



Order under Section 57 Residential Tenancies Act, 2006

Citation: BUTLER v BISHAY, 2026 ONLTB 35714

Date: 2026-05-07

File Number: LTB-T-053608-25

In the matter of: Basement Apartment, 46 WESTON CRES
AJAX ON L1T0C8

Between: LINUS R JR BUTLER Tenant

And

IOANNA (JOANNA) BISHAY Landlord

LINUS R JR BUTLER (the 'Tenant') applied for an order determining that IOANNA (JOANNA) BISHAY (the 'Landlord') gave a notice of termination in bad faith.

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

The Tenant, the Landlord, and the Landlord's Legal Representative Kimberly Covey attended the hearing.

Preliminary Issue:

The Landlord's Legal Representative Ms. Cove, submitted that:

1. There was only one N12 notice served upon the Tenant.
2. That N12 formed part of prior Board file LTB-L-071950-23.
3. That N12 proceeding was formally withdrawn, and the Board issued a file closure notice in February 2024.
4. Prior to the formal withdrawal, in January 2024, the parties entered into a brand-new lease agreement at a revised rental amount of \$1,800.00 per month.
5. The new lease constituted a novation and superseded all prior notices and prior tenancy arrangements.
6. No replacement N12 was ever served after the withdrawal of the prior N12.

7. The Tenant continued to reside in the unit for approximately one and a half years thereafter.
8. In April 2024, the Tenant independently advised the Landlord by text message that he had found another place and intended to vacate in July 2024.
9. The Tenant vacated voluntarily and not because of any active N12. The Landlord submits that the present T5 application is based on a withdrawn notice and therefore has no reasonable prospect of success.
10. The Landlord further submits the matter constitutes an abuse of process and should be dismissed pursuant to section 15.1 of the Board's Rules of Procedure.
11. Based on the above submissions, Ms. Cove requested that the application be dismissed.
12. The Tenant, Mr. Butler, opposed the motion and submitted that there were two prior N12 notices served on the Tenant in 2023. In January 2024, the parties entered into a new lease agreement with a monthly rent of \$1,800.00, which the Tenant understood to be a temporary arrangement. This new lease was discussed in the context of the Landlord's stated intention that her son and his girlfriend would be moving into the basement unit. As a result of these representations, the Tenant continued searching for alternative housing, anticipating that the Landlord's son would require possession of the unit.
13. The Tenant ultimately secured another residence and advised the Landlord of this development. An N11 agreement to terminate the tenancy was subsequently signed by the parties. Relying on the Landlord's representations regarding family occupation, the Tenant vacated the rental unit in July 2024 with the understanding that the Landlord's son would be moving into the premises. After vacating, however, the Tenant discovered that the unit was instead occupied by a Brazilian family, not by the Landlord's son or his girlfriend.
14. In support of his position, the Tenant submitted text message evidence that he alleges confirms the Landlord's representations that her son and his girlfriend intended to move into the unit. The Tenant also provided evidence showing that a listing for the basement unit was reposted after he vacated, which he argues is inconsistent with the Landlord's claimed intention to house an immediate family member. Based on this sequence of events and the documentary evidence filed, the Tenant maintains that there is sufficient evidence to proceed with the T5 application.
15. I considered the parties' submissions regarding whether the existence of a withdrawn N12 prevents a T5 application from proceeding.
16. I find that there does not necessarily need to be an active N12 at the time of vacancy in order for allegations of bad faith to be considered under section 57 of the 'Act'. Whether bad faith exists requires a fact-specific analysis and generally involves a three-part test which must be established by the Tenant on a balance of probabilities.

17. At this stage, I am not satisfied that the issue raised by the Landlord is properly characterized as a true preliminary jurisdictional issue. Rather, the submissions concern the evidentiary significance of:
- the withdrawn N12.
 - the subsequent lease renewal.
 - the signed N11; and
 - the circumstances surrounding the Tenant's decision to vacate.
18. These matters require a full hearing on the merits and assessment of evidence rather than summary dismissal at the preliminary stage.
19. The Board distinguishes between procedural defects that may justify immediate dismissal (such as defective notices or defective applications) and evidentiary disputes that require viva voce evidence and credibility findings. The issue raised by the Landlord falls into the latter category.
20. Therefore, I decline to dismiss the application on a preliminary basis, for the reasons above.

