



Order under Section 57 Residential Tenancies Act, 2006

Citation: Iliescu v Wan, 2026 ONLTB 37225

Date: 2026-05-12

File Number: LTB-T-022073-24

In the matter of: 882 Centre Rd
Waterdown ON L8N 2Z7

Between: Mihaela Iliescu
Lucian Iliescu
Tenants

And

Xing Wan
Landlord

Mihaela Iliescu and Lucian Iliescu (the 'Tenants') applied for an order determining that Xing Wan (the 'Landlord') gave a notice of termination in bad faith.

The Tenants also have three additional related applications before the Board: *T2 Application* (LTB-T-066847-23); *T3 Application* (LTB-T-070421-23); and a *T6 Application* (LTB-T-066918-23). These applications could not be heard and were adjourned to a future date.

The T5 application was heard by videoconference on May 5, 2026. The following individuals attended the hearing:

- Mihaela Iliescu ('MH') (Tenant)
- Lucian Iliescu ('LI') (Tenant)
- Lynn Baxter (Tenant's Representative)
- Xing Wan (Landlord)
- Ting (Tina) Cao (Landlord's Representative)
- Maggie Xie (Landlord's Witness)
- Uijuan Zhu ('UZ') (Landlord's Witness)
- Eleanor Xie ('EX') (Interpreter Support for Uijuan Zhu)
- Changye Ting (Interpreter)

Determinations:

Preliminary Issues:

Dismiss Application

1. The Landlord submits the Tenants' T5 application should be dismissed.
2. By way of background, the Landlord gave the Tenants an N12 notice of termination ('N12 notice') pursuant to s. 48 of the *Residential Tenancies Act* ('the Act'). The Landlord's N12 notice stated he required the rental unit for the personal use of his wife's parents. The Landlord filed the L2 application, based on the N12 notice, with the LTB (LTB-L-067258-23). The Tenants opted to move out, and the Landlord's subsequently withdrew their application as it was no longer needed.
3. The Landlord now submits that that the pleadings contained in the Tenants' T5 application would properly have been brought to the L2 hearing to challenge the Landlord's good faith intention. At the time the Landlord made the submissions, it was unclear to me the basis of the preliminary argument. However, I now understand that the Landlord was stating that the tenancy had not terminated on the date the T5 application was filed. The tenancy terminated on September 18, 2023, but the T5 application was filed on August 25, 2023.
4. Section 57 of the Act states (in-part): "The Board may make an order described in subsection (3) if, on an 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....". [Emphasis added]
5. Initially I determined that just because the Tenants chose to move out of the rental unit rather than exercise their right to a hearing, this was not a bar to the Tenants bringing a T5 claim against the Landlord. I still find this to be true assuming that the tenancy had ended. However, I am no longer of the view that this T5 application could be brought. Section 57 is clear that an application can be brought by a "former Tenant". The Tenants had not moved out of the rental unit at the time the application was brought. As such, I find the application was brought prematurely and should be dismissed on that basis.
6. However, as the matter was heard and in an abundance of caution, and even though I find that the matter should be dismissed, I have included my analysis on the merits of the Tenants' T5 application below.

Tenants' Request to Amend

7. The Tenants seek to amend their application to include a request for the compensation due under s.48.1(1) of the Act. The Tenants' T5 application was filed with the LTB on August 25, 2023. The tenancy terminated on September 18, 2023. A copy of the amended application was filed with the Board on March 22, 2024.
8. The Landlord did not argue that they were not aware of the amended application which attached a schedule requesting the unpaid compensation. However, the Landlord did submit evidence which demonstrated that the Landlord had attempted to pay the compensation owed, but that the Tenants did not accept the funds.
9. A request for unpaid compensation is typically included in a T1 application. As no T1 application was filed, I sought submissions on whether the Board should amend the Tenants' application to include a claim for the unpaid compensation.

10. The Tenants state that they were under a lot of stress at the time these applications were filed, which led to the oversight. However, the MI indicates that her legal representative was aware that she had declined the funds in July 2023 when her representative was retained.
11. The Landlord submits that the Tenants were represented at all material times. They also argue that enforcing the payment now is prejudicial to the Landlord; however, I did not find this argument to be well supported, except to say the Landlord should not be “penalized” for the Tenants’ decision not to file the correct application.
12. When considering a request to amend an application, I must look at the Board’s [LTB - Rules of Procedure](#), Rule 15.4, which states:

The LTB may exercise its discretion to grant a request to amend made at the hearing if satisfied the amendment is appropriate, would not prejudice any party and is consistent with a fair and expeditious proceeding.

