



Order under Section 57 Residential Tenancies Act, 2006

Citation: Wicks v Harrison, 2026 ONLTB 27412

Date: 2026-04-02

File Number: LTB-T-041020-25

In the matter of: 644 Galahad Drive
Oshawa ON L1K1M2

Between: Matika Wicks Tenant

And

Matthew Harrison Landlord

Matika Wicks (the 'Tenant') applied for an order determining that Matthew Harrison (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on March 3, 2026.

The Landlord 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. It is undisputed that the Tenant received an N12 notice of termination from the Landlord in August 2023. Order LTB-L-068960-23 issued on April 12, 2024 found that the N12 notice had been issued in good faith and terminated the tenancy on May 30, 2024.
4. Section 57 provides that a tenant can apply to the LTB for remedies if a landlord gives a notice under sections 48, 49, or 50 in bad faith, and the tenant moves out as a result of the notice. Section 57(4) provides that the application can be brought even if the landlord was previously

found to have given the notice in good faith. The Tenant brings the present application under section 57.

5. The Tenant's position is that the Landlord served the N12 notice in bad faith and did not move into the unit when she moved out. She produced the following photographs of the rental unit to confirm that no one moved into the unit:

Doc 6568972 – undated photograph of dining room window. There are no curtains on the window and the Tenant states that there are tires and paint stored inside.

Doc 5658968 – photograph of tires piled in the living room, taken by the Tenant on October 3, 2024.

Doc 5806894 – photograph of For Sale sign at the unit taken on either June 3 or 4, 2025 .

Doc 5658976 – photograph of back yard taken in September 2024 which Tenant says shows unit is empty.

Doc 5658989 – photograph of unshovelled snow in driveway taken on November 12, 2024 which Tenant stated confirms no one was living in the unit.

6. The Landlord asserts that he did move into the unit on June 30, 2024, after the Tenant vacated. He spent considerable time and effort trying to eliminate the overwhelming smell of cigarettes. He had to wash all the walls twice, painted the unit twice, used an ozinator to try to eliminate the smell and had the air ducts cleaned twice. Given the difficulty in eliminating the cigarette smell, he only moved minimal furniture, including his bed, into the unit. On May 26, 2025, he had the unit staged and listed the home for sale in June 2025. Even then, the home still smelled of cigarettes.
7. On cross-examination, the Landlord admitted that he thought about selling the unit in 2020 because the market was good. However, after the Tenant refused to move out and his mother became ill, he decided to move into the unit instead.

Analysis

8. The Tenant did not prove the following requirement in subsection 57(1)(a), namely that the Landlord did not occupy the unit after the Tenant moved out. There is nothing in the photographs produced by the Tenant to confirm that no one is living in the unit.
9. First I cannot determine what is inside the unit based on the Tenant's photograph of unit's dining room window [Doc 6568972]. The fact that there are no curtains visible does not confirm that the unit is empty. Similarly, while storing tires in a living room may be unorthodox, it does not mean that no one lives in the unit.
10. Second, the Landlord did not dispute that he listed the house for sale in June 2025, but this was over one year after the Tenant vacated and I accept the Landlord's explanation that the smell of cigarettes made living in the unit difficult for him.
11. Third, I disagree that the photograph of the house from the backyard [Doc 5658976] confirms it is empty. I cannot see inside the home and curtains are drawn on one of the windows.

12. Lastly, while the photograph of snow in driveway confirms snow had not yet been shovelled, there is no information to confirm how long the snow had been on the ground (i.e. was it fresh), or what time the snow fall happened (was it after the Landlord went to work). The fact that there are footprints in the snow at the side of the house and on the front steps indicates that someone has been at the house.
13. Given that I am not persuaded by the Tenant's evidence that the Landlord did not move into the unit, the Tenant's application is dismissed.

It is ordered that:

1. The Tenant's application is dismissed.

April 2, 2026
Date Issued

Karen Gonçalves
Member, Landlord and Tenant 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.