



Order under Section 57 Residential Tenancies Act, 2006

Citation: Mailhiot v LaPorte, 2026 ONLTB 30654

Date: 2026-04-27

File Number: LTB-T-044074-25

In the matter of: 1054 Dawson Rd
Windsor ON N8Y4A4

Between: Brittany Mailhiot Tenant

And

Kirk LaPorte Landlord

Brittany Mailhiot (the 'Tenant') applied for an order determining that Kirk LaPorte (the 'Landlord') gave a notice of termination in bad faith.

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

The Landlord, the Tenant and the Tenant's husband Luke Buczynski (LB) 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 the Tenant \$4,309.04 for abatement of rent, increased rent the Tenant has incurred for the one-year period and the application filing fee.

Background

2. Tenancy commenced in February 2020, the lawful rent was \$1,036.58, given the passage of time, this was a month-to-month tenancy until the Tenant vacated the rental unit on or about July 31, 2024.

The T5 application

3. On or about June 30, 2024, the Landlord served the Tenant an N12 notice for purposes of the Landlord's own use with the termination date of September 1, 2024.
4. The Tenant submitted that she immediately started looking for new accommodations and emailed the Landlord on July 4, 2024 that she may have found a place in case they called

for a reference. The Tenant then followed up with another email on or about July 12, 2025, proving the Landlord with a N9 notice to terminate the tenancy and advising the Landlord that she secured a place and would be vacating on July 31, 2024.

5. The Tenant testified that she was aware that despite the termination date a provided for in the N12 notice she could vacate sooner as outlined on page 2 of the N12 notice form and hence she decided to exercise this option.
6. On August 24, 2024, the Tenant became aware that the property was listed for rent on Instagram as available for October 1, 2024, DOC-571128 as uploaded in the Board's record and was subsequently confirmed to have been re-rented.
7. The Tenant submits that she was not surprised the Landlord never moved into the property as there was a prior attempt by the Landlord to regain possession of the rental property in which it was evidenced that the Tenant said she "would not sign an N11 but would await the service of an N12 notice." Given these circumstances, the Tenant alleges that the Landlord served the N12 notice of termination in bad faith.
8. The Landlord submitted that the Tenant vacated the rental unit pursuant to an N9 notice, that she had advised him that since her partner moved in with her the place and yard was feeling too small. Having received the N9 notice, he advertised the unit for rent for October 1, 2024 at \$1,095.00 and that the unit was re-rented.
9. It was uncontested by the Landlord that:
 - the Landlord did not move into the rental unit;
 - they did not notify the Tenant of their material changes in circumstances, and
 - they did not permit the Tenant to move back into the rental unit.
10. There was no evidence provided to support the submissions that the Tenant moved out because the unit no longer met her needs.
11. The Tenant moved from a detached house into an apartment. While said to be larger by approximately 200 sq. feet, the new rental unit does not compare as they had to gave up a private backyard that they and their dog was able to enjoy.
12. The Tenant submitted that the rental unit was considerably closer to (LB's) work, that given the new travel demands of approximately 40 minutes, the former rental unit was in a better location.

Analysis

13. Pursuant to [section 57\(1\) of the Residential Tenancies Act, 2006, S.O. 2006, c17](#) (the 'Act'), the Board may make an order against a landlord if, on application by a former tenant of a rental unit, the Board determines that,

(a) the landlord gave a notice of termination under section 48 in bad faith, the former tenant vacated the rental unit as a result of the notice ... and no

person referred to in clause 48 (1) (a), (b), (c) or (d) occupied the rental unit within a reasonable time after the former tenant vacated the rental unit.

14. 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.
15. 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. In this application, the burden typically falls on the Tenant to establish that the notice of termination was served in bad faith.
16. However, the fact that the rental unit was listed for rent creates a rebuttable presumption that the Landlord served the N12 notice in bad faith. In other words, in this case, the burden falls on the Landlord to establish whether or not the rebuttable presumption should apply.

Rebuttable Presumption of Bad Faith

17. Subsections 57(5) and 57(6) establish a rebuttable presumption of bad faith on the following ground:

For the purposes of an application under clause (1)(a), it is presumed, unless the contrary is proven on a balance of probabilities, that a landlord gave a notice of termination under section 48 in bad faith, if at any time during the period described in subsection (6) the landlord,

- a) advertises the rental unit for rent;
- (b) enters into a tenancy agreement in respect of the rental unit with someone other than the former tenant;
- (c) advertises the rental unit, or the building that contains the rental unit, for sale;...

The period referred to in subsection (5) is the period that,

- (a) begins on the day the landlord gives the notice of termination under section 48; and
- (b) ends one year after the former tenant vacates the rental unit.

18. The Tenant takes the position that the rebuttable presumption is engaged, as it is undisputed that the rental unit was advertised for rent less than a year after they vacated, in this case this was a matter of approximately three weeks and subsequently re-rented.
19. The Landlord did not dispute that the rental unit was advertised for rent and that it was re-rented for October 1, 2024.