13. After considering both parties’ submissions, I am satisfied that it is appropriate to amend the Tenants’ application. I say this because the amendment was filed in March of 2024, which was within the one-year limitation period which would have began September 19, 2023, and ended on September 18, 2024. Although the amendment sought to include the claim for compensation pursuant to the T5, rather than on the appropriate T1 application, the Landlord was put on notice, at least since March 2024, that the Tenants were claiming this amount.
14. Further, the Landlord did not make submissions as to whether they are suffering from financial constraints which would make paying this amount difficult for them. Thus, I cannot find any prejudice to the Landlord in this regard.
15. Finally, the Landlord was represented at that time and was clearly aware of his statutory obligation to pay the Tenants one-months’ compensation as required by s.48(1). It is not clear to me why the Tenants failed to accept the funds when offered. The e-transfer clearly stated in the comments area that the payment was being made pursuant to the N12 notice. However, there were submissions made that MI was suffering from mental health issues at that time which were a contributing factor.
16. In *Price v. Turnbull's Grove Inc.* (2007), [2007 ONCA 408 \(CanLII\)](#), 85 O.R. (3d) 641 (C.A.), the Court of Appeal for Ontario summarized a line of previous case law involving residential tenancies, and reaffirmed at paragraph 26 of its order that the Act is remedial legislation with “a tenant protection focus”; and that the Act must receive “such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit”.
17. When I consider whether it is appropriate to grant the Tenants’ request to amend, and the Court of Appeal’s guidance in *Price*, I am satisfied that the amendment is appropriate, does not prejudice any party, and is consistent with a fair and expeditious proceeding. Therefore, the Tenants’ application is amended to include a T1 application.

Tenants' T5 Application

18. As explained below, the Tenants did not prove the allegations contained in the application on a balance of probabilities.
19. The rental property was in a rural setting. The Landlord lives in an adjacent home to the rental unit, which was a small home of about 900 square feet which the Landlord describes as a "helper house" which I take to mean it is a home which, due to the rural setting, was intended for housing agricultural workers in the past.
20. 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.
21. The Tenants were given a an N12 notice of termination stating the rental unit was to be used by the Landlord's spouse's parents. However, it is not clear to me whether the Tenants moved out in accordance with the N12 notice, or whether the Tenants felt pressured and coerced to move out of the rental unit. MI's testimony was that the Tenants left because the relationship between the parties had deteriorated at this time. Regardless, the Tenants do not believe that the N12 notice was given in good faith.
22. The Tenants' evidence was that during their tenancy, the Landlord had repeatedly stated that the long-term plans for the rental unit was to rebuild the entire property. Further, after the Tenants moved out, LI had driven past the property on many occasions, several of those in the middle of the night, and observed the same two lights on in the property every time. This led the Tenants to believe that the intended occupants, the Landlord's wife's parents, did not move into the rental unit.
23. The Landlord testified that his in-laws had moved into the main house with his wife and him in 2019. However, they decided that his in-laws would be happier moving into the rental property instead. This is because the Landlord has a business which involves business ventures in Asia. He is often on the phone late at night and this was bothersome to his in-laws, whose bedroom was above his office.
24. The Landlord also indicated there were stairs his in-laws would have to climb in his home, but no stairs to climb at the rental unit, except the basement which his in-laws do not access. His mother in-law is 76; his father in-law ('father') is 80. He says his father had contracted Covid in May or June 2023. After this, his father's health declined noticeably. He submits his in-laws moved into the rental unit about 10 days after the Tenants vacated.
25. Submitted into evidence was a video which was taken by the Landlord's mother-in-law (the 'mother') (Doc-7853921). In the video, an older gentleman [the father] is lying in bed and appears to be reading, and a chair and desk are visible, as is a quilt.

