



Order under Section 57 Residential Tenancies Act, 2006

Citation: Castellan v Buys, 2026 ONLTB 25185

Date: 2026-03-27

File Number: LTB-T-023300-23

In the matter of: 161 Pelham Rd
St. Catharines ON L2S1V3

Between: Jessie Castellan Tenant

And

Carl Buys Landlord

Jessie Castellan (the 'Tenant') applied for an order determining that Carl Buys (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on December 2, 2025.

Only the Landlord's legal representative, J. McDougall, and the Tenant attended the hearing.

As of 11:22 a.m., the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Tenant's evidence. The Landlord's legal representative had the opportunity to cross-examine the Tenant.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities.
2. The Tenant alleges that she received an N12 notice of termination from the Landlord for Landlord's own residential use. The Tenant moved out on April 1, 2022, and she alleges that she saw an ad for the rental unit on the market for rent only 9 months after she moved out, that is, in January 2023.
3. The Tenant moved into the rental unit, a 3 bedroom bungalow with a garden, with her two daughters and her husband in July 2018. The rent in April 2022 when she moved out was \$1,350.00.

4. The Tenant said that the Landlord told her he had broken up with his girlfriend in January 2022, and he needed to move into the house so he could have visits with his daughter. She said that he told her he could not afford to rent a different unit, and he needed to move into this rental unit. She submitted into evidence the N12 notice of termination which had a termination date of April 1, 2022.
5. The Tenant alleges that the Landlord never moved into the rental unit.
6. The Tenant said that it took her and her family three months to find a suitable unit because they had to stay in Ste. Catherines for her children's school and her work. She said that her husband James also worked in Ste. Catherines. She said that they found another bungalow, but it only had two bedrooms. The Tenant said that there was a "housing crisis" when she looked, and the new place was \$1,850.00 per month, an increase of \$500.00 per month. She said that the new unit had a slightly bigger backyard, but it was not fenced in for their dog as the previous unit had been. It was located not far from the old unit.
7. The Tenant said that since their new unit was close to the old rental unit, they drove by every day and they never saw a vehicle parked in front, never saw a light nor any sign of habitation. She said that since she had been looking for a place for so long, her Facebook kept showing her postings for comparable units. She said that she saw the old rental unit for rent on Facebook at the end of January 2023, nine months after she moved out. The Tenant submitted into evidence an ad for the rental unit at the same address and description, for \$2,100 plus utilities. The ad is undated, but the Tenant said that it was an ad from January 2023. She said that she also saw a "for rent" sign in front of the house at the same time.
8. The Tenant said that after she saw the "for rent" signs and ad, she came across a Facebook posting of the Landlord from October 2022, in which he is standing in front of a "sold" sign, and he posts "moving back to Beamsville!"
9. The Tenant said that the impact of the move was brutal. She said that her daughters still ask her when they can go "home". She said that it took so much time to find a new place, she was filled with anxiety, and they only found the new place a couple of days before they had to move.
10. The Tenant said that it was only around April 2023 that she began to see signs of life at the old rental unit. She said that she began to see garbage put out, and cars in the driveway. The Tenant said that she saw the Landlord's lease with the new Tenants in the Landlord's evidence brief. That lease showed a new tenancy began on May 1, 2023, for a rent of \$1,995.00 per month.
11. The Tenant requests a rent differential of \$500.00 per month, as well as her moving cost of \$250.00. She submitted into evidence a Uhaul receipt for \$254.15.

Reasons and Analysis:

