



**Order under Section 57
Residential Tenancies Act, 2006**

File Number: LTB-T-036741-25

In the matter of: 737 SAMMON AVE
EAST YORK ON M4C 2E3

Between: Kimberly Moore Tenants
Geoffrey Carter

and

Robert Clancy Landlord

Kimberly Moore and Geoffrey Carter (the 'Tenants') applied for an order determining that Robert Clancy (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on January 26, 2026.

The Tenants, Geoffrey Carter, the Landlord and his representative, Julia MacDonald attended the hearing. Geoffrey Carter testified on behalf of the Tenants.

Determinations:

1. As explained below, the Tenants proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay to the Tenants \$39,490.62.
2. Subsection 57(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') requires the Tenants to prove each of the following on a balance of probabilities:
 - The Tenants received an N12 notice of termination under s. 48;
 - The Tenants moved out of the rental unit as a result of the notice;
 - The notice was given in bad faith; and
 - The person who was supposed to move into the rental unit failed to occupy the unit within a reasonable period of time after the Tenants moved out.
3. The first two elements of the legal test are undisputed. The Landlord served an N12 notice on March 28, 2024, with a termination date of May 31, 2024, for the Landlord's son to occupy the rental property in accordance with section 48 of the Act. The Tenants moved out of the rental unit on November 1, 2024, as a result of a consent order dated October 18, 2024 (LTB-L-026035-24) which terminated the tenancy on November 30, 2024.

4. It is undisputed that the rental property was not listed for sale or rented after the Tenants vacated the rental unit.
5. The issues before the Board are the remaining requirements in subsection 57(1)(a): whether the Landlord, or another person permitted under subsection 48(1) of the Act, occupied the rental unit within a reasonable time after the Tenants vacated; and whether the N12 notice was served in bad faith.

The Sequence of Events

6. The Tenant testified that after vacating the rental unit on November 1, 2024, he attended at the rental property to check whether the rental unit was being occupied by the Landlord's son. During the hearing, the Tenant referred to his chronological log documenting his observations of the property from November 2024 through January 2026. He also referred to photographs taken during several of these visits which consisted of an empty driveway, no response at the door, an overflowing mailbox, and no regular activity.
7. The Tenant testified that he started taking pictures of the rental unit as of June 2025. He attended at the property on June 13, 2025, and no one answered the door, there were no vehicles present in the driveway, and he observed painting supplies inside the home through the window.
8. In July 2025, the Tenant observed renovation activity at the property, including the presence of a dumpster in the driveway and painting materials inside the home. The Tenant did not observe anyone residing at the property. He indicated that some furniture appeared in the unit in September 2025 but there was still no signs of occupancy at the property, no answer at the door, and the driveway remained empty.
9. On October 29, 2025, he observed a blue light turn on inside the home that appeared to be operating on a timer rather than indicating regular occupancy.
10. The Tenant also referred to a signed statement from his former neighbour, Jan Horlock, dated December 23, 2025. Ms. Horlock did not attend at the hearing to testify. In her written statement she states that she lives across the rental unit and confirms that no one appeared to be living at the property from approximately November 1, 2024 until July 2025. She describes a similar observation as the Tenant of a lack of activity and signs of occupancy.
11. The Landlord testified that his son, Luka, was the intended occupant of the rental unit. He stated that the rental property was always meant to be for his children.. The Landlord indicated that Luka moved into the rental unit approximately November 29, 2024. At the time he was working downtown and his girlfriend resided downtown as well. Luka did not drive so it was convenient for him to stay with his girlfriend. When Luka's employment contract was not renewed, he left for France on January 24, 2025 and did not continue living at the rental property. No documentary evidence was provided to support the Landlord's hearsay testimony on this point.
12. I asked the Landlord why Luka did not attend at the hearing to testify. He indicated that Luka is now in south Africa and there is a significant time difference.

13. The Landlord testified that his younger son, Roam, began living in the rental unit in late May 2025 until approximately December 2025. The Landlord referred to Luka's driver's license issued in July 2025 which reflect the rental unit as his address, Luka's bank statement for June 2025, and a Bell statement addressed to Roam dated August 2, 2025, all of which list the rental unit as the address.

