



Order under Section 57 Residential Tenancies Act, 2006

Citation: Zapata v Seecharran, 2026 ONLTB 30759

Date: 2026-04-20

File Number: LTB-T-007682-24

In the matter of: 60, 2398 Britannia Road West
Mississauga ON L5M6B6

Between: Ana Maria Zapata Tenant
Jeffrey Rodrigues

And

Maylene Seecharran Landlord
Michael Mohamed

Ana Maria Zapata and Jeffrey Rodrigues (the 'Tenant') applied for an order determining that Maylene Seecharran and Michael Mohamed (the 'Landlord') gave a notice of termination in bad faith.

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

The Landlords and the Landlords' legal representative, B. Lue Sang, and the Tenants and the Tenants' legal representative, H. Khan attended the hearing.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay to the Tenants \$6,626.53 by May 1, 2026.
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. The parties agree that the Landlord gave the Tenants with an N12 notice to terminate the tenancy for residential occupation by the Landlord's child and that no one specified in the notice moved in pursuant to the notice.
4. The Landlord disagrees that the Tenants vacated pursuant to the N12 notice and that the Landlord gave the notice in bad faith.

Did the Tenants vacate the unit pursuant to the N12 notice?

5. The Tenant testified that when they received the N12 notice from the Landlord, they were not financially prepared to move. They received the notice in June 2022. The Tenants were preparing for their wedding in October 2022, and all of their finances were tied up in that. The Tenants testified that they asked the Landlord for an extension of the vacate date on the notice, and the Landlords agreed.
6. The Tenants testified that they eventually found other accommodations and gave the Landlord's an N9 notice in November 2022, terminating their tenancy on January 31, 2023. A text message was sent to the Landlord on November 18, 2022, that said, in part:

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7. The Tenants testified that the Landlord did not respond, or tell them that plans had changed and they no longer had to vacate.

8. The Tenants testified that they vacated because they were served with the N12 notice. The Tenants testified that they understood that the Landlord's son would move into the unit after January 31, 2023, to be closer to school.
9. The Landlord testified that the N12 was given to the Tenants so that their son could move into the unit. The Landlord testified that when the Tenants asked for an extension, they ended up renting a different unit for their son to live in. The Landlord's did not communicate to the Tenants when the Tenant's gave the N9 notice to advise them that they no longer required the unit for their son. The Landlord testified that they did not pursue the L2 application to move forward with terminating the tenancy.
10. Based on the evidence before me, I am satisfied, on a balance of probabilities, that the Tenants vacated pursuant to the N12 notice given by the Landlord's. It is unclear how the Landlord expected the Tenants to know that they no longer required the unit for their son if they were not told that by the Landlord. Just because the Tenants may or may not have known that the Landlord's rented their son a unit after the Tenants requested an extension, without clear communication from the Landlord rescinding the N12, it is reasonable for the Tenants to believe that that was a short term measure until the Landlord's son could occupy the unit once the Tenant's moved out. It is clear from the text message sent to the Landlord from the Tenant on November 18, 2022, that as of the time of serving the N9 notice, the Tenants believed that the Landlord's required the unit for their son. The Landlord did not respond to the text message advising the Tenants that they no longer had to move. The fact that the Landlord chose not to pursue the L2 application to terminate based on the N12 notice is not determinative of the Landlord rescinding the N12 notice or communicating to the Tenant that the N12 notice was rescinded.

Did the Landlord give the N12 notice in bad faith?

11. The parties agree that no one named in the notice moved into the rental unit. It is not disputed by the Landlord that the unit was listed for sale shortly after the Tenant's vacated in January 2023.
12. Subsection 57 (5) of the Act says that it is presumed that the Landlord gave notice of termination in bad faith if, within one year from the date the Tenant vacated the unit, the unit is listed for sale. The onus is on the Landlord to rebut the presumption that the notice was served in bad faith.
13. It is the Landlord's position that because they did not believe that the Tenant vacated because of the N12 notice, they were free to do what they wanted with the rental unit after the Tenants vacated.

