



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

File Number: LTB-T-013267-23

In the matter of: 52 Tecumseh Crescent
Kitchener Ontario N2B2T4

Between: Anthony Hall Tenant
Elizabeth Finch

And

Yiwen Xu Purchasers
Li Tang

And

Zi Jie Zhang Landlord

Anthony Hall and Elizabeth Finch (the 'Tenant') applied for an order determining that Yiwen Xu, Li Tang (the 'Purchasers') and Zi Jie Zhang (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on March 25, 2026.

The Tenants and the Purchaser Yiwen Xu 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.

Evidence of the Tenants

2. The Tenants testified that on September 30, 2021 they were served with an N12 Notice stating that the Landlord had entered into an Agreement of Purchase and Sale and that the Purchasers intended to personally occupy the rental unit. The N12 Notice listed a termination date of January 31, 2022. This notice was entered into evidence.
3. On February 10, 2022, the Landlord filed an L2 Application seeking to evict the Tenants based on the N12 Notice. Along with the application, the Landlord filed two declarations

from the Purchasers. These declarations, both entered into evidence, were identical and stated that both Purchasers intended to move into the rental unit for at least one year.

4. On April 30, 2022, following negotiations with the Landlord, the parties executed an N11 Agreement to terminate the tenancy, and the Tenants vacated the unit. The Tenants were clear in their testimony that they would not have agreed to vacate had they not been served with the N12 Notice.
5. The Tenants testified that they later discovered the property had been listed for rent, leading them to believe the N12 Notice had been issued in bad faith. They entered into evidence an undated Google search result showing multiple links from real estate companies regarding the rental unit. Two of the links dated October 17 and 18, 2022, appeared to advertise the rental unit for \$3,000.00 per month. A third link was dated May 2, 2022, though the Tenants were uncertain whether it related to a new rental listing or the original MLS listing for the sale of the property.
6. The Tenants also submitted into evidence the MLS listing for the rental unit being available for rent dated November 1, 2022. The listing indicated that it was created 14 days earlier, on October 17, 2022.
7. On November 1, 2022, the Tenants drove by the property and observed a "Leased" sign posted at the rental unit. They took a photograph of the sign, which was entered into evidence.
8. The Tenants' position is that the Purchasers did not intend to move into the rental unit and that the Landlord therefore served the N12 Notice in bad faith. This was especially evident to the Tenants as they compared the Purchasers' declarations to the fact that the rental unit was eventually re-rented on November 1, 2022.
9. The Tenants seek compensation for the rent differential between the rental unit and their subsequent unit, as well as reimbursement for out-of-pocket moving-related expenses, including costs for cable, propane, and internet. They submitted their new lease and supporting receipts into evidence to substantiate their claim for damages.

Testimony of Yiwen Xu

10. The Purchaser testified that she immigrated to Canada from China and initially settled in British Columbia. For various reasons, she determined that relocating to Ontario would be more suitable and began searching for a property to purchase. She came across the rental unit listed for sale, inspected it, and decided to proceed with the purchase. The Purchaser submitted one page of the Agreement of Purchase and Sale into evidence. That page reflects an agreement date of September 1, 2021, and a completion date of March 29, 2022.
11. The Purchaser testified that her real estate agent advised her that the Tenants would vacate by the completion date (March 29, 2022). Relying on this information, she and her spouse (the other Purchaser Li Tang) terminated their lease in Vancouver in anticipation of moving into the rental unit. Around December 16, 2021, the Purchaser's agent also asked them to sign two declarations in support of the Landlord's L2 Application. The Purchaser stated that, when she signed the declaration, she genuinely intended to reside in the rental

unit for at least one year, although she understood that such a commitment was not legally required to evict the Tenants.

12. As March 29, 2022 approached, the Purchaser's agent informed her that the Tenants had not vacated the unit. Having already terminated their tenancy in Vancouver, the Purchasers were required to rent temporary accommodation in Waterloo until the rental unit became available. The Purchasers submitted U-Haul receipts into evidence showing payments for a moving truck and storage dated March 18, April 6, and May 5, 2022. The Purchaser also submitted into evidence a copy of Li Tang's driver's license showing a Waterloo address.
13. The Purchaser confirmed that she moved into the rental unit on May 2, 2022. Shortly thereafter, in or around August 2022, she travelled to China to visit family. While there, she engaged in discussions with an entrepreneur who was considering opening a business in either the Greater Toronto Area or the Greater Vancouver Area. The Purchaser testified that she continued to reside in the rental unit during this period despite being temporarily out of the country.
14. In or around October 2022, the entrepreneur decided to establish the business in Vancouver and offered the Purchaser a position in the company. She accepted the offer and moved out of the rental unit by the end of October 2022. To demonstrate her residency from May 2, 2022 to the end of October 2022, the Purchaser submitted a copy of her driver's license and updated automobile insurance, both listing the rental unit's address.
15. The Purchaser testified that, after accepting the job offer and preparing to return to Vancouver, she listed the rental unit for rent on October 17, 2022. The unit was subsequently re-rented as of November 1, 2022.