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 Tenant testified that the Landlord repeatedly represented that her eldest son, Mena, together with his girlfriend, would be moving into the basement rental unit. He referred to text message evidence showing a conversation involving the Landlord, Joanna Bishay, in which she stated that her eldest son Mina and his girlfriend would be moving into the basement unit.
4. The Tenant testified that this representation was significant because it confirmed that the intended occupant was a family member of the Landlord and formed the basis upon which he continued searching for alternative housing and ultimately vacated the rental unit.
5. He maintained that he accepted this representation in good faith and understood that the Landlord genuinely required possession of the unit for residential occupation by her son.

6. The Tenant referred to photographic evidence filed under file reference DOC-7523663. He stated that the Landlord's son Mena was known to drive a Tesla SUV but also drove a Hummer truck. Lastly, he claimed that Mena had access to a Mercedes AMG Vehicle.
7. The Tenant testified that the vehicle shown in the photographs was not any of those vehicles. He further stated that the side of the driveway where the photographed vehicle was parked was the side historically used by basement occupants because that side provided access to the basement stairs.
8. I questioned the Tenant, and he acknowledged that:
 - he never observed anyone entering or exiting the photographed vehicle.
 - he never observed the Landlord entering or exiting the vehicle.
 - he did not know who owned the vehicle; and
 - he simply observed the same vehicle parked there over several weeks after driving by multiple times.
9. I advised the Tenant that the evidentiary weight of this evidence may be limited due to the lack of direct identification of the occupants.
10. The Tenant stated that the Landlord repeatedly pressured him to vacate the premises and became increasingly aggressive as the move-out date approached. Due to the escalating hostility, he redirected communications to the Landlord's son, George, who was more level-headed and easier to deal with. Despite this, the Landlord continued to behave in a confrontational manner, including following him around the property while he was attempting to move his belongings.
11. Before he had fully completed the move, the Landlord took possession of the basement key, which resulted in him being locked out of the basement while some of his belongings were still inside. He subsequently took time off work to retrieve the remaining items but arrived to find that the basement remained locked. During this period, he received repeated messages demanding possession of the unit, followed by unrelated accusations concerning allegedly missing barbecue components.
12. These events occurred at a time when his wife was suffering from serious kidney-related medical issues. Taken together, the Landlord's conduct and the surrounding circumstances caused him significant emotional distress, financial loss, and physical strain.
13. He testified that he suffered a stroke in 2022 and later suffered another stroke in January 2025. He stated that he believed the stress arising from the tenancy dispute, move-out process, and ongoing communications contributed to his elevated blood pressure and health decline.
14. The Tenant sought to rely on a written statement which he described as an affidavit from Rebecca Morgan. He stated that Ms. Morgan attended the rental property after the Tenant vacated and allegedly spoke to occupants whom she believed were not the Landlord's family members.
15. The Tenant relied upon this evidence to support his allegation that unrelated tenants moved into the rental unit shortly after he vacated.

16. The Landlord's Legal Representative Ms. Covey objected to this affidavit as the witness was not present nor was the document properly commissioned.
17. Upon review of the document, I agree with Ms. Covey. The document was not a properly sworn affidavit nor was there a commissioner stamp or seal, no commissioner signature and no verification that the contents were sworn or affirmed.
18. Even where declarations are admitted into evidence, written statements carry significantly reduced weight when the witness is not available for cross-examination, as such statements cannot be tested through questioning. First-hand viva voce evidence is always preferable where credibility and factual disputes are central to the application. In this case, the identity of the alleged replacement occupants is a significant disputed issue. Accordingly, I assign little to no evidentiary weight to the written statement on its own. It may be considered only as narrative background unless the witness attends and provides oral testimony subject to cross-examination. The Tenant indicated that he may be able to contact the witness, but this witness did not attend.
19. The Landlord's Legal Representative Ms. Cove cross-examined the Tenant on the evidence he presented.
20. During cross examination the Tenant confirmed that in 2023, he received N12 notices from the Landlord, which became the subject of a prior Landlord and Tenant Board proceeding. That proceeding was ultimately withdrawn, and he received formal notice from the Board confirming that the application had been withdrawn. At no time did a Sheriff, Board Member, or any enforcement authority require him to vacate the rental unit.
21. Following the withdrawal of the earlier application, no new N12 notice was served after the parties entered a new lease in January 2024. Under that lease, the monthly rent was set at \$1,800.00, and he continued to pay rent in accordance with its terms through July 2024. There was no active Landlord and Tenant Board application or eviction proceeding requiring him to leave the unit during this period.
22. In or about April or May 2024, he voluntarily advised the Landlord by text message that he had secured alternative accommodation and intended to move out by July 1, 2024. When he vacated the unit, there was no active N12 notice in effect, and his departure was not the result of, or in response to, any formal eviction order or requirement imposed by the Landlord and Tenant Board.
23. The Tenant maintained, however, that although there was no active legal order, he vacated because he understood the Landlord still required possession for her son and his girlfriend to move in.
24. He testified that he considered himself a "man of his word" and did not want to reverse course after advising the Landlord that he would leave. He further stated that once he later learned that the unit was occupied by a Brazilian family rather than the Landlord's son, he concluded that the Landlord had acted in bad faith.

