



Order under Section 57 Residential Tenancies Act, 2006

File Number: LTB-T-044783-25

In the matter of: 82 Cleta Drive
SCARBOROUGH ON M1K3G7

Between: Clinton Richardson Tenant

And

Luigi Gabriele Landlord
ANNA Gabriele

Clinton Richardson (the 'Tenant') applied for an order determining that Luigi Gabriele and ANNA Gabriele (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on March 10, 2026.

The Tenant, the Landlord's Legal Representative Bryan Rubin and both Landlords attended the hearing.

Determinations:

1. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.

Landlord gave N12 for own use in bad faith

2. 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.
3. The Tenants vacated the rental unit on August 1, 2024.

4. The Tenant alleged that the Landlord did not genuinely occupy the rental unit after they have vacated. The rental unit appeared vacant based on their observations while driving by.
5. The Tenant testified that a building permit dated January 7, 2025, suggests redevelopment inconsistent with landlord's own use. The Tenant presented photographic evidence showing construction activity at the property.
6. He claimed that some neighbours indicated to him that the Landlord did not reside at the property.
7. The Tenant relied on three (3) exterior photographs of the property, a building permit for basement development, and testimony based on a belief-based assertions regarding the Landlord's occupancy.
8. In cross examination, the Tenant acknowledged:
 - No interior access to the property after vacating.
 - No direct proof of occupancy or non-occupancy.
 - No witness testimony.
 - No documentary proof of rent payments at their new residence.
9. On redirect the Tenant stated that they vacated strictly to comply with an LTB Order and avoid any further legal issues. They believed the Landlord may have experienced financial loss and later used the property for redevelopment.
10. The Tenant suggested the building permit indicated an intent to generate income rather than personal use. But confirmed they did not independently verify occupancy after vacating. Lastly, the Tenant acknowledged lack of documentary proof supporting key allegations.

Motion to dismiss

11. Mr. Rubin brought a motion to dismiss the application due to insufficient evidence. He argued that the Landlord was had a prior LTB decision confirming validity of the N12 Notice. After receiving the order lawfully proceeded with regaining possession of the rental unit. Further, construction activity does not negate residential use. Lastly, the Tenant presented no evidence that the Landlord did not occupy or was not going to occupy the rental unit. There was no evidence of the rental unit being re-rented or listed for sale.
12. The Landlords' motion to dismiss the application is granted.
13. The Tenants failed to provide sufficient, reliable, and probative evidence to establish that the Landlords served the N12 notice in bad faith or failed to occupy the unit as required. The Board cannot rely on speculation, inference, or belief in the absence of objective evidence meeting the balance of probabilities standard.
14. I find that:
 - The Tenants' evidence is primarily speculative and based on external observation.
 - Exterior photographs do not establish who occupied the unit.

- A building permit obtained after vacating does not establish bad faith at the time the N12 was issued.
- The Tenants provided no direct evidence of non-occupancy.
- No witness testimony or independent verification supports the allegation.
- No documentary evidence was provided to substantiate alleged rent differential payments.
- Assertions regarding motive (financial hardship or redevelopment intent) are unsubstantiated or supported.

15. I find that The Board the Tenants' evidence does not meet the threshold required under section 57 of the *Residential Tenancies Act*.

16. For all the reason above, the Tenant's application shall be dismissed.

It is ordered that:

1. The Tenants application is dismissed.

May 5, 2026
Date Issued

Anthony Bruno
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.