20. The Tenant proved all the requirements in subsection 57(1)(a), I say this as parts 1-3 of the test are uncontested. As relating to the 4th part of the test, the allegation of service of the N12 in bad faith, the Landlord failed to adduce sufficient evidence to rebut the presumption of bad faith.
21. Here while outlined that it was the Tenant who wanted to move out voluntarily and hence the N9 notice was accepted, there was no evidence adduced for the Board's consideration which could support the Landlord's testimony with respect to these submissions. And the Tenant testified that she moved out pursuant to the Landlord's N12 notice.
22. Based on the evidence before the Board, on a balance of probabilities the Tenant was served the N12 notice in bad faith.

Remedies

23. In the application, the Tenant requested the following remedies, totalling \$16,248.00. This amount represents:
 - a) an abatement of rent equal to 12 months - \$12,438.96;
 - b) difference in her rent paid at the new property \$3,761.04;
 - c) the Landlord to pay a fine to the LTB.
24. Subsection 57(3) of the Act provides the following remedies for this type of application and states: The orders referred to in subsection (1) are the following:
 1. An order that the Landlord pay a specified sum to the former tenant for all or any portion of any increased rent that the former tenant has incurred or will incur for a one-year period after vacating the rental unit.
 - 1.1 An order that the Landlord pay a specified sum to the former tenant as general compensation in an amount not exceeding the equivalent of 12 months of the last rent charged to the former tenant. An order under this paragraph may be made regardless of whether the former tenant has incurred any actual expenses or whether an order is made under paragraph 2.
 - 1.2 An order that the Landlord pay a specified sum to the former tenant for reasonable out-of-pocket moving, storage and other like expenses that the former tenant has incurred or will incur.
 2. An order for an abatement of rent.
 3. An order that the Landlord pay to the Board an administrative fine not exceeding the greater of \$10,000 and the monetary jurisdiction of the Small Claims Court.
 4. Any other order that the Board considers appropriate.

25. A rent abatement is a contractual remedy. Its purpose is to compensate a tenant for the difference in value between what a tenant was paying for and what they were receiving during a tenancy. Here, the Tenant was served the N12 notice on or about June 30, 2024 prompting them to seek new housing and to ultimately decided to move to a neighbouring town. The Tenant appears to have exercised their options promptly. This permitting them to continue to reside in the rental unit knowing where they were moving and to prepare accordingly.
26. There was no evidence before me that the Tenant was not paying for what they were receiving during the tenancy. However, as they had to find alternative housing and prepare to move, I believe a lump sum of \$500.00 is appropriate for the loss of enjoyment of the rental unit in the final month of their tenancy given these circumstances.
27. The Tenant also seeks \$3,761.04 for the increased rent that the Tenant has incurred for a one-year period after the Tenant moved out of the rental unit. This is arrived at subtracting the former rent of \$1,036.58 from the new rent of \$1,350.00 for a difference of \$313.42 per month x 12 months.
28. The Tenant submitted that given housing pricing, they were unfortunately unable to find any comparable housing in the area, and she had lived in the community since February 2020. The rental property was a detached home; they had to move into a residential complex at a higher monthly rent of \$1,350.00. And while she submits that the new rental unit is slightly larger, it is significantly different in character in that they no longer have private parking nor backyard to use for their own enjoyment. As recognized, sharing communal outdoor spaces is a significantly different experience and the new higher rent paid does not offer the Tenant any additional amenities.
29. Given the outlined factors, in addition to an increase in travel time to access employment, I find that the Landlord must pay the Tenant \$3,761.04 for the increased rent that the Tenant has incurred for a one-year period after the Tenant moved out of the rental unit.
30. Lastly, the Tenant requested that the Landlord pay a fine to the LTB.
31. Guideline 16 of the Landlords and Tenant Board Interpretation Guidelines states under purpose, that an administrative fine is a remedy to be used by the LTB to encourage compliance with the Act, and to deter landlords from engaging in similar activity in the future. This remedy is not normally imposed unless a landlord has shown a blatant disregard for the Act and other remedies will not provide adequate deterrence and compliance.
32. Based on the evidence before me, I am satisfied that the remedies as ordered will provide adequate deterrence and ensure future compliance by the Landlord.
33. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$4,309.04. This amount represents:
 - \$500.00 for a rent abatement.
 - \$3,761.04 for increased rent the Tenant has incurred for the one-year period from August 1, 2024 to July 31, 2025.
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by May 8, 2026.
3. If the Landlord does not pay the Tenant the full amount owing by May 8, 2026, the Landlord will owe interest. This will be simple interest calculated from May 9, 2026 at 4.00% annually on the balance outstanding.
4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

April 27, 2026
Date Issued

Alicia Johnson
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.