



Order under Section 57 Residential Tenancies Act, 2006

Citation: Vania v Hernandez, 2026 ONLTB 28439

Date: 2026-04-08

File Number: LTB-T-061722-25

In the matter of: Main floor, 270 Renforth Dr
Etobicoke ON M9C2K9

Between: Shafique Vania Tenants
Ayob M Vania

And

Javier Hernandez Landlord

Shafique Vania and Ayob M Vania (the 'Tenants') applied for an order determining that Javier Hernandez (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on March 12, 2026.

The Landlord, the Landlord's witness Katherine Cartagena, the Landlord's representative Anome Mehrabian, and the Tenants attended the hearing.

Determinations:

1. As explained below, the Tenants did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.

Landlord gave N12 for own use in bad faith

2. Subsection 57(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') requires the Tenants to prove each of the following on a balance of probabilities:
 - The Landlord gave the Tenants an N12 notice of termination under section 48 of the Act;
 - The Tenants 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 Tenants vacated; and
 - The Landlord served the N12 notice of termination in bad faith.
3. The Tenants filed their application within one year of vacating the rental unit which is required under section 57(2) of the Act.

4. The Tenants moved into the rental unit in January of 2022 and vacated on August 1, 2024.
5. The Tenants testified that they did not feel a presumption of bad faith was engaged as outlined in section 57(5) of the Act. As a result, it is the Tenants' burden to prove each element of the test outlined above.
6. However, the parties also agreed that the rental unit was put up for sale on October 8, 2025, after the period referenced in section 57(5).
7. The Tenants only proved some of the requirements of subsection 57(1)(a). The Tenants testified that the Landlord served them with an N12 notice of termination with a termination date of May 14, 2024. The Tenants stated that they moved out as a result of receiving the notice. The parties also agreed that the Landlord never moved into the rental unit. Thus, the first three elements of the test have been met.
8. However, the Tenants did not prove the following requirement in subsection 57(1)(a): that the Landlord served the notice of termination in bad faith.
9. The Landlord and the Landlord's witnesses are spouses and share a child. The Landlord's witness testified that they initially rented out the rental unit to the Tenants because they made a decision to temporarily reside in the Caribbean. This decision was made in order to cater to the complex medical needs of their child, after doctors recommended that they live in a sunny and warm environment, and close to specialists.
10. The witness testified that in 2023 they and the Landlord decided that they wanted to move back home and reside in the rental unit. The N12 was served in anticipation. Their aim was to secure a spot in a specific private school which would be able to cater to their child's medical needs.
11. The Landlord submitted copies of correspondence with a private school into evidence, where on July 18, 2024 the witness declines an invitation to enroll their child into a local Ontario based school because the Tenants were still residing in the rental unit. The Landlord also provided copies of correspondence between the witness and their child's doctor where they discuss the child's medical condition.
12. After the Tenants vacated, the Landlord stated that they took approximately two months to clean and renovate the rental unit in order for it to be free of odours and smoke.
13. The Tenants testified that they felt the Landlord served a notice of termination in bad faith because after they vacated, their former neighbour never saw any activity at the rental unit. Then, on October 8, 2025, the Tenants noticed a for sale sign was posted outside.
14. The Landlord's witness testified that after they began renovations in the Fall of 2024, their son began to show significant medical improvements, and they made a decision to sell the rental unit after having carried its costs and leaving it unrented between July of 2024 to October 2025.
15. Based on the evidence provided by the Landlord and their witness, I am persuaded that the Landlord experienced a genuine change of circumstances after the Tenants vacated. I have no evidence before me to suggest that the Landlord gave the notice of termination in bad faith. It is clear from the correspondence entered into evidence that the Landlord

intended to enroll their child into a local school and move into the rental unit once the Tenants moved out. However, due to the Tenants overstaying beyond the termination date outlined on the N12, the Landlord had to give up their child's spot in a specialized school. After this delay, the Landlord's child began to show new medical improvements which prompted them to decide to permanently reside in the Caribbean. In order to reduce their expenses, they then made the decision to sell the rental unit. I am satisfied on a balance of probabilities that the Landlord served the notice of termination in good faith. Thus, the Tenants' application cannot succeed.

It is ordered that:

1. The Tenants' application is dismissed.

April 8, 2026
Date Issued

Madeline Ntoukas
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.