Analysis of the Evidence

14. The Ontario Divisional Court in the case of *MacDonald v. Richard [2008]* O.J. 6076 (Ont. Div. Ct.), ruled that temporary full-time occupancy of a residential unit (which in MacDonald was four months) does not constitute "residential occupation" as contemplated in s.48(1) of the Act. In this case, although the Landlord testified that Luka moved into the unit on November 29, 2024, the evidence establishes that his occupancy was not full time or continuous. The Landlord acknowledged that Luka was "back and forth" between the unit and his girlfriend's residence and did not reside in the unit on a full time basis. He left Canada on January 24, 2025, less than two months after allegedly moving in. I find that this does not constitute residential occupation as contemplated by s.48(1) of the Act, which requires genuine good faith occupation of the unit as a primary residence for a period of at least one year. Further, Luka did not attend the hearing to testify and the Landlords evidence regarding his son's occupation is hearsay, which I assigned limited weight.
15. The Landlord testified that his younger son Roam began residing in the unit months later, and I find that his occupancy is not relevant to the determination under subsection 57(1)(a) which focuses on the person who was intended to occupy the unit at the time the notice was given. However, even if Roam's occupation was included that that would not change the outcome. During the 12-month period following the Tenant's departure from the rental unit on November 1, 2024, the rental unit was not continuously occupied. The Landlord testified that there were significant periods where the unit remain vacant, including during renovations. He was not sure on what days Luka or his sons stayed in the unit overnight. Therefore, the rental unit was not occupied for residential purposes by the Landlord's son for at least one year. I find that the Tenants have established that the rental unit was not occupied by the intended occupant within a reasonable time after the Tenants vacated.
16. I must also consider whether the Tenants have established that the Landlord served the N12 Notice in bad faith. To determine that issue, I considered whether there were any unforeseen changes in circumstances that might explain why Luka was unable to occupy the unit for at least 12 months after the Tenants vacated.
17. The Landlord testified that Luka's employment ended and that he decided to leave for France on January 24, 2025, just 3 months after the Tenants vacated. The Landlord also indicated that the property was generally intended for use by his children. I find that this explanation is vague and not supported by reliable evidence. The evidence before me is hearsay from the Landlord regarding his son's intention and circumstances. Further, the evidence does not establish that Luka's departure was the result of any unforeseen change in circumstances after the Tenants vacated but rather suggest that he never genuinely intended to occupy the unit. Therefore, the Tenant has established that the N12 Notice was served in bad faith.

18. Given all of the above I am satisfied the Tenants have established all of the elements of the legal test required under s 57(1)(a). Therefore, the Tenants are entitled to reasonable remedies under subsection 57(3) of the Act.

Remedies

19. The Tenant testified that his rent at the rental unit was \$2,260.00 per month and that his new rent is \$5,375.00 per month. The rent difference is $\$3,115.00 \times 12 = \$37,380.00$ and not \$36,976.20 as incorrectly calculated on the application.
20. The Tenant referred to his tenancy agreement for 45 St Hubert Ave, Toronto, Ontario, dated September 29, 2024, which confirms the tenancy commenced on November 1, 2024. The Tenant testified that the property is 2,000 square feet, single family detached home with 3 bedrooms and 3 bathrooms. The Tenant testified that he searched for several properties but was only able to secure 45 St Hubert Ave in 2024.
21. It is undisputed that the rental unit is 800 square feet with 3 bedrooms and 2 bathrooms. The Landlord's representative submitted that the properties are significantly different in size and price and requested that I consider this when making a decision. However, she led no evidence that there were other comparable properties available during that time for lower rent, and she did not challenge the Tenant's evidence with respect to securing a rental property for \$5,375.00 per month beginning November 1, 2024.
22. While I accept the Tenants acted reasonably in securing alternative accommodation, I also note that the Tenants did not provide evidence of efforts to locate comparable rental units at a lower cost or that no such units were available. In these circumstances, there is limited evidence from either party regarding the availability of comparable rental properties. However, based on the evidence before me, I am satisfied that the Tenants incurred increased rent as a direct result of having to vacate the rental unit due to the Landlord's bad faith notice.
23. Given the lack of any evidence that contradicts the Tenants' testimony about the property at 45 St Hubert Ave being their only option at the time and their unchallenged evidence of the rent paid, I find it appropriate to award the full rent differential of \$37,380.00 for the one-year period after the Tenants moved out of the rental unit.
24. The Tenant also requests compensation for moving expenses of \$2,062.62 and referred to a receipt dated October 17, 2024 from Six Moving Inc, this amount includes a tip in the amount of \$225.01.
25. The Landlord's representative submitted that the tip of \$225.01 provided by the Tenant should not be considered part of the remedy award. The Landlord's representative did not provide any basis for this position. I find that tipping is a customary and reasonable expense associated with moving services, and in the absence of evidence that the tip was excessive, I am satisfied that it forms part of the Tenants' reasonable out-of-pocket expenses. Therefore I find that the Landlord must pay the Tenants \$2,062.62 for the reasonable out-of-pocket moving expense that the Tenants have incurred as a result of having to move out of the rental unit.

It is ordered that:

1. The total amount the Landlord shall pay the Tenants is \$39,490.62. This amount represents:
 - \$37,380.00 for increased rent the Tenants have incurred for the one-year period.
 - \$2,062.62 for the reasonable moving expenses that the Tenants have incurred as a result of having to move out of the rental unit.
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenants the full amount owing by April 9, 2026.
3. If the Landlord does not pay the Tenants the full amount owing by April 9, 2026, the Landlord will owe interest. This will be simple interest calculated from April 10, 2026 at 4.00% annually on the balance outstanding.

March 24, 2026
Date Issued

Adeela Alvez
Member, Landlord and Tenants 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.