25. The Tenant also acknowledged during cross-examination that he did not vacate because of an active N12 notice and that there was no active Board application or eviction order requiring him to leave at the time he vacated.
26. He further confirmed that after the January 2024 lease renewal, no further N12 notice was served.
27. The Tenant acknowledged that the vehicle photograph could belong to anyone and that he had no direct proof of ownership. He disputed the Landlord's suggestion that he had no obligation to leave and maintained that the surrounding circumstances made continued occupation unrealistic.
28. On Redirect, the Tenant clarified that:
- The parties originally discussed a rent increase higher than \$1,800.00, initially around \$2,200.00.
 - The parties ultimately agreed to a new lease at \$1,800.00 monthly rent.
 - During those discussions, the Landlord and George Bishay told him he could continue searching for another place and could take the time needed.
 - He agreed to continue looking for alternative housing while respecting that the Landlord's son would eventually require the basement.
 - He accepted that if the Landlord's son genuinely intended to move in, the law permitted that arrangement.
 - His concern only arose after discovering that a non-family Brazilian family had occupied the premises.
29. Finally, the Tenant testified that had the unit genuinely been occupied by the Landlord's son, he would not have pursued this application.

Landlord's Rebuttal Evidence

30. The Landlord's first witness was George Bishay. He testified that an N12 Notice was served on September 5, 2023. The intended occupant was initially his mother (Landlord).
31. The Landlord's intention arose following the death of the father (who's the primary income source) and the plan was always for his mother to move into the basement and rent the upper rent.
32. He further testified that after the notice was issued, the landlord's mother experienced depression and psychiatric treatment. A psychiatrist advised that moving into a basement unit was not appropriate.
33. As a result, the landlord withdrew the LTB application. The withdrawal was confirmed by LTB on February 23, 2024.
34. Mr. Bishay testified that the Tenant was notified of the withdrawal of the application through the LTB process. Thereafter, he stated that they continued a normal landlord-tenant relationship. Further, the Tenant continued to pay rent and it was accepted.

35. Further evidence through George Bishay established that a new lease was signed by the parties on January 10, 2024. This lease was executed after the N12 application was withdrawn. This new agreement allowed the Tenant to remain in possession under this new lease agreement.
36. George Bishay identified text messages sent from the Tenant's spouse stating (December 1, 2023, messages):
- Appreciation for allowing the tenant to remain in the unit
 - Reference to financial hardship and request for continued tenancy
 - Offer of increased rent (\$1800/month)
37. He testified that the text messages were received on his mother's phone. I was satisfied from this text message evidence there were no alterations or deletion of the messages.
38. Mr. Bishay testified that the Tenant provided a N9 Notice to leave on April 22, 2024. The Landlord accepted this N9 and prepared a mutual termination agreement (N11). The Tenant ultimately vacated around July 2024.
39. He testified that the Landlord's brother moved into the basement around mid-July 2024 and remained until October 2024. He admitted that a subsequent tenancy began November 1, 2024.
40. Lastly, Mr. Bishay testified that the Tenant left garbage costing the Landlord \$600.00 for garbage removal and \$425.00 cleaning services.
41. The Tenant cross examined Mr. Bishay on the evidence presented.
42. The Tenant challenged regarding the overlap of tenancy involving the tenant vacating, the brother moving in, and the arrival of the new tenant. Mr. Bishay maintained the timeline that mid-July 2024, the Landlord's brother moved into the rental unit. In October 2024, the Landlord's brother vacated the rental unit. And by November 1, 2024, a new lease commenced with new tenants.
43. The Landlord's next witness was Joanna Bishay.
44. Joanna Bishay testified to a timeline beginning with a December 1, 2023, request from the Tenant to remain in the unit due to significant personal hardships, including health issues related to a stroke, reduced income, and ongoing legal expenses. Although she initially agreed to an indefinite stay, a psychiatric recommendation later advised that Ms. Bishay should not move into the basement unit herself, as the lack of natural light posed a risk to her mental health stability and depression. Consequently, the initial N12 and L2 applications were withdrawn, and the parties executed a new lease agreement at a monthly rent of \$1,800, which she maintains was signed without any form of coercion or pressure.
45. Following this agreement, she testified that no further eviction notices were served, and the tenant eventually provided voluntary notice to vacate the premises. It was only after this notice was received that the landlord's son decided to occupy the basement unit, which he did from July through October 2024.