26. UZ testified. She is the Landlord's mother-in-law. She stated that she took the video to show that she was happy in the rental unit. In cross-examination, it was put to the mother that she did not have a lot of personal belongings in the video. For example, no pictures were hung, or other personal items were visible. The mother said that they [referring to her and her husband] did not have much. UZ confirmed that her husband had been ill with a virus.
27. UZ was participating in the hearing from the former rental unit. With EX's assistance, UZ made a short tour of the residence. In the laundry room, there is clearly evidence of personal items which are typically found in a home. For example, laundry detergent and winter coats hung on hooks. In the living area where UZ gave her testimony, there were house plants.
28. Based on the testimony of the Landlord and UZ, the video evidence submitted by the Landlord, and the tour that UZ took in the rental unit, I am satisfied that UZ and her husband occupy the rental unit on a balance of probabilities. I am not persuaded that because the Tenants observed some lights on and that those lights appeared to be the same lights at all times of the day, that this sufficient evidence to demonstrate that the mother and father did not move in. The Tenants did not lead any evidence to challenge the Landlord's evidence that his in-laws moved into the rental unit on September 28, 2023.
29. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is genuine intention to occupy the premises and not the reasonableness of the Landlord's proposal. This principle was upheld in *Salter v. Beljinac* 2001 CanLII 40231 (ON SCDC), where the Divisional Court held that the "good faith" requirement simply means that the Landlord sincerely intends to occupy the rental unit. The Landlord may also have additional motives for selecting a particular rental unit, but this does not affect the good faith of the Landlord's notice.
30. I refer to the case of *Feeney* because the Tenants led evidence both in-chief and in cross-examination to suggest the Landlord lacked credibility. For example, the Tenants contested the Landlord's evidence that the in-laws were not as physically infirm as the Landlord suggested, or that because the rental unit had a mold issue, that it did not accord that the Landlord would move elderly people in. However, I do not find that any of this evidence overcame UZ's testimony or evidence.
31. Of note, the Tenant's Representative objected to the Landlord's sister, EX, [who is also UZ's daughter] assisting UZ with translation. The Landlord hired a translator; however, the translator did not speak the specific dialect which UZ spoke. EX was bilingual and could interpret the dialect differences in UZ's responses. The Tenant Representative's objections were predicated on the fact that the Landlord ought to have hired an appropriate translator who could provide translation services specific to the dialect spoken by his mother, UZ. The Landlord advised that they were unable to find a translator who spoke UZ's specific dialect.
32. After considering the Tenant Representative's objection, I found that it was appropriate to allow EX to provide translation assistance. EX was not providing any evidence during the hearing, so there was no concern about tainted evidence. EX had been cautioned not to discuss UZ's evidence with her. Further still, EX only assisted where the translator, because of the dialect differences could not confidently translate the witness's testimony.

33. I am of the view that procedural fairness must include witnesses where their testimony is critical to the matter. The Board routinely allows friends and family members to assist parties appearing before the Board. I cannot find a reason that allowing EX to aid her mother where necessary would prejudice the Tenants or bring the administration of justice into disrepute. Therefore, I allowed EX to support UZ's testimony limited to the circumstances in which the translator could not accurately provide translation services.
34. The Tenants did not prove that no person referred to in s.48(1) failed to move into the rental unit within a reasonable time. Although I have already found the Tenants could not have brought the T5 application, I also find that the Tenants did not prove, on a balance of probabilities, that the intended occupants did not move into the rental unit within a reasonable time. The Tenants' T5 application is dismissed.

Tenants' T1 Application

35. The evidence shows that the Landlord did attempt to provide the lawful compensation pursuant to s.48.1 of the Act. The funds were sent by e-transfer and the documentary evidence shows the e-transfer expired without the Tenants having accepted the funds.
36. Given my analysis above, I am of the view that the Tenants should be provided with the funds.
37. The Landlord shall pay to the Tenants \$2,500.00 for the compensation owed pursuant to s. 48.1 of the Act.
38. I am not of the view that it is appropriate to include reimbursement of the Tenants' application filing fee and choose to exercise my discretion not to do so. I say this because the Landlord has already offered the funds to the Tenants who declined them. Thus, they would not have had to file the amended application seeking those funds had they accepted them in the first place.
39. This order contains all of the reasons within it. No further reasons shall issue.

It is ordered that:

1. The Tenants' T5 application is dismissed.
2. The total amount the Landlord shall pay to the Tenants is \$2,500.00 which represents the compensation due pursuant to s. 48.1.
3. The Landlord shall pay the Tenants the full amount owing by June 30, 2026.
4. If the Landlord does not pay the Tenant the full amount owing by June 30, 2026, the Landlord will owe interest. This will be simple interest calculated from July 1, 2026, at 4.00% annually on the balance outstanding.
5. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

May 12, 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.