



Order under Section 57 Residential Tenancies Act, 2006

Citation: Konkov v Brittain, 2026 ONLTB 18617

Date: 2026-03-27

File Number: LTB-T-002593-25-AM2

In the matter of: 1, 205 ST JEROME CRES
KITCHENER ON N2C2K9

Between: Yevhenii Konkov Tenant

And

MAR 27, 2026

Zack Brittain Landlord

And

Remzi Ozturk Purchaser

AMENDED ORDER

This order is made to correct clerical errors in the orders issued March 3, and March 19 2026.

Yevhenii Konkov (the 'Tenant') applied for an order determining that Zack Brittain (the 'Landlord') and/or Remzi Ozturk (the 'Purchaser') gave a notice of termination in bad faith.

As a result of order LTB-T-002593-25-RV-IN2, issued October 28, 2025, this application was ordered to be reheard. The rehearing was held by videoconference on January 14, 2026.

The Landlord, the Purchaser, and the Tenant attended the hearing. The Purchaser was represented at the hearing by Abraar Unia.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Purchaser must pay the Landlord-Tenant \$8,108.00

Background

2. The Landlord and the Purchaser entered into an Agreement of Purchase and Sale (APS) dated May 31, 2024, for the residential complex that included the rental unit.
3. The APS closed on August 16, 2024.
4. On May 31, 2024, the Landlord served the Tenant with an N12 Notice of Termination with a termination date of July 31, 2024. The notice indicated that the Purchaser required the rental unit for their own residential occupation.
5. After the Tenant vacated, he testified that he later discovered the rental unit had been re-rented when he attended the property in October 2024 to retrieve mail and was greeted by new occupants. As such, he believes the Purchaser did not move into the rental unit and the N12 was given in bad faith.
6. The Landlord takes the position that he acted in good faith in serving the N12, relying on the Purchaser's representation that he required the rental unit for his own use.
7. The Purchaser acknowledges that he advised the Landlord that he intended to move into the rental unit.
8. The Purchaser testified that he intended to reside in the property with his three sisters and one nephew, who were residing abroad, and that he had obtained visas for them.
9. The Purchaser testified that he moved into the unit on or about August 17, 2024, and resided there until approximately September 5, 2024.
10. The Purchaser states that shortly after he moved in, he learned that one of his sisters had been diagnosed with breast cancer, which prevented his sisters from relocating to Canada. He testified that his financial plan relied in part on his sisters contributing to household expenses, and that without their support he could not sustain the mortgage payments. He therefore moved out and re-rented the property. Accordingly, he believes the N12 was given in good faith.

Analysis

11. Subsection 57(1)(b) 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 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.
12. There is no dispute that the Tenant was served the N12 and vacated in accordance with notice.

13. The issues before me are whether the Purchaser occupied the unit within a reasonable time as contemplated by the Act and whether the N12 was served in bad faith.

Residential Occupation

14. The Purchaser argues that because he moved into the rental unit immediately after closing and resided there for several weeks, the requirement of occupation within a reasonable time was met. I do not accept that argument.
15. The law is clear that “residential occupation” does not include temporary full-time use. The Ontario Divisional Court in the case of *MacDonald v. Richard* [2008] O.J. 6076 (Ont. Div. Ct.) (“MacDonald”), 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. *MacDonald* has been followed by the Board in a number of decisions, including TSL-2128-11; TSL-52712-14; TSL-62689-15; TSL-76374-16; and TSL-80318-16.
16. Although *MacDonald* concerned section 48 of the Act, I find that the interpretation of “residential occupation” applies equally to section 49. The Act requires genuine residential occupation, not temporary or transitory use.
17. In this case, the Purchaser occupied the rental unit for approximately three weeks before vacating and re-renting it.
18. I find that this brief period of occupation does not constitute genuine residential occupation as contemplated by section 49 of the Act.
19. Accordingly, I find that no person referred to in subsection 49(1) or (2) occupied the rental unit within a reasonable time after the Tenant vacated.