Analysis

16. Section 49(1) of the *Residential Tenancies Act* (the Act) states:

49 (1) A landlord of a residential complex that contains no more than three residential units who has entered into an agreement of purchase and sale of the residential complex may, on behalf of the purchaser, give the tenant of a unit in the residential complex a notice terminating the tenancy, if the purchaser in good faith requires possession of the residential complex or the unit for the purpose of residential occupation by,

- (a) the purchaser;
- (b) the purchaser's spouse;
- (c) a child or parent of the purchaser or the purchaser's spouse; or
- (d) a person who provides or will provide care services to the purchaser, the purchaser's spouse, or a child or parent of the purchaser or the purchaser's spouse, if the person receiving the care services resides or will reside in the building, related group of buildings, mobile home park or land lease community in which the rental unit is located.

17. Subsection 57(1)(b) of the Act requires the Tenants prove each of the following on a balance of probabilities:
 - The Landlord gave the Tenant an N12 notice of termination under section 49 of the Act;
 - The Tenant vacated the rental unit as a result of the N12 notice of termination;
 - No person referred to in subsection 49(1) or 49(2) 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.
18. In *Elkins v. Van Wissen*, 2023 ONCA 789, the Court of Appeal for Ontario held that when deciding a T5 application relating to an N12 served for purchaser's own use under section 49 of the Act, the LTB must consider both the landlord's and the purchaser's good faith. After making both those determinations, the LTB must then consider what orders to make in respect of the landlord and the purchaser.
19. The Tenants established some elements required under subsection 57(1)(b) of the Act, specifically that the Landlord served them with an N12 Notice and that they vacated the rental unit as a result of that notice. However, the Tenants did not prove, on a balance of probabilities, that the Purchasers failed to occupy the rental unit within a reasonable time or that the N12 Notice was given in bad faith.
20. When asked directly, the Tenants acknowledged that they had no knowledge or evidence regarding who resided in the rental unit between May 1 and October 31, 2022. The Purchaser's evidence regarding her occupation of the rental unit as of May 2, 2022 was credible and persuasive. She provided corroborating documentation, including moving receipts as well as an updated driver's license and automobile insurance listing the rental unit's address. The burden rests with the Tenants to establish their claim on a balance of probabilities, and no evidence was presented that contradicts or undermines the Purchaser's account of her occupation of the unit.
21. I have considered the undated Google search result showing an MLS link for the rental unit. On its face, it is unclear whether the link reflects the original sale listing or a later rental listing. However, the Tenants submitted the rental listing dated November 1, 2022, which indicates it was first created on October 17, 2022. In light of this, I find it more likely than not that the May 2, 2022 link corresponds to the original MLS sale listing rather than a new rental listing. Accordingly, I do not consider it relevant to determining whether the Purchasers occupied the rental unit or whether the N12 Notice was served in good faith.
22. Additionally, section 49 of the Act does not require a purchaser to reside in the rental unit for a minimum period of one year. Nonetheless, I have considered section 202 of the Act to assess the real substance of the transaction, noting that the Purchasers ultimately vacated the rental unit at the end of October 2022 despite signing a declaration indicating an intention to reside there for at least one year. I am satisfied, based on the evidence, that the Purchaser genuinely intended to reside in the unit and that her departure was the result of a change in circumstances arising from an unforeseeable job opportunity. Per *Elkins*, I have analyzed the Landlord and Purchasers' actions both at the time the N12 Notice was served and subsequently, and cannot determine that they acted in bad faith given the evidence at the hearing. The job opportunity that caused the Purchasers to leave

the rental unit materialized almost one year after the Agreement of Purchase and Sale was executed. This could not have been foreseeable to either the Landlord or the Purchasers at the time the N12 Notice was served.

23. As the Tenants have not established all of the necessary elements under section 57 of the Act, the application must be dismissed.

It is ordered that:

1. The T5 Application is dismissed.

April 2, 2026
Date Issued

Brett Lockwood
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.