



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

Citation: mcmillan v jan, 2026 ONLTB 29206

File Number: LTB-T-071178-25

In the matter of: 12 Cartier Ave.
Cornwall ON K6J4B4

Between: Jenna McMillan Tenant

And

Mohammed Humayoun Jan Landlord

Jenna McMillan applied for an order determining that Mohammed Humayoun Jan (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on April 7, 2026.

The Landlord and the Tenant attended the hearing.

Determinations:

1. Austin Secord was removed as a party to the proceedings as he is an occupant in the rental unit, but not a Tenant pursuant to the lease.
2. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities.
3. 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.
4. There is no dispute between the parties that the Landlord gave the Tenant an N12 notice of termination and the Tenant vacated the rental unit in accordance with the notice.
5. The issues that remain in dispute are :
 - a) Whether the Landlord occupied the rental unit within a reasonable timeframe after the Tenant's vacated; and

b) Whether the Landlord gave the N12 notice in bad faith

Tenant's evidence

6. The Tenant testified that they vacated the rental unit on September 10, 2024. Since vacating, the Tenant would occasionally drive by the rental unit and noticed that it appeared no one had moved in. The Tenant took pictures of the unit (DOC-6535846). There are various pictures taken between October 2024 up until August 2025. Winter pictures show a snow-covered driveway and walkway. The final picture taken August 2025 shows a for sale sign on the lawn.
7. The Tenant testified that she heard from a neighbour, Edith Szendsen, that no one moved into the rental unit and that she saw new Tenants move into the unit in November 2025.
8. E. Szendsen testified on behalf of the Tenant. She testified that she lives at 14 Cartier Ave, next door to the Tenant's unit. She testified that no one moved into the rental unit until she noticed new Tenants move in in November 2025. She testified that she saw the Landlord at the rental unit about two or three times since the Tenant vacated. She testified that the Landlord preformed outdoor maintenance.

Landlord's evidence

9. The Landlord testified that he came to the rental unit on September 13, 2024, and cleaned and prepared the rental unit for his family to move in. He testified that he moved his family in in October 2024, and only stayed for two days before vacating due to his wife not being comfortable in the rental unit.
10. The Landlord testified that his wife suffers from depression and has ODC. His wife was unable to stay in the home because her condition became uncontrollable. He testified that prior to moving to the house on Cartier, they lived in Montreal but got evicted from their unit. He testified that his wife's condition worsened after they were evicted. He testified that his wife was not used to the new city and that there were dogs, and she was afraid of dogs.
11. The Landlord testified that they left the house after two days and returned to Montreal. He testified that he wanted to try again in the summer, but his wife refused. He testified that he put the house up for sale in August 2025, but it did not sell. As a result, new Tenants moved into the rental unit in November 2025.
12. M. Bibi testified on behalf of the Landlord. She is the Landlord's wife. She testified that has depression. A letter dated March 26, 2026 was submitted into evidence (DOC-7661752). The letter authored by M. Bibi's Doctor. The letter indicates that the Tenant has significant anxiety and OCD and panic attacks, and her symptoms increased significantly since the eviction from the Montreal unit in 2024 and that she improves when she lives in a know community.
13. M. Bibi testified that when she moved with her family to the cartier house, she was scared of the house, scared of everything around her and she kept seeing things. She testified that her condition got worse in the cartier house, that is why they moved out after two days.

Analysis

14. Based on the evidence before me, I am not satisfied, on a balance of probabilities, that the Landlord moved into the rental unit within a reasonable time after the Tenant's vacated the rental unit. I am not satisfied that moving into the rental unit for two days and then vacating constitutes actually moving into the rental unit.
15. As the rental unit was listed for sale within one year proceeding the termination date on the N12, subsection 57(5) of the Act is engaged. This means that bad faith is presumed unless the contrary is proven on a balance of probabilities. I am not satisfied that the Landlord has rebutted the presumption of bad faith.
16. I am not satisfied that the Landlord's wife's mental health issues demonstrate unforeseen circumstances that rebut the presumption of bad faith. The letter submitted by the Landlord indicates that the Tenant's mental health issues were exacerbated by the Montreal eviction, not the move into the Cartier Avenue unit. I am not satisfied that living in the unit for two days demonstrates a genuine indentation to reside in the unit and I am not satisfied that the medical evidence provided demonstrates that the Tenant's wife's mental health issues prevented her from living in the rental unit.
17. Further, the Landlord testified that the N12 notice was served to the Tenant as a result of eviction proceeding commenced against him in Montreal. He served the N12 notice to the Tenant in July 2024, when he received a decision terminating his Montreal tenancy. The Landlord testified that he appealed that decision but ultimately lost as of October 2024. The Landlord appealing a decision terminating his tenancy after serving the Tenant the N12 notice is not indicative of a genuine intention reside in the rental unit. It demonstrates a desire to remain in Montreal.
18. As a result of the above, I am satisfied that the Landlord have the Tenant the N12 notice of termination in bad faith.

Remedies

19. Although the Tenant requested a rent abatement totalling \$22,800.00, the Tenant clarified at the hearing that this is actually a rent differential that is being sought. As the Tenant also requested a rent differential under remedy 3, the request for an abatement is dismissed.
20. The Tenant requested a rent differential of \$1,055.00 a month for 12 months. The Tenant testified that the rent at her old unit was \$845.00. Her old unit was a two-bedroom unit where she split access to the back yard with another Tenant. She testified that rent at the new unit is \$1,900.00. Her new unit is a two-bedroom unit plus an office. She testified that the new unit is a little bigger than the old unit, the bedrooms are a little larger and there is an office. The Tenant is entitled to a rent differential. As the new unit is a little bigger than the old unit, I am not satisfied that the Tenant is entitled to the full rent differential requested, but is entitled to a reduced amount of \$755.00, this accounts for the new unit being bigger than the old unit and an additional room. Therefore, I find that the Landlord must pay the Tenant \$9,060.00 for the increased rent that the Tenant has incurred for a one-year period after the Tenant moved out of the rental unit.

21. The Tenant requested \$250.00 for costs associated with moving. The Tenant testified that she paid friends to help her move and paid for gas. The Tenant provided no receipts for the above expenses and did not call any of the friends that helped move as witnesses. As such, the requests for costs associated with moving are denied.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$9,108.00. This amount represents:
 - \$9,060.00 for increased rent the Tenant has incurred for the one-year period from September 10, 2024, to September 9, 2025.
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by April 27, 2026.
3. If the Landlord does not pay the Tenant the full amount owing by April 27, 2026, the Landlord will owe interest. This will be simple interest calculated from April 28, 2026 at 4.00% annually on the balance outstanding.

April 16, 2026

Date Issued

Emily Robb

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.