



Order under Section 57 Residential Tenancies Act, 2006

Citation: Roberts v Sepehr, 2026 ONLTB 33321

Date: 2026-05-19

File Number: LTB-T-039811-23

In the matter of: 392 MELORES DRIVE
BURLINGTON ON L7L1E1

Between: Carmen Roberts Tenants
Ron Phillips

And

Ali Sepehr Landlord

Carmen Roberts and Ron Phillips (the 'Tenants') applied for an order determining that Ali Sepehr (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on February 11, 2026.

The Landlord, the Landlord's Representative, Reyhaneh Lajevardi, and the Tenant, Carmen Roberts, attended the hearing.

Determinations:

1. For the reasons that follow, the Tenants' application is granted as the Landlord gave a notice of termination in bad faith.
2. This application is brought pursuant to s. 57(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') which states:

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. What this provision means is that in order to succeed on this application the Tenants must lead sufficient evidence to establish it is more likely than not that:
 - (1) The Tenants got a notice of termination under s. 48 of the Act;
 - (2) They moved out of the rental unit as a result of the Landlord's notice;
 - (3) The notice was given in bad faith meaning the Landlord had no intention of moving into the rental unit; and
 - (4) The Landlord did not in fact move into the rental unit within a reasonable time after the Tenants vacated.
4. There is no dispute between the parties about the first element of this test. The Tenants were served a notice of termination, pursuant to section 48 of the Act on March 19, 2022 with a termination date of May 19, 2022. It was also undisputed that the Tenants vacated the unit on May 31, 2022, when they gave the keys to the Landlord to provide vacant possession.
5. The Landlord disputed the second element of the test that the Tenants moved out as a result of the Landlord's notice. The Tenant, Carmen Roberts ('CR') provided oral testimony at the hearing that they lived in the rental unit since 2017 and they would not have vacated had they not received the Landlord's notice of termination. The Landlord's position was that the Tenants moved out on their own initiative. The Landlord did not provide sufficient evidence or reasons to support their assertion that the Tenants did not move out due to the Landlord's notice. As a result, based on the evidence before me, and on a balance of probabilities, I am satisfied that the Tenants moved out of the rental unit after they received the Landlord's N12 notice.
6. The Landlord also disputed the fourth element of the test that he did not move into the rental within a reasonable amount of time after the Tenants vacated. He testified that he moved into the house and due to a change of circumstances he resided in the basement unit on a part-time basis until he sold the house in June 2024.
7. The parties agree that the rental unit was a single detached house. CR testified that she rented the entire house and there was no "upper or lower" unit through the 5-year tenancy; she had exclusive use of all levels of the house. CR said the rental unit was a single-family dwelling and there was only one kitchen in the house, which was on the main floor. CR submitted a copy of the 'renewal' lease agreement, signed by both parties in January 2022, and noting the rental unit as "392 Melores Drive".
8. CR testified that the rental unit was listed for re-rent in August 2022, in the amount of \$3,500.00, and further reduced in the month of October 2022, to \$3,200.00. The Landlord testified that his sister acted as the property manager for the rental unit, and her son is a real estate agent. He said he was not aware of the rental listing in August 2022 nor the re-listing in October 2022. However, the Landlord did not dispute that they existed, only that he did not consent to the listings.

9. The Landlord submitted that he did not want the rental to be vacant during the winter months, so he re-rented the upper unit of the property while he lived in Windsor during the weekdays. A copy of the Ontario Standard Lease Agreement, with the new tenants was submitted as evidence, which reflected that the agreement was signed on January 8, 2023, to begin on February 1, 2023 for a one year period, in the amount of \$2,000.00, for the upper level only.
10. Neither the Landlord's sister, nor the Landlord's nephew, attended the hearing to provide evidence regarding the circumstances of the rental unit being advertised for lease or being rented.
11. The Landlord testified that he moved into the basement portion of the rental unit on May 31, 2022, the same day the Tenants returned the keys. He testified that he moved into the unit and worked remotely from the unit from June 6, 2022 to March 2023. He testified that he lived full-time in the basement until March 2023 during his remote work period, until his job changed to a hybrid position requiring him to attend the office in person 2-3 days per week. He said after March 2023, when the upper level was re-rented, he moved to Windsor but still lived in the rental unit on the weekends. The Landlord provided copies of hydro bills for the periods after the Tenants vacated to support his testimony.
12. Based on the evidence of the parties, and on a balance of probabilities, I was not satisfied that the Landlord lived in the house after the Tenants vacated for a period of one-year. The Landlord did not provide any corroborating evidence to establish his residency in the unit, such as photos of possessions in the basement, or testimony of witnesses or receipts for moving expenses, etc., to support his testimony. The fact that there were hydro bills in the Landlord's name was not sufficient to prove that he moved into the unit, this only demonstrated that the Landlord, as the owner, retained the hydro bill in his own name. Based on the above, I am satisfied that the Landlord did not move into the rental unit after the Tenant vacated. Further, I find that the Tenants' lease agreement was for the entire house and not just a basement unit.
13. Additionally, the Landlord admitted that a portion of the house was re-rented in February 2023.

Rebuttable Presumption of Bad Faith

14. It was undisputed that the Tenants moved out of the rental unit on or about May 31, 2022, and that they genuinely believed the Landlord intended to move into rental unit. It was also undisputed that the Landlord re-rented the unit on or around March 2023, less than one year after the Tenants vacated the unit.
15. On an application to the Board, the person who alleges a particular event occurred has the burden of proof to establish that it is more likely than not that their version of events is true. In this application, the burden typically falls on the Tenants to establish that the notice of termination was served in bad faith.

