



Order under Section 57 Residential Tenancies Act, 2006

File Number: LTB-T-055019-25

In the matter of: 3684 REVELSTOKE DR
OTTAWA ON K1V 7C3

Between: Sabena De Mel
Lester De Mel
Sherazade De Mel

Tenants

and

Sophie Abigail Thomas
Jake Thomas

Landlords

Sabena De Mel, Lester De Mel and Sherazade De Mel (the 'Tenants') applied for an order determining that Sophie Abigail Thomas and Jake Thomas (the 'Landlords') gave a notice of termination in bad faith.

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

The Tenants with their representative, Damian Cordaie, and the Landlords with their representative, James Moak, attended the hearing.

Preliminary Issue

1. The Tenants' representative filed an amended application on January 14, 2026, increasing the Tenants' claim for general compensation from \$30,000.00 to \$42,000.00. He withdrew the amendment for rent abatement in the amount of \$7,800.00 but claims rent differential. Both the application and the amended application provide a narrative with respect to the rent differential; however, it appears the wrong box was selected when the application was originally filed. The Landlords' representative had notice of the amendments and was prepared to respond. Therefore, I have granted the amendments.

Determinations:

2. As explained below, the Tenants have not proven the allegations contained in the application on a balance of probabilities. Therefore, the Tenants' application is dismissed.

3. The parties agree on the following facts: (1) the Tenants received an N12 notice on May 16, 2024, with the termination date of July 31, 2024, for the Landlords' own use; (2) the Tenants vacated the rental unit on July 5, 2024 because of the N12 notice; and (3) the Landlords sold the property in October 2024.
4. The Tenants' T5 application is brought pursuant to s. 57(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act'). That provision says the Tenants' application can only succeed if it is proven that:
 - 1) The Tenants received an N12 notice of termination under s. 48;
 - 2) The Tenants moved out of the rental unit as a result of the notice;
 - 3) The notice was given in bad faith; and
 - 4) 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.
5. There is no dispute between the parties that the first two elements of the legal test are satisfied. The issue before the Board is the third element. Subsection 57(5) and 57(6) of the Act provides that if a Landlord gives an N12 notice and sells the rental unit within one year of the Tenant vacating, the Landlord is presumed to have given the notice in bad faith unless the contrary is proven on a balance of probabilities.
6. The Tenants submit that the Landlords served the N12 Notice in bad faith because the Landlords did not move into the rental unit for residential occupation after the Tenants vacated and the property was sold within one year of the Tenants vacating the unit.

Sequence of the Events

7. The Landlord, Sophie Abigail Thomas, testified on behalf of the Landlords. She indicated that both Landlords are federal public servants. They were assigned to a diplomatic posting in Georgetown (Guyana). Ms. Thomas referred to a posting confirmation showing that their posting in Guyana was to conclude on August 1, 2024. She testified that at the time the N12 notice was served, the Landlords intended to return to Ottawa and live in the rental unit at the end of their posting.
8. Ms. Thomas stated that as a federal public servant on overseas posting they were provided with long term storage through Global Affairs Canada to store their personal belongings. She referred to series of emails with Global Affairs Canada in July 2024 in which they were making plans to have their belongings shipped to the rental unit address.
9. Ms. Thomas also referred to an email dated June 21, 2024, confirming travel from Georgetown (Guyana) to Vancouver to visit family. When she received notice that the Tenants moved out of the rental unit, she testified regarding her plan to travel to the rental unit located in Ottawa. Ms. Thomas referred to an Expedia itinerary dated July 4, 2024, showing that her family was to travel on July 24, 2024 from Kelowna International Airport in British Columbia to Ottawa.
10. Ms. Thomas also referred to an email from the Tenant, Sabena De Mel, dated July 5, 2024, informing the Landlords that they had vacated the property earlier than the

termination date of July 31, 2024, and directing the Landlord to pick up the rental unit keys from her lawyer. On July 25, 2024, the Landlords wrote to the Tenants' lawyer requesting the alarm code and inquiring whether the items left at the property were unwanted. The lawyer responded the same day with the code and confirmed that the items can be discarded.

11. Ms. Thomas also testified regarding their two children's education. She indicated that their children were previously enrolled in a private school in Guyana, during their earlier posting, with education costs covered by the Government of Canada. Ms. Thomas testified that she had an interview scheduled on August 21, 2024 with the private school in Guyana regarding their children's enrollment. She referred to an email dated August 12, 2024, confirming flight itinerary from Ottawa to Georgetown (Guyana) for August 19, 2024, which she indicated was delayed to August 20, 2024 due to flight issues. Ms. Thomas confirmed that both children were eventually accepted to the private school in Guyana.
12. Ms. Thomas further testified that the Landlords decided not to move back to Ottawa and instead to remain in Guyana with their children because she was offered employment in Guyana. She referred to a contract signed with the Republic of Guyana on August 26, 2024, for a term of nine months from October 1, 2024 to June 30, 2025. She also referred to a letter which confirms that Mr. Thomas was granted leave without pay for the period of November 6, 2024 to November 5, 2029. She indicated that they remained in Guyana, she accepted employment there, and that Mr. Thomas remained employed but on leave as a federal servant and that he also opened a small business in Guyana.
13. During examination, Ms. Thomas was asked whether the Landlords moved into the rental unit by August 24, 2024, and whether they stayed at the unit overnight. She indicated that they slept at the unit for a few nights but did not have their bedding or personal belongings there because those remained in their primary residence in Guyana.
14. Ms. Thomas further testified that the property was sold after the Landlords decided to remain in Guyana. She referred to an Agreement of Purchase and Sale, which provided for a closing date of October 31, 2024. She indicated that the property was sold to a relative for a fair market value in October 2024.

