



Order under Section 57 Residential Tenancies Act, 2006

Citation: Lackey v Chen, 2026 ONLTB 22743

Date: 2026-03-31

File Number: LTB-T-012604-23

In the matter of: 150 WHITESTONE DR
OTTAWA ON K2C4C7

Between: David Lackey Tenant

And

Chun Zhi Chen Landlord
Fang Yu

David Lackey (the 'Tenant') applied for an order determining that Chun Zhi Chen and Fang Yu (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on March 3, 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.
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 Landlord 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 Landlord served the N12 notice of termination in bad faith.
3. The Tenant testified that they moved into the unit on October 1, 2016. The Tenant testified that on March 14, 2022, the Landlord texted them stating they will be living in the unit for a year or more. On March 16, 2022, the Landlord gave the Tenant a N12 Notice under section 48 of the Act, stating that the Landlord and his spouse will move in and the termination date was May 31, 2022. On March 24, 2022, the Landlord filed an L2

application with the LTB based on the N12 Notice. The Tenant started to look for alternative housing and signed a lease on March 27, 2022, to move into their new rental unit on May 1, 2022. On April 12, 2022, the Tenant provided the Landlord with a N9 Notice to terminate their tenancy on May 2, 2022. The Tenant vacated the unit on May 2, 2022.

4. The Tenant discovered a for sale listing of the rental unit on October 11, 2022. The Tenant believes that that after they vacated the rental unit, the unit remained vacant for some time and then it was listed for sale. The Tenant submitted they drove by the house and saw a For Sale sign on October 11, 2022.
5. The Landlord states that they moved into the rental unit on May 2, 2022, and started renovations. The renovations included painting the walls, removing the carpet, fixing water damage and replacing the countertop in the kitchen.
6. The Landlord testified that on September 13, 2021, they purchased a newly built home, however they were short of funds and as such, they listed the house they were living in for sale on April 20, 2022, to secure funds. However, they were not getting many offers and as such they switched agents and re-listed that house in October 2022. While they were waiting for that house to sell, they moved into the rental unit on May 2, 2022. Their house still did not receive any offers therefore, the Landlord listed the rental unit for sale on October 16, 2022, however it did not sell, and the Landlord still owns it. The Landlord testified that they eventually purchased their newly built house on May 25, 2023. However, they did not vacate the rental unit until July 26, 2023.
7. The Landlord provided a record of an address change done on July 25, 2022, to July 23, 2023, from service Ontario when the Landlord moved out of the rental unit, declaration of occupancy, as well as copies of utility and internet bills for the rental unit that span from May 14, 2022, to July 14, 2022. The Landlord also provided an invoice for moving costs dated July 26, 2023.
8. Based on the evidence before the Board, I find the Landlord gave the Tenant a notice of termination under section 48 and the Tenant vacated the rental unit in response to the eviction notice served by the Landlord. Given that the Tenant moved out the rental unit r two months after the eviction notice was served, I am satisfied the Tenant vacated the rental unit due to the Landlord's eviction notice and satisfied the second requirement of section 57(1)(a) of the Act.
9. Based on the evidence, the presumption of bad faith in subsection 57(5) of the Act applies to this situation. This provision 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 the 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,

(c) advertises the rental unit, or the building containing the rental unit, for sale

10. This provision means that, because there is evidence before me that during the one-year period after the Tenant moved out of the rental unit the Landlord listed the rental unit for sale, it is presumed that the notice was given in bad faith. The onus then shifts to the Landlord to rebut the presumption and prove that they did not serve the notice of termination in bad faith.
11. In this case, the evidence from the Landlord was that they did move into the rental unit as of May 2, 2022, and they occupied the rental unit until July 26, 2023.
12. I find that the Landlord did occupy the rental unit for at least 12 months as required when a landlord terminates the tenancy with a notice of termination served under section 48 of the Act.
13. There is no evidence before the Board to substantiate or corroborate the Tenant's claim that the Landlord did not move into the rental unit within a reasonable time after the Tenant vacated.
14. The evidence of Tenant was that they occasionally pass through the neighbourhood and saw for a For Sale sign on October 16, 2022. I do not find that this alone establish that the Landlord did not occupy the unit. The Tenant also did not visit the rental unit after they vacated to confirm who moved into the rental unit.
15. Given it was not disputed that there are charges for internet, utilities, and the bills reflect usage. I also find the very fact that all their driver licenses, bills and accounts was placed in the Landlord's name for approximately a year support a finding of residential occupation.
16. I find that for the utility bills show variation in electricity and water usage. Further, the utility bills show variability in thermal cooling charges in the spring, summer, and fall and thermal heating charges in the winter. The Tenant's theory of the case; consistent with no occupation. Given the variable usage of utilities, I was not satisfied that no one resided in the rental unit.
17. The Tenant did not present any concrete evidence to challenge the Landlord's position on these points. Therefore, I cannot find that the Tenant proved on a balance of probabilities that the Landlords did not move into the rental unit within a reasonable time after the Tenant vacated.
18. On an application to the Board, the person who alleges a particular event occurred has the burden of proof to establish that it is more likely than not that their version of events is true.
19. The evidence was that rental unit was listed for sale on October 16, 2022, and it failed to sell. As a result, I find the evidence supports finding the true nature of the Landlord was to occupy the rental unit for the time required under the Act and at the end the Landlord moved out to occupy their new home.

20. Therefore, I find the Landlord has rebutted the presumption that the N12 was served in bad faith and have proven on a balance of probabilities that their original intent was genuine. The Tenant's application must therefore fail.

21. As the Tenant cannot establish all the requirements of subsection 57(1)(a), the Tenant's application must be dismissed.

It is ordered that:

1. The Tenant's application is dismissed.

March 31, 2026
Date Issued

Vinuri Sivalingam
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.