



Order under Section 57 Residential Tenancies Act, 2006

Citation: Bakestani v Gehi, 2026 ONLTB 34789

Date: 2026-05-04

File Number: LTB-T-072194-23

In the matter of: 1402, 388 PRINCE OF WALES DR
MISSISSAUGA ON L5B0A1

Between: Antoinette Bakestani Tenant

And

Vinod Arjun Gehi and Payal Vinod Gehi Landlords

Antoinette Bakestani (the 'Tenant') applied for an order determining that Vinod Arjun Gehi and Payal Vinod Gehi (the 'Landlords') gave a notice of termination in bad faith.

This application was heard by videoconference on September 29, 2025, February 9, 2026 and April 27, 2026.

The Landlords and the Tenant attended the hearing. Elana Grigorieva represented the Landlords. Donna Keuhl represented the Tenant.

I heard evidence from the Tenant and Mr. Gehi. I also considered the following documents filed by the parties:

DOC-1945071

DOC-1945073

DOC-1945076

DOC-1945079

DOC-4491560

DOC-4491559

DOC-4491556

DOC-4468414

DOC-4489761

DOC-4489755

DOC-4491556

DOC-6453100

DOC-6453097

DOC-7801207

DOC-7283266

DOC-7283249

I did not have to consider the affidavit uploaded as DOC-6491707.

Determinations:

1. This is a T5 application. It is brought under section 57 of the *Residential Tenancies Act, 2006* (the 'RTA'), which says, in part:

57 (1) The Board may make an order described in subsection (3) 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 or as a result of an application to or order made by the Board based on 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;*

...

(3) 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.*

2. The Tenant asked for: (a) a rent differential totalling \$11,400.00; (b) moving expenses of \$2,192.20; (c) an inconvenience claim of \$3,722.40; (d) return of a \$250.00 key deposit; and (e) payment of the compensation the Landlord were required to pay under section 48.1 of the LTB. **[DOC-7285201]**

3. As a technical matter, the return of the key deposit and payment of the compensation required by section 48.1 of the RTA should have been asked for on a T1 application and not a T5 application.

4. However, it is not uncommon for the LTB to allow a tenant to amend an application made using the wrong form in circumstances where the landlord was given sufficient information to allow them to understand the claim being made by the tenant, particularly where dismissing the claim based on the tenant having used the wrong form would cause the tenant prejudice. **[See *Dembinski v Nguyen*, 2024 ONLTB 8151 (CanLII) and *Ryan v Homestead Land Holdings Limited*, 2024 ONLTB 40533 (CanLII)]**

5. The Landlord was aware of the key deposit and the issue with the compensation and, on April 27, 2026, agreed to: (a) repay the key deposit; and (b) pay to the Tenant the compensation required by section 48.1

6. At the hearing on April 27, 2026, the Tenant, for the first time, raised that they had not received back their last month's rent deposit paid to the Landlords. The Landlords took the position that the Tenant had directed that the LMR be applied to a specific month other than the last month of the tenancy.

7. The LMR was not raised on the Tenant's (amended) T5 application and I refused to permit the Tenant to (again) amend their application to raise the LMR¹.

8. This application involves a notice of termination delivered under section 48, which says, in part:

48 (1) *A landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by,*

(a) the landlord;

(b) the landlord's spouse;

(c) a child or parent of the landlord or the landlord's spouse; or

¹ There was also no reference to the LMR in the application initially filed by the Tenant: DOC-1945099.

(d) *a person who provides or will provide care services to the landlord, the landlord's spouse, or a child or parent of the landlord or the landlord's spouse, if the person receiving the care services resides or will reside in the building, related group of buildings, mobile home park or land lease community in which the rental unit is located.*

9. The Landlords delivered an N12 dated December 15, 2022 with an April 6, 2023 termination date on which it was asserted that a parent of the spouse of the Landlords required possession of the rental unit. **[DOC-1945071]** I was told that it was the parents of Mrs. Gehi who the Landlords wanted to move into the unit.

10. The Tenant vacated the unit in May of 2023.

11. For a tenant to obtain a remedy under section 57 based on a notice of termination delivered under section 48—an N12—the LTB must be satisfied on the balance of probabilities that:

- (a) the tenant vacated the unit as a result of the N12 delivered by the landlord;
- (b) the person identified on the N12 did not occupy the unit within a reasonable time after the tenant vacated the unit; and
- (c) the landlord delivered the N12 in bad faith.