Analysis of the Evidence

15. As it is undisputed that these Landlords sold the rental unit less than a year after the Tenants vacated, there is a rebuttable presumption that the N12 notice was served in bad faith. Therefore, the issue before the Board is whether the Landlords have rebutted the presumption of bad faith contained in s.57(5) of the Act.
16. The Tenants relied on events such as the children's school enrollment in Guyana, Ms. Thomas's employment, and the sale of the property. Ms. Sabena De Mel testified that the N12 was served in retaliation because she filed a T6 Application on May 6, 2024 (LTB-T-036504-24). Although I find these events to be relevant, they do not, by itself, prove bad faith.

17. The evidence before me is that when the N12 notice was served on May 16, 2024, the Landlords were anticipating the conclusion of their foreign posting, and they genuinely intended to return to the rental unit in Ottawa. The Landlords' testimony on this point is corroborated by documentary evidence of their travel arrangements to Ottawa made in July 2024. In addition, the sequence of communication is consistent with the Landlord's preparation to access the property after the Tenants had vacated.
18. The Tenants vacated on July 5, 2024, earlier than the termination date of July 31, 2024 having signed a new tenancy agreement on June 19, 2024.
19. The Ontario Court of Appeal in *Elkins v. Van Wissen*, 2023 ONCA 789 ('Elkins') stated that a contextual approach to interpreting the Act is necessary to consider more than just the point in time when the N12 notice was served at paragraph 43:

On a plain reading of ss. 49(1) and 57(1)(b), the landlord's conduct is linked to the purchaser's good faith. Section 49(1) permits the landlord to, on behalf of the purchaser, give the tenant a termination notices so long as the purchaser, in good faith, requires possession of the rental unit for the purpose of residential occupation. Section 57(1)(b) requires the Board to determine, among other things, whether the landlord gave the s. 49 termination notice in bad faith. When ss. 49(1) and 57(1)(b) are read together, it is clear that the object of those provisions is to prevent the sale of a property from being used to unlawfully evict a tenant. Accordingly, the Board must consider all the evidence before it that is relevant to the landlord's bad faith under s. 57(1)(b). It is an error of law for the Board to restrict its consideration to the evidence at the point in time when the landlord gives the tenant a s. 49 termination notice. This case makes that point. (emphasis added)

20. Although the *Elkins* decision refers to section 49 of the Act, it is equally applicable to section 48. The Landlord had a continuing obligation of good faith up to the point that the Tenants vacated the rental unit. In other words, the Board must consider whether the Landlords knew or ought to have known, prior to the Tenants vacating, that there circumstances had changed and they no longer intended to occupy the unit.
21. At the hearing, Ms. Thomas indicated that their decision to remain in Guyana arose after she was offered employment in August 2024, which is after the Tenants vacated on July 5, 2024. The decision to remain in Guyana flows from Ms. Thomas's employment, including arrangements for the children to attend private school there, for Mr. Thomas to take leave without pay and open a small business, and to sell the property in October 2024. I find that the evidence before me establishes that between May 16, 2024 (when the N12 was served) and July 5, 2024 (when the Tenants vacated) the Landlords continued to genuinely intend to move into the rental unit after the Tenants vacated. Rather the evidence shows that the circumstances that caused the Landlords to remain in Guyana occurred in August to October 2024, after the Tenants vacated the rental unit.

22. I therefore find that the Landlords' evidence is sufficient to rebut the presumption of bad faith. I find that Landlords had a genuine intention to return to Ottawa and to occupy the rental unit, but that their circumstances changed after the Tenants vacated. Therefore, the Tenants have not proven the bad faith element required by s.57(1)(a) of the Act.
23. The Landlords' representative requested costs in the amount of \$700.00 for 4 hours of work. The Tenants' representative opposed the request and stated that the Tenants' application was brought in good faith. There is no evidence before me that the Tenants acted unreasonably or improperly in pursuing this application. In the circumstances, the Landlords request for costs is dismissed.

It is ordered that:

1. The Tenants' application is dismissed.

March 27, 2026
Date Issued

Adeela Alvez
Member, Landlord and Tenants 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.