



Order under Section 57 Residential Tenancies Act, 2006

Citation: Herlihy v Wu, 2026 ONLTB 24838

Date: 2026-03-25

File Number: LTB-T-062646-25

In the matter of: 31 Windover Drive
Georgina ON L4P3L9

Between: Sarah Herlihy Tenant

And

Sally Wu Landlords
Canh Duong Nghiem

Sarah Herlihy (the 'Tenant') applied for an order determining that Sally Wu and Canh Duong Nghiem (the 'Landlords') gave a notice of termination in bad faith.

This application was heard by videoconference on March 12, 2026.

The Landlords and the Tenant attended the hearing.

Determinations:

1. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.

Landlords gave N12 for own use in bad faith

2. 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 Landlords 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 Landlords served the N12 notice of termination in bad faith.
3. The Tenant filed their application within one year of vacating the rental unit which is required under section 57(2) of the Act.

4. The Tenant testified that they did not feel a presumption of bad faith was engaged as outlined in section 57(5) of the Act. As a result, it is the Tenant's burden to prove each element of the test outlined above.
5. The Tenant only proved some of the requirements of subsection 57(1)(a). The Tenant testified that the Landlords served her with an N12 notice of termination in April of 2024 with a termination date of June 30, 2024. The parties ultimately had a hearing at the Board in relation to this notice on August 14, 2024. A consent order resulted which required the Tenant to vacate the unit by October 31, 2024. Thus, the first two elements of the test have been met. The Landlords served a notice of termination and the Tenant moved out as a result of that notice.
6. However, the Tenant did not prove the following requirements in subsection 57(1)(a): that the Landlords did not move in within a reasonable time after they vacated, or that the Landlords served the notice of termination in bad faith.
7. The Tenant was of the view that the Landlords never moved into the rental unit. This was because after vacating on October 1, 2024 they began to occasionally drive by the rental unit and did not see anyone living there. In addition, the Tenant stated that their former neighbour who lived across the street did not see anyone living there. The Tenant acknowledges that the last time they spoke to this neighbour was in June of 2025. The Tenant also agrees that prior to receiving the N12 the Landlords told her that eventually they would want to retire at the rental unit.
8. The Landlords stated that they moved into the rental unit in July of 2025, they explained that the delay was caused by a number of factors. The primary reason was because the Landlords wanted to fully renovate the rental unit before moving in. They stated that they obtained quotes for the cost of work in December of 2024 and then became preoccupied with holiday and new years celebrations. They then began renovating the unit in February 2025 and did not finish until May 2025. The Landlords submitted a number of exhibits into evidence which show them hiring contractors in stages over this span of months in order to renovate the unit. It was a large-scale job involving work like replacing windows and doors, finishing their basement, painting the unit, cleaning it and hiring an air duct cleaning company, as well as receiving furniture deliveries. The Landlords testified that while they had been living in a different home at the time of serving the N12, they always intended to downsize and live out their retirement in the rental unit, and sell the larger home. As of the hearing date, the Landlords testified that they still reside in the rental unit.
9. The Tenant did not provide any concrete evidence to demonstrate that the Landlords never moved in. In fact, the Tenant's testimony and the Landlords' testimony are not inconsistent. If the Tenant's neighbour didn't see anyone living in the rental unit as of June 2025, that would have made sense given the Landlords took until July 2025 to move in after furnishing the unit. I do not find the period over which the renovation took place to be an unreasonable amount of time given the scale of work which was conducted. The Landlords testimony was well supported with a series of receipts and invoices that show them undertaking work and purchasing furniture over time.
10. Given that the Landlords' testimony was well supported with written documentation, I was more persuaded by it than that of the Tenant's. The parties also agreed that before the N12 was served the Tenant was told they intended to retire there. All of the available

evidence corroborates the Landlords' version of the events. In addition, a landlord is not barred from owning multiple properties, and section 57 of the Act does not restrict them in terms of where they choose to live.

11. On a balance of probabilities, I find that the Landlords moved into the rental unit within a reasonable amount of time, and that the notice of termination was served in good faith. I am satisfied that the Landlords always intended to reside in the rental unit.

It is ordered that:

1. The Tenant's application is dismissed.

March 25, 2026
Date Issued

Madeline Ntoukas
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.