12. In order to form the basis of a T5 bad faith application based on an N12 notice for Landlord's own use, there is a three part test outlined in subsection 57(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act'). That is:
 - (a) First: the N12 was served pursuant to section 48 of the Act;
 - (b) Second, the Tenant moved out of the unit as a result of the N12;
 - (c) Third: that the Landlord or relative of the Landlord did not move into the rental unit within a reasonable time after the Tenant vacated the unit.
13. If the Tenant is able to prove all three parts, and the Landlord is not able to rebut it, then it is before me to determine that the Landlord served the N12 notice in bad faith.
14. Pursuant to subsection 57(5)(a), there is also a *presumption* of bad faith, which reverses to the Landlord the onus to prove that there is not bad faith. That is, if the Landlord advertises the rental unit for rent within one year of serving the N12 notice of termination, it reverts to the Landlord to rebut a presumption of bad faith service if the N12.
15. I find that the Tenant has proved she was served an N12 notice of termination in bad faith by the Landlord, and the Landlord has failed to rebut the presumption of bad faith, for the following reasons.
16. The Landlord did not attend the hearing to provide his own evidence. However, there was, in the Landlord's own document brief, evidence that the rental unit was re-rented as of May 1, 2023, just over a year after the Tenant vacated the rental unit. Therefore, it is undisputed that the Landlord did not live in the rental unit after May 1, 2023.
17. The uncontested evidence of the Tenant was also that the Landlord did not live in the rental unit prior to May 1, 2023. The Tenant said that she drove by almost every day and she never saw a sign of life in the unit until at least April or May 2023. The Tenant also had documentary evidence of a Facebook ad for the rental unit for rent in January 2023, at \$750.00 more per month than her final rent in the unit. As it happens, in the Landlord's own documents, the new lease, shows that he was able to re-rent it for \$1,995.00, or \$600.00 more per month than the Tenant was paying. Finally, the Tenant had a Facebook posting of the Landlord dated October 22, 2022, in which the Landlord himself posts "Moving back to Beamsville!". The Landlord had a listing for a house in Beamsville in his own document brief. Therefore, I determine that it is uncontested that the Landlord planned to move back to Beamsville at least by October 2022, or six months after the Tenant moved out of the rental unit.
18. The Tenant's uncontested evidence is that she saw an ad for the rental unit for rent less than one year after she moved out. Therefore, the presumption of bad faith in subsection 57(5)(a) of the Act applies, and it is for the Landlord to provide evidence to rebut the presumption. In this case, there is also uncontested evidence that the Landlord bought a property in a completely different city six months after the Tenant moved out.
19. In a T5 application for a bad faith service of an N12 notice of termination, a landlord may try and rebut the presumption of bad faith by showing that they moved into the rental unit

within a reasonable time after the Tenant moved out, and their plans unexpectedly changed, or that they did not move in within a reasonable time because their plans unexpectedly changed almost immediately. The Landlord was not present to testify or provide evidence about any change in plans, or to provide evidence that he had ever moved into the rental unit.

20. Consequently, I find that the Landlord has failed to rebut any presumption of bad faith. In any case, even without the ad for rent, which triggered the presumption of bad faith, I find that the Tenant has proved bad faith service of the N12 notice because she moved out of the rental unit as a result of receiving the N12 notice of termination, and there is no evidence that the Landlord ever moved into the rental unit, nor that he ever had a genuine intention to move into it.

Remedy:

Rent Differential

21. The Tenant did not have documentary evidence of her new lease. However, I find that it is credible the Tenant paid \$500.00 more per month for a relatively comparable unit. Given changing market conditions in that year, and the fact that the Landlord was able to obtain a \$600.00 per month increase in rent in just one year for his unit, the amount the Tenant alleges she paid for her new unit is credible and reasonable. She found a slightly smaller unit in a neighbourhood very close by her old unit.
22. Therefore, I find that the Tenant is entitled to $\$500.00 \times 12 = \$6,000.00$ for the rent differential.

Moving Costs:

23. The Tenant had a UHaul receipt for \$254.15, which is a reasonable amount for moving costs. The Tenant only requested \$250.00. I find that she is entitled to the \$250.00 requested.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$6,298.00. This amount represents:
 - \$6,000.00 for increased rent the Tenant has incurred for the one-year period from April 2022 to March 2023.
 - \$250.00 for the reasonable moving, storage and other like expenses that the Tenant has 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 Tenant the full amount owing by April 7, 2026.
3. If the Landlord does not pay the Tenant the full amount owing by April 7, 2026, the Landlord will owe interest. This will be simple interest calculated from April 8, 2026 at 4.00% annually on the balance outstanding.

March 27, 2026
Date Issued

Nancy Morris
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.