



Order under Section 57 Residential Tenancies Act, 2006

File Number: LTB-T-045780-25

In the matter of: 1301 MERKLEY RD
WINCHESTER ON K0C 2K0

Between:	Denis Allaire	Tenant
	and	
	Jeffrey Byles	Landlord
	and	
	Jason Kane	Purchaser

Denis Allaire (the 'Tenant') applied for an order determining that Jeffrey Byles (the 'Landlord') and Jason Kane (the 'Purchaser') gave a notice of termination in bad faith.

This application was heard by videoconference on March 2, 2026.

The Landlord, the Purchaser, and the Tenant attended the hearing.

Determinations:

Preliminary issues

1. The Tenant requested that I amend the application to name Jason Kane a Purchaser and not as a Landlord. The Tenant also requested that I amend the application to remove remedy 1, which is rent abatement. There were no objections and I granted the amendments.

Tenant's T5 Application

2. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.
3. Subsection 57(1)(b) 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 Tenant an N12 notice of termination under s.49 of the Act;
 - The Tenant vacated the rental unit as a result of the N12 notice of termination;

- No person referred to in subsection 49(1) or 49(2) 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. It is undisputed that the Landlord served an N12 notice with a termination date of April 30, 2024, in accordance with s.49(1) of the Act for the purpose of residential occupation by the Purchaser. The Landlord filed an L2 Application (LTB-L-018223-24) and by amended order dated May 28, 2025, the tenancy was terminated on May 20, 2025. The Tenant moved out of the rental unit on May 26, 2025.

Evidence and Submissions

5. The Tenant testified that he initially believed the sale of the property was fraudulent, he later learned that the property had in fact been sold to the purchaser, Jason Kane. The Tenant alleges that the Landlord served the N12 notice in bad faith, asserting that the purchaser did not occupy the rental unit within a reasonable time after the Tenant vacated.
6. The Tenant claims the Purchaser intended to renovate the property rather than occupying it. He relied on a text message dated May 10, 2025. In that communication, the Tenant offered the purchaser the option of staying in a trailer rather than a tent in the garage. The purchaser declined and stated that he was preparing to undertake renovations.
7. The Tenant also relied on a photograph taken by him on August 5, 2025, at 8:31 a.m. He stated that the picture “demonstrates that the property was not being used as a personal residence at the time.” He suggests that the property was being renovated. The image shows a bin at the front of the property and a vehicle parked in the driveway. The Tenant also drew attention to the size and placement of the windows.
8. The Tenant further relied on a photograph taken by him on December 23, 2025 at 4:54 p.m. He stated the image shows the property after substantial renovations. “The scope of the renovations suggest value enhancement rather than immediate occupancy.” He specifically referred to the windows as evidence of the significant structural work, rather than minor repairs. He suggests that the renovations are substantial and that the Purchaser was not living in the property. The image shows the property from the outside and it appears to be freshly painted. I inquired whether the Tenant had additional evidence in support of his application, he stated that his ability to gather evidence was limited due to concerns about stalking and trespassing.
9. The Landlord testified that the N12 notice was served in good faith and confirmed that the property was sold to the Purchaser. He further testified that the Tenant moved out through the Board’s order on May 26, 2025. He denies the allegations in the application.
10. The Purchaser testified that he purchased the property on June 2, 2025, and he moved into the rental unit on June 9, 2025. Although the Purchaser acknowledged that renovations were undertaken by him, he testified that the property has always been his primary residence and he has been living there continuously since June 9, 2025. He also confirmed that his driver’s license and the utility bills are all in his name and his address for service is the rental property. He indicated that he was confused as to why he was being sued.

Reasons for the decision

11. In *Elkins v. Van Wissen*, 2023 ONCA 789, the Court of Appeal for Ontario held that when deciding a T5 application relating to an N12 served for purchaser's own use under section 49 of the Act, the Board must consider both the Landlords and the purchaser's good faith. After making both those determinations, the Board must then consider what orders to make in respect of the Landlords and the Purchaser:

“[52]. . . When deciding applications brought under s. 57(1)(b), it is insufficient for the Board to assess only whether the landlord acted in bad faith in giving a s. 49 termination notice. The Board must also assess the purchaser's good faith, which s. 49(1) requires. After making both those determinations, the Board must then consider what orders to make in respect of each of the landlord and the purchaser.”

12. In *Elkins* the Court also found that in assessing good faith, the Board should consider events that occurred after the landlord serves the N12 Notice:

“[42] . . . The purposes of the RTA are set out in s. 1. The first purpose listed is “to provide protection for residential tenants from...unlawful evictions.” To ignore events after a landlord gives a tenant a s. 49 termination notice limits the Board from fulfilling its responsibility to determine bad faith under s. 57(1)(b) and undermines the RTA's stated purpose of providing tenants with protection from unlawful evictions.

[43] 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 notice 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.”

13. I find the Tenant's evidence does not establish on a balance of probabilities that the Purchaser failed to occupy the rental unit within a reasonable time after the Tenant vacated or that the Landlord served the N12 notice in bad faith, which are required parts of the test contained in subsection 57(1)(b) of the Act.
14. The Tenant's evidence in support of his allegation consisted of a text message dated May 10, 2025, in which the Purchaser refers to his intention to undertake renovations. I find this does not establish a lack of intent to occupy. The Tenant also relied on two photographs taken on August 5, 2025 and December 23, 2025. The photographs show the exterior of the property; it does not show the interior or otherwise establish that the unit was unoccupied. The Tenant did not provide direct evidence regarding non-occupancy and did

not call any witnesses in support of his allegations. Further, the Purchaser provided credible and convincing evidence that he moved into the rental unit on June 9, 2025 and has lived there ever since. His testimony was not challenged by the Tenant. Therefore, based on the evidence before me, I am satisfied that the Purchaser moved in within a reasonable time after the Tenant vacated on May 26, 2025.

15. I have also considered the Landlord's testimony that he served the N12 notice because he had entered into an agreement of purchase and sale on February 12, 2024 and that the property was sold on June 2, 2025, to the Purchaser, who intended to use the unit for residential occupation. Therefore, I find no evidence that the Landlord acted in bad faith.

It is ordered that:

1. The Tenant's application is dismissed.

April 24, 2026
Date Issued

Adeela Alvez
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.