12. In this case, there is no dispute that:

- (a) the Tenant vacated the unit as a result of the N12 notice delivered by the Landlords—they would not have vacated the unit but for the N12; and
- (b) Mrs Gehi's parents never moved into the unit.

13. The only issue on this application is whether the Landlords delivered the N12 notice of termination in bad faith.

14. On a T5 application, the burden of establishing bad faith typically falls on the tenant. However, subsections 57(5) and (6) of the RTA establish a rebuttable presumption of bad faith where the application is based on section 48. Those subsections say:

57 (5) *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;*
- (d) *demolishes the rental unit or the building containing the rental unit; or*

(e) *takes any step to convert the rental unit, or the building containing the rental unit, to use for a purpose other than residential premises.*

(6) *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.*

15. It was agreed that, in May of 2023, the Landlords relisted the unit for rent. **[DOC-1945073]**
16. In determining 'bad faith'—the absence of the 'good faith' required by the RTA—on an application under section 57 based on an N12 delivered under section 48 the LTB must determine whether: (a) the landlord genuinely intended that the person identified on the N12 would occupy the unit; and (b) the person identified on the N12 genuinely intended to occupy the unit. **[See *Feeney v. Noble*, 1994 CanLII 10538 (ON SCDC) and *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC)]**
17. There are cases where the LTB has indicated that good faith—genuine intent—is determined when the N12 was delivered. However, in *Elkins v. Van Wissen* **[2023 ONCA 789 (CanLII) and see *CET-67272-17 (Re)*, 2017 CanLII 70040 (ON LTB)]**, the Court of Appeal found that the LTB should not limit its analysis to the time the N12 was delivered. Based on *Elkins*², the LTB is required, on an application under section 57 of the RTA based on a notice given under section 48, to consider whether the 'genuine intent' continued until the tenant vacated the unit.
18. It is difficult to determine a person's subjective intent. The LTB will typically make inferences concerning the subjective intent of a person based on the evidence, including the testimony of that person. **[See *Fava v. Harrison*, 2014 ONSC 3352 (CanLII)]**
19. The LTB has broad discretion in terms of the evidence that it may consider in determining whether a notice of termination under section 48 was delivered in good faith. **[RTA, s. 72(3)]**
20. The failure of the person identified on the N12 to attend before the LTB to provide evidence may result in an adverse inference being drawn. **[See *TSL-98774-18 (Re)*, 2019 CanLII 87043 (ON LTB)]** However, in this case, I do not think the evidence of Mrs. Gehi's parents would have changed the result.
21. The fact that the person identified on the N12 did not move into the unit and the unit was listed for sale or rent are not the sole considerations when determining the landlord's 'good faith'. A landlord may be able to establish that: (a) an unforeseen change in circumstances resulted in the person identified on the N12 being unable to occupy the unit; and (b) it was for that reason that the unit was re-rented or sold. **[See, for example, *Al Richan v Mirza*, 2021 CanLII 141438 (ON LTB)]** Where, however, there was an unforeseen change in

² While *Elkins* involved a notice of termination given under section 49 of the RTA, I think that the case also applies where notice is given under section 48 or 50. The object of sections 48, 49 and 50 is the same: to prevent the unlawful eviction of a tenant.

circumstances that resulted in the person named on an N12 notice not occupying the unit, the LTB should consider whether the change in circumstances occurred prior to the tenant vacating the unit and, if so, whether the tenant was given the opportunity to remain in the unit. It would, in my view, be 'bad faith' for a landlord who became aware that the person identified on the N12 delivered to the tenant would not occupy the unit to not 'rescind' the N12 and allow the tenant to remain.