Analysis

14. The Divisional Court in *Elkins v. Van Wissen*, 2023 ONCA 789 has commented that the Board should adopt a broader approach to the bad faith inquiry and should not restrict itself to only the evidence at the time the notice was served. At paragraph 43, the Court stated:

On a plain reading of ss. 49(1) and 57(1)(b), the landlord's conduct is linked to the purchaser's good faith. Section 49(1) permits the landlord to, on behalf of the purchaser, give the tenant a termination notices so long as the purchaser, in good faith, requires possession of the rental unit for the purpose of residential occupation. Section 57(1)(b) requires the Board to determine, among other things, whether the landlord gave the s. 49 termination notice in bad faith. When ss. 49(1) and 57(1)(b) are read together, it is clear that the object of those provisions is to prevent the sale of a property from being used to unlawfully evict a tenant. Accordingly, the Board must consider all the evidence before it that is relevant to the landlord's bad faith under s. 57(1)(b). It is an error of law for the Board to restrict its consideration to the evidence at the point in time when the landlord gives the tenant a s. 49 termination notice. This case makes that point. (emphasis added)

15. Although the Elkins decision refers to section 49 of the Act, it is equally applicable to section 48. The Landlord had a continuing obligation of good faith up to the point that the Tenants vacated the rental unit.
16. In this case, The Landlord served notice to the Tenants for their son's occupation. The Tenants approached the Landlords for more time to vacate, and the Landlord's agreed. The Landlords rented a unit for their son to move into. However, the Landlord's failed to communicate to the Tenant's that they no longer required the rental unit for their son's occupation. When the Tenants sent a texts to the Landlords advising them that they found a place, and prefaced the message with "I have good news for your son" and proceeded to advise that they found a place, the Landlord did not respond. The Landlord knew prior to the Tenants vacating that they no longer required the unit for their son's occupation and had an obligation to inform the Tenants and failed to do so.
17. Given the above, I find that the Landlord has not overcome the presumption of bad faith and that the Tenants have proven the required elements to establish their claim under section 57. As such, they are entitled to a remedy under the Act.

Remedies

18. The Tenants requested a rent differential totaling \$5,320.00, which represents increased rent they paid for 12 months. In order for the Tenants to be successful, the Board must be satisfied that the rental units are comparable, not necessarily identical.
19. The Tenants testified that the rental unit they moved out of was a three bedroom town house with a little backyard. The rent was \$2,250.00. The unit they moved into is a detached home, with three bedrooms and is about 100 square feet larger. The rent when they moved in to the unit was \$2,600.00. The Tenants testified that the rent was raised in December 2023 to \$3,160.00. I am not satisfied that the Landlords are liable for a potentially illegal increase in rent for the Tenant's new rental unit, so the difference in rent that will be considered is the rent for the new unit at \$2,600.00.
20. As I am satisfied that the rental units are comparable, the Tenants are entitled to a rent differential of \$4,200.00. This is calculated by the difference in rent (\$350.00) multiplied by 12 months.

21. The Tenants requested \$394.25 for costs related to moving and storage. The Tenants provided receipts for U-Haul rental, packing materials and Canada Post mail forwarding service. I am satisfied that these are reasonable costs related to moving and the Tenant is entitled to \$373.53. I decline to award the Tenant costs associated with serving their notice by XpressPost for \$20.72. I am not satisfied that this is a reasonable costs associated with moving.
22. The Tenants are requesting \$25,000.00 in general compensation. General compensation is intended to capture the intangible losses suffered as a result of the Landlords' breach.
23. The Tenants testified that they lived in the rental unit for 4 years. The testified that they are now further from work and their children's school. They testified that the move caused them stress, budgeting has been difficult due to the higher rent and that they have trouble trusting in general as a result of the bad faith termination.
24. I accept that the move caused the Tenant's some stress as they were not planning on moving had they not been served with the N12 notice. The Tenant's were able to stay in the same town and the children stayed in the same school but are now farther away resulting in increased travel expenses. As a result, and with my knowledge of other similar cases, I am not satisfied that the Tenant's are entitled to the amount they are requesting, but I find that the Tenant's are entitled to general compensation in the amount of \$2,000.00.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$6,626.53. This amount represents:
 - \$4,200.00 for increased rent the Tenant has incurred for the one-year period from February 1, 2023 to January 31, 2024.
 - \$373.53 for the reasonable moving, storage and other like expenses that the Tenant has incurred as a result of having to move out of the rental unit.
 - \$2,000.00 for general compensation.
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by May 1, 2026.
3. If the Landlord does not pay the Tenant the full amount owing by May 1, 2026, the Landlord will owe interest. This will be simple interest calculated from May 2, 2026 at 4.00% annually on the balance outstanding.

April 20, 2026
Date Issued

Emily Robb
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.