisted the unit for sale in June 2024, to assess the market value of the unit in the event that her financial circumstances, as a result of an upcoming mortgage renewal on another property, necessitated a sale of the unit. The Landlord's sister confirmed that the Landlord listed the unit for sale as a result of financial concerns, and the Landlord's partner confirmed the requirement for a mortgage renewal in August 2024, for a property that he co-owned with the Landlord.
36. I am satisfied that when the Landlord separated from her partner in December 2023, and served the N12 Notices to the Tenant in January and February 2024, the Landlord in good faith intended to move into the unit and live in the unit for her own personal residence for a period of at least one year. As provided in paragraphs 27 through 34, the Landlord did move into the unit within a reasonable time after the Tenant vacated, and did reside in the unit for a period of approximately one year.
37. I accept that during a relationship breakdown resulting in the physical separation of a couple, particularly a couple with multiple shared real estate assets, the financial circumstances and status of the individuals within that relationship may become temporarily destabilized. I am satisfied that this was the situation for the Landlord in December 2023 to August 2024, before a mortgage was renewed on a property that she co-owned with her partner.
38. I find it reasonable and appropriate, under the circumstances of the Landlord's separation from her partner and her resulting financial instability, for the Landlord to explore her financial options by listing the unit for sale. I find that when the Landlord's financial circumstances stabilized in August 2024, with the renewal of a mortgage on a property that she co-owned with her partner, she removed the unit listing from the real estate market. I am not satisfied that the unit listing was removed as a result of the Tenant filing his T5 application on July 23, 2024. I am satisfied that the Landlord, by listing the unit for sale after moving into the unit, was merely responding as best she could to her fluctuating personal financial circumstances as a result of an unfortunate relationship breakdown.
39. For the reasons provided in paragraphs 35 through 38, I am not satisfied that the listing of the unit for sale, and the potential sale of the unit, was the Landlord's pre-determined intent when the Landlord served the N12 Notice of Termination to the Tenant in February 2024. The Landlord has established that she served the N12 Notice in good faith.

Summary

40. As provided in paragraphs 27 through 39, the Landlord has established that when she served the N12 Notice to the Tenant, she served the Notice in good faith, genuinely intending to move into the unit and reside in the unit for at least one year. The Landlord moved into the unit soon after the Tenant vacated, and lived in the unit for approximately one year. As provided in paragraphs 27 through 39, the Landlord has succeeded in rebutting the presumption of bad faith, raised as a result of her listing of the unit for sale. Given that the Landlord has succeeded in rebutting the presumption of bad faith, the Tenant's requested remedies will not be considered, and the Tenant's application must be dismissed.

It is ordered that:

1. The Tenant's application is dismissed.

March 30, 2026
Date Issued

Frank Ebner
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.