



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

File Number: LTB-T-038361-25

In the matter of: 1, 75 PEPPERWOOD CRES
KITCHENER ON N2A2R4

Between: Melissa Gissing Tenant

And

SUBHADIP GHOSH Landlord

MELISSA GISSING (the 'Tenant') applied for an order determining that SUBHADIP GHOSH (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on January 22, 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. The T5 application alleges the Landlord gave the Tenant a notice of termination in bad faith.

Tenant's Evidence

3. The Landlord served a N12 Notice of Termination ('N12 Notice') on the Tenant on April 27, 2023, deemed served on May 2, 2023, informing the Tenant that the Landlord required the rental unit for personal use and that the Tenant was to move out by June 30, 2023.
4. The Tenant disputed the N12 Notice, and the matter proceeded to a hearing before the Board. The Member who presided over that hearing found that the Landlord, in good faith, required possession of the rental unit for residential occupancy for a period of at least one year. As a result, an eviction order was issued, and the Tenant was required to vacate the rental unit and did so on May 8, 2024.
5. The Tenant testified that she does not believe the Landlord moved into the rental unit once she had vacated. The Tenant testified that the Landlord's vehicle was rarely observed in

the driveway, including during a period when the driveway was being repaved, and questioned where the Landlord would have parked. The Tenant also testified that the Landlord's boat remained at another location and was not seen at the property, that garbage was not put out for collection during several weeks, and that neighbours advised her that they had not observed the Landlord residing in the unit.

Landlord's Evidence

6. The Landlord testified that he and his family moved into the rental unit on June 4, 2024, and subsequently moved out on November 29, 2025. The Landlord testified that his children went to school in the area and provided their report cards to support that the family resided in the rental unit for at least one year.
7. The Landlord further testified that his boat remained at his previous residence in Whitby, where it is stored, and explained that he does not use the boat in the Kitchener area. When he does use the boat, he travels to Whitby.

Analysis

8. This application was served pursuant to section 57(1)(a) of the Act. This section establishes a three-part test. In order to be successful in their T5 application, the Tenant must establish all three of the requirements of subsection 57(1)(a) on a balance of probabilities:
 - First, that the Landlord gave a notice of termination under section 48 of the Act (the N12) and the notice was given in bad faith;
 - Secondly, that the Tenants vacated the rental unit as a result of the N12 or Board order based on the N12;
 - Thirdly, that the person named in the N12 did not move into the rental unit within a reasonable time after the Tenant's vacated.
9. Based on the uncontested evidence before the Board, I find that the Landlord gave the Tenant an N12 notice for personal use under section 48 of the Act. I also find that the Tenant vacated the rental unit in response to the eviction notice served by the Landlord – i.e. as a result of the eviction order that stemmed from the N12 notice. Given that the Tenant moved into the rental unit less than a month before 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.
10. 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.
11. The Tenant's evidence on this point was circumstantial and consists primarily of observations and assumptions regarding the Landlord's presence at the unit, including vehicle absence, garbage placement, and statements attributed to neighbours. In contrast, the Landlord provided direct testimony, supported by documentary evidence, including

school records, which supports that he and his family resided in the rental unit for the relevant period.

12. 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.
13. In these circumstances, the burden falls on the Tenant to establish that the Landlord's parents did not move into rental unit within a reasonable time after the Tenant vacated. Based on the evidence before the Board, I find the Tenant has failed to lead sufficient evidence to establish the Landlord did not move into the rental unit. As such, the Tenant did not satisfy the third requirement of section 57(1)(a) of the Act.
14. Given my finding on the third requirement, there is no need for me to address the first requirement of section 57(1)(a) of the Act. As the Tenant cannot establish all three of 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.

April 7, 2026
Date Issued

Joshua Labbe
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.