46. I will note that during cross-examination, George Bishay confirmed this sequence of events, stating that the move-in took place in mid-July 2024 and aligned with typical vacancy planning practices. The Tenant, however, disputed the timeline, specifically questioning whether there was an overlap between their move-out and the new occupants' arrival.
47. Lastly, the Landlord submitted evidence which included documentation of cleaning and garbage removal expenses incurred after the unit was vacated, leading up to the commencement of a new lease with replacement tenants on November 1, 2024.
48. The Tenant cross examined Ms. Bishay on the evidence presented.
49. During cross-examination, the Tenant raised concerns regarding the timing of the return of keys and alleged that a lockout occurred. The Tenant also questioned the dates of occupancy by the Landlord's son and the subsequent occupancy by a Brazilian family.
50. Throughout this line of questioning, I repeatedly clarified that evidence regarding later occupants is only relevant to the extent that it demonstrates bad faith under a T5 application. The Tenant moved into the rental unit in 2019, and the evidence establishes that the relationship between the parties was initially positive. The Landlord's husband passed away in November 2022 following a lengthy illness related to cancer. The Landlord testified that she was her husband's sole caregiver, that she ceased working during this period, and that he had been the primary source of household income. As a result, the Landlord experienced both financial hardship and depression. In September 2023, the Landlord served an N12 Notice of Termination, stating her intention to move into the basement unit and rent the upstairs portion to obtain greater income. I accept this evidence, which was not meaningfully challenged by the Tenant, and the N12 itself was produced.

Analysis

51. In September 2023, the Landlord served an N12 Notice of Termination for Landlord's Own Use, stating her intention to move into the basement unit and rent the upstairs portion for increased income following the death of her husband in November 2022. I find that the N12 was served in good faith. This evidence was credible, supported by testimony, and not meaningfully challenged.
52. The Landlord testified that she later withdrew the N12 after medical advice from her psychiatrist that residing in a basement unit would negatively affect her depression and mental health. The evidence presented establishes that:
- The L2 application was withdrawn.
 - The Tenant was formally notified; and
 - Written confirmation of withdrawal was issued on February 23, 2024.

53. I find the withdrawal to have been genuine and consistent with good faith. A withdrawn N12 cannot continue to operate as an eviction instrument.
54. Following the withdrawal of the N12, the Tenant (through his partner) requested to remain in the unit and proposed increased rent. Text messages confirming this were submitted into evidence. A new lease agreement was executed on January 10, 2024. I find this constituted a new tenancy arrangement, effectively resolving the prior dispute.
55. On April 22, 2024, the Tenant advised the Landlord that he had found another house and would be moving out.
At that time:
- No active N12 existed.
 - No eviction order had been issued; and
 - No legal obligation to vacate was in place.
56. During the hearing, the Tenant admitted that he was not claiming he vacated because of the N12.
57. The Landlord's brother occupied the basement unit between July and October 2024. I accept the Landlord's evidence on this issue. In any event, this finding does not remedy the fatal defect in the Tenant's application: the absence of causation.
58. I find the Landlord's evidence more reliable overall. It was more consistent, supported by documentary evidence, and consistent with the Tenant's own admissions. The Tenant's allegations regarding bad faith were speculative and unsupported.
59. The Tenant has failed to establish causation. The evidence demonstrates that the N12 notice was withdrawn and could not serve as an eviction instrument, that the Tenant was formally advised of the withdrawal, and that the parties subsequently entered into a new lease, creating a fresh tenancy.
60. At the time the Tenant decided to vacate, there was no active N12, no eviction application before the Board, no order requiring the Tenant to leave, and no legal obligation to vacate the unit. Instead, the Tenant voluntarily advised the Landlord that he had found alternative housing. Most significantly, the Tenant expressly admitted during the hearing that he did not leave the unit because of the N12.
61. I find that section 57(1) of the 'Act' is not satisfied.
62. For all the reasons given above, the Tenant's application shall be dismissed.

It is ordered that:

1. The Tenant's application is dismissed.

May 7, 2026
Date Issued

Anthony Bruno
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

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