Bad Faith

20. The Purchaser submits that his intention was genuine at the time the notice was served and that unforeseen medical circumstances caused a change in plans.
21. I am not satisfied, on a balance of probabilities, that the Purchaser had a genuine intention to reside in the rental unit.
22. Although the Purchaser stated there were unforeseen health concerns with his sister, no documentary evidence was submitted at the hearing to support this, and the Purchaser’s sister or other family Members were also not present at the hearing to give testimony on this sudden change in circumstances. The Purchaser also failed to provide any immigration or travel documents to confirm that his sisters had a initial intention to move to Canada and into the rental unit at the time the agreement of purchaser was signed on May 31, 2024.
23. Moreover, the Purchaser acknowledged that his sisters’ income was not included in the mortgage approval process. Mortgage lenders, including private lenders, assess a borrower’s income to determine their ability to service debt. The Purchaser was approved for the mortgage based solely on his own income. If the mortgage approval was based solely on his income, it indicates that he represented to the lender that he could afford the

payments independently. This seems contradictory to the Purchaser's claim that he ran into financial difficulties that could seemingly only be remedied by re-renting the unit less than two months after the Tenant vacated.

24. Based on the evidence before me, I am not satisfied that the Purchaser had a good faith intention to reside in the rental unit. I find the notice of termination was given in bad faith. Therefore, the Tenant has proven all of the elements of the test under section 57(1)(b) for their application to be successful.

Liability/Remedies

25. 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.
26. I find evidence before the Board is clear that at the time the agreement of purchase and sale was entered into, that the Purchaser advised the Landlord that he required possession of the rental unit for his own use and that he would be moving into and residing. The Landlord served the N12 notice in accordance with the Act and based on the information provided by the Purchaser.
27. There was no evidence before the Board to suggest that the Landlord knew or had any indication that the Purchaser would not be moving into the rental unit. I am, therefore, unable to conclude that the Landlord acted in bad faith. Therefore, I find the Purchaser is solely liable for the N12 being given in bad faith.
28. The Tenant's application requests a 12-month rent differential for the increased rent from his old rental unit to his current unit.
29. The monthly rent at the time the tenancy terminated was \$2,495.00. The Tenant testified that his current monthly rent is \$3,000.00, which is an increase of \$505.00 per month.
30. While the Tenant is now responsible for paying utilities at the new rental unit, I note that the new unit includes an additional half bathroom. Considering the overall comparability of the two units, I am satisfied that the monthly rent increase of \$505.00 reasonably reflects the net difference in housing costs. Accordingly, the Tenant is entitled to a rent differential of \$6,060.00, representing the increased rent paid over a 12-month period.
31. The Tenant also seeks general compensation pursuant to section 57(3) of the Act. Although this request was set out under the "other remedies" portion of the application, the Landlord was aware of the relief sought and had an opportunity to respond at the hearing.
32. When assessing the claim for general compensation, the Board must consider the overall impact of the breach on the Tenant.
33. The Tenant testified that his son was required to change schools as a result of the move and experienced emotional and academic difficulty.

34. While the evidence does not establish that the move was the sole cause of academic decline, I accept that the forced relocation and school change caused disruption beyond the ordinary inconvenience of moving.
35. In the circumstances, I find that general compensation in the amount of \$2,000.00 is appropriate and proportionate.
36. The Tenant paid \$48.00 for the application and is entitled to be reimbursed that cost

It is ordered that:

1. The total amount the Purchaser shall pay the Tenant is ~~\$106.00.~~ **\$8,108.00.** This amount represents:
 - \$6,060.00 for a rent abatement
 - \$2000.00 for general compensation
 - \$48.00 for the cost of filing the application.
2. The Purchaser shall pay the Tenant the full amount owing by March 14, 2026.
3. If the Purchaser does not pay the Tenant the full amount owing by March 14, 2026, the Purchaser will owe interest. This will be simple interest calculated from March 15, 2026, at 4.00% annually on the balance outstanding.

March 3, 2026

Date Issued

Bryan Delorenzi

Member, Landlord and Tenant Board

March 19, 2026

Date Amended

March 27, 2026

Date Amended

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.