22. In this case, I am satisfied that when the N12 was delivered, the genuine intent of the Landlords was to put Mrs. Gehi's parents into the unit. Mr. Gehi's evidence, which I accept, was that when the N12 was delivered Mrs. Gehi's parents were living with them but were not comfortable and wanted to move. The Tenant's evidence was that, as far back as October of 2022, they were aware that the Landlords wanted to put Mrs. Gehi's parents into the unit.
23. I am also satisfied that after the N12 was delivered the circumstances changed and it was for that reason that Mrs. Gehi's parents did not move into the unit. Specifically, I am satisfied that: (a) Mrs. Gehi's parents travelled to India in December of 2022 so that her mother could have cataract surgery with the intent of returning to Canada and moving into the unit; **[See DOC-4468414 pp17-22]** and (b) issues with the health of Mrs. Gehi's mother resulted in Mrs. Gehi's parents initially being unable to return to Canada as planned and ultimately deciding to remain in India.
24. The Tenant did not seriously dispute that the circumstances may have changed after the N12 was delivered but argued, in essence, that the Landlords should have notified them that the circumstances had changed and allowed them to remain in the unit.
25. Mr. Gehi testified that, in April of 2023—after determining his in-laws would not be returning to Canada and prior to listing the unit for rent—he asked the Tenant whether they wanted to stay in the unit and, in response, the Tenant declined and advised him that they had purchased a house into which they would be moving.
26. Ms Keuhl elected not to cross-examine Mr. Gehi on this assertion but invited me to find that this assertion was untrue and that Mr. Gehi did not, in fact, offer to allow the tenant to remain in the unit.
27. As a general rule, a party is required to challenge by cross-examination the evidence of any witness of the opposing party on a material point that they wish to submit should not be accepted. This is because it is unfair to challenge the credibility of a witness without giving them the opportunity to explain. **[See *Browne v. Dunn*, 1893 CanLII 65 (FOREP), *Sidhu v Gill*, 2026 BCSC 511 (CanLII), *Griffiths v TUI (UK) Ltd.*, 2023 UKSC 48 and *Rubis Bahamas Ltd. v. Russell*, [2026] UKPC 9]** Where a party does not cross-examine on a statement such as the one made by Mr. Gehi—which I find is material—it is, in my view, generally not open to the party to assert later that the statement was untrue and I am not prepared to find that Mr. Gehi's testimony was untrue.
28. Mr. Gehi's evidence concerning his conversation with the Tenant in April of 2023 was not directly contradicted by the Tenant.
29. On September 29, 2025, the Tenant's evidence was that the Landlords never told them that Mrs. Gehi's parents would not be moving into the unit. However, on cross-examination, Ms

Grigorieva put to the Tenant that, on April 10, 2023, Mr. Gehi advised them that they could remain in the unit. The Tenant initially denied this. However, the Tenant later: (a) confirmed that they had telephone calls with the Landlords after April 1, 2023 but could not remember the specifics of those communications [2:03:50]; and (b) admitted telling the Landlords after April 1, 2023 that their brother was buying a house into which they would be moving [2:07:43]³.

30. I find that it is more likely than not that in April of 2023—after determining his in-laws would not be returning to Canada and prior to listing the unit for rent—Mr. Gehi asked the Tenant whether they wanted to stay in the unit and the Tenant declined. For this reason, I find that the Landlords did not act in bad faith—if the Tenant did not want to remain in the unit it is not bad faith for the Landlords to have listed it for rent in circumstances where Mrs. Gehi's parents would not be returning to Canada to live in the unit—and no remedy is available to the Tenant under subsection 57(3) of the RTA.
31. Notwithstanding that the Tenant is not entitled to a remedy under section 57, they are entitled to a remedy on this application. As noted above, the Landlords agreed to: (a) return the \$250.00 key deposit; and (b) pay the compensation required by section 48.1 of the RTA—\$2,550.00.
32. I think, in the circumstances, that it is appropriate to order that the Landlords reimburse the \$48.00 filing fee paid by the Tenant because the Tenant was required to bring this application to obtain an order concerning the key deposit and the compensation required by section 48.1.

It is ordered that:

1. The Landlords shall pay to the Tenant \$2,848 by May 15, 2026.
2. If the Landlords do not pay the Tenant the full amount owing by May 15, 2026, the Landlords will owe interest. This will be simple interest calculated from May 16, 2026 at 4.00% annually on the balance outstanding.
3. The application is otherwise dismissed.

May 4, 2026
Date Issued

E. Patrick Shea
Vice Chair, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

³ On April 37, 2026, Ms Keuhl clarified that the offer to purchase the house was made at the end of January of 2023 and the transaction closed in February of 2023.

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