



Order under Section 57 Residential Tenancies Act, 2006

Citation: Austin v MILAN, 2026 ONLTB 35054

Date: 2026-05-07

File Number: LTB-T-087367-25

In the matter of: 479 Hurontario Street
Collingwood ON L9Y2M7

Between: Tammy Austin Tenant

And

REJC MILAN Landlord

Tammy Austin (the 'Tenant') applied for an order determining that REJC MILAN (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on April 28, 2026. Only the Tenant attended the hearing.

As of 9:39 a.m., the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Tenant's evidence.

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 Tenant \$17,400.00.
2. By way of background, the rental unit was a two-bedroom detached family home with one bathroom and approximately 1100 square feet. The Tenant lived in the rental unit with her child for 18 years.
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 ('N12 notice');
 - 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 in bad faith.
4. Further, section 57(5) of the Act creates a rebuttable presumption that a notice of termination given under s. 48(1) of the Act was given in bad faith if the property is advertised for sale or rent. A rebuttable presumption means that the landlord is assumed to have acted in bad faith unless the landlord can provide an explanation that satisfies the Board as to what changed after the tenancy terminated, that affected the landlord's ability to move in or remain in the rental unit.
 5. The Tenant testified that on June 20, 2025, the Landlord gave the Tenant an N12 notice with a termination date of September 1, 2025. He told the Tenant that he had a medical problem which required him to live closer to major hospitals and his family doctor who advised they would resume care to the Landlord and his wife. The Landlord had been living in British Columbia prior to this time.
 6. The Tenant, feeling concerned for her Landlord's health, agreed to move. She found another rental unit in the community. She said it was stressful, because she had lived in the rental property for 18 years.
 7. About two weeks after moving out, she saw the rental property was being fitted for a new roof. About three weeks later, she saw a for sale sign on the front lawn of the property. The Tenant submitted a copy of the MLS listing. Her evidence is that the property is still vacant and still for sale.
 8. The Tenant proved all of the requirements in s.57(1)(a). The Tenant was given an N12 notice of termination and the Tenant vacated the rental property in accordance with that notice. The Tenant also proved that the notice was given in bad faith because the property was put up for sale five about five weeks after she left, and the property remains vacant. Further, the Landlord did not attend the hearing to rebut the presumption of bad faith pursuant to s. 57(5) of the Act. Therefore, the Tenant has proven, on a balance of probabilities, that the Landlord acted in bad faith.

Remedies

9. By way of remedies, the Tenant seeks rent differential totalling \$17,400.00 for the period between September 1, 2025, to August 31, 2026.
10. The Tenant told the Board that she had an agreement with the Landlord that her rent would remain \$850.00 per month, but she was to pay the property taxes, which she did. Her new rent is \$2,300.00 per month. The Tenant seeks \$1,450.00 for 12 months as rent differential totalling 17,400.00 (\$1,450 x 12). The Tenant submitted a copy of her current lease showing the current rental rate. The Tenant states that her new rental unit is in approximately the same age building and about the same size as her old rental unit.
11. I note that it could be argued that the Tenant paid more than \$850.00 per month if the property taxes were added into the calculation. However, s. 134(1) of the Act states that no Landlord shall collect any "...fee, premium, commission, bonus, penalty, key deposit or other like amount of money whether or not the money is refundable." Further, s. 3(1) of the Act states that the *Residential Tenancies Act* applies to all rental units despite any other agreement to the contrary.

12. What this means is that the Landlord was not permitted to charge or ask the Tenant to pay the property taxes even if the parties agreed on this. Section 3(1) specifically states that despite any agreement to the contrary, the Act prevails, and s. 134(1) prohibits the collection of any other fees, premiums, etc. such as in this case, the property taxes.
13. Therefore, it was not lawful for the Tenant to pay the property taxes. As a result, I am not considering these charges in the calculation of the Tenant's lawful rent for the purposes of determining the rent differential.
14. I find that the Landlord must pay the Tenant \$17,400.00 for the increased rent that the Tenant will incur for a one-year period after the Tenant moved out of the rental unit.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$17,448.00. This amount represents:
 - \$17,400.00 for increased rent the Tenant will incur for the one-year period from September 1, 2025, to August 31, 2026.
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by May 18, 2026.
3. If the Landlord does not pay the Tenant the full amount owing by May 18, 2026, the Landlord will owe interest. This will be simple interest calculated from May 19, 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.

May 7, 2026
Date Issued

Jane Dean
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.