16. However, the fact that the rental unit was re-rented, creates a rebuttable presumption that the Landlord served the N12 notice in bad faith. In other words, in this case, the burden falls on the Landlord to establish whether or not the rebuttable presumption applies.

17. The timing of the Landlord's re-renting the unit engages the reverse onus provision in subsection 57(5) of the Act applies. It says in part:

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,

(b) enters into a tenancy agreement in respect of the rental unit with someone other than the former tenant

18. The period referred to in s. 57(5) runs for one year starting the day the notice is served.

Analysis:

19. The Landlord testified that there was a legitimate and unforeseen change of circumstances that led them re-renting the unit, which rebuts the presumption of bad faith. He said that at the time the notice was served on March 19, 2022, he planned to move into the rental unit due to his dire financial situation from a job layoff, effective March 31, 2022.

20. The Landlord submitted that he received a new job offer from Magna Electronics, on May 19, 2022, located in Auburn Hills, Michigan. He said this offer permitted him to work remotely, which meant he could continue to live in the basement of the rental unit. He stated that in March 2023, his job changed to hybrid, requiring him to attend in person and to live in Windsor during the week. He stated he returned to live at the rental unit on weekends.

21. The Landlord did not dispute that the entire rental unit was listed for rent in August 2022, and the Landlord admitted that he entered a new tenancy for the upper-level beginning February 1, 2023.

22. The Landlord testified that he did not want the house to be vacate during the winter, which was the reason why he entered a new tenancy for the upper level of the rental unit, while he lived part-time in Windsor during the weekdays, due to the change in his employment.

23. CR testified that when they lived in the unit from 2017- 2022, and when they received the N12 notice from the Landlord, she did not believe it was served in good faith but related to ongoing issues with the tenancy, and not due to the Landlord's employment or genuine hardship.

24. CR submitted that as soon as they received the N12 notice, they immediately began looking for another suitable house for their family within the neighborhood. She said they entered an agreement for April 15, 2022, to begin May 1, 2025, but due to her husband's

schedule and having to prepare the new unit, they had to carry two leases for the month of May and finally vacated on May 31, 2022, after receiving written consent from the Landlord's sister to extend the termination date from May 19, 2022, to May 31, 2022.

25. CR testified that she was not made aware of the Landlord's alleged change in circumstances before they vacated the unit on May 31, 2022.
26. CR said they moved into a house that was approximately 4 blocks from the rental unit and they never saw any evidence that anyone was living in the rental unit on a daily basis, such as weekly recycling bins or garbage bags at the curb, or vehicles in the driveway, every time they walked by their former unit, which was usually on a weekly basis.
27. I have considered the Landlord's testimony and while I believe the Landlord's genuine intention *may* have been to move into the unit when the notice of termination was initially served in March 2022, the timeline of the events that occurred, after the notice was served, did not make sense and failed to provide evidence to demonstrate a sufficient change of circumstance about why he essentially may have split the house into two separate units to rent the upper level. While I believe that the Landlord *may* have lost his employment on or about March 2022, he failed to provide any documentation to support his testimony of financial hardship for service of the N12 or an explanation of why he did not let the Tenants know that he was offered a new position on May 19, 2022 which would require him to take possession of only the basement of the house, before the Tenants vacated the unit at the end of May 2022.
28. In addition, the Landlord did not provide a sufficient explanation as to the reasons of why the entire rental unit (the house) was listed for re-rent as early as August 2022, and again in October 2022 with a reduced rate. The testimony of the Landlord was inconsistent regarding the need to move in and the timing of listing of the house and in relation to his work circumstances, as a result I did not find him to be credible. His testimony, with respect to dates about employment positions and/or changes in employment, changed throughout his evidence.
29. Having considered the evidence before me from both the Landlord and the Tenant, I find that the Landlord did not move into the rental unit and I do not find it credible that he was living in the basement of the rental unit on a part-time basis as a "change of circumstance." The Landlord's evidence was inconsistent, it was undisputed that there was only one kitchen in the rental unit, and he gave no evidence regarding this or the state of the basement when he alleges, he lived there.
30. I find that it is more likely than not that the Landlord did not have a change of circumstances but simply decided to re-rent the rental unit. I accept the evidence of the Tenants because it was clear and consistent throughout. The Landlord's evidence was contradictory and not convincing on a balance of probabilities. I am not satisfied that there was a legitimate unforeseen change of circumstances resulting in the Landlord re-renting the rental unit or that the Landlord moved in the rental unit on a full-time basis for a period of one year. As a result, I find that the Landlord has failed to rebut the presumption of bad faith.

31. As a result, the presumption in s. 57(3) stands and I am satisfied the notice of termination was served on the Tenants in bad faith.

Remedies

32. The remedies sought in the application are: a rent differential for 12 months; and out of pocket expenses for moving costs.

a) Rent Differential

33. With respect to rent differential, the Tenants claim \$16,800.00 in the application. The Tenants submitted both their prior and current lease agreements and said they are now paying \$1,400.00 more per month than they were for the rental unit. The Tenants' current home is similar to the size of the rental unit; however, the new unit has a much smaller outdoor backyard space than their prior rental unit, which they used to spend a lot of time as a family. I accept Tenant's evidence that the rental units were comparable with less outdoor space.

34. In determining rent differential, I must consider whether the units are comparable, not identical. I accept that the rental units are comparable, the new unit is a similar in size to the rental unit, although the outdoor space in the new unit is smaller. I find that it is reasonable to grant the Tenant the rent differential claim in the amount of \$16,800.00 (\$1,400.00 per month x 12 months) and an order will issue accordingly.

d) Moving Costs

35. At the hearing, the Tenants withdrew this claim in their application.

36. The Tenants incurred costs of \$53.00 for filing the application and are entitled to an order for those costs.

37. This order contains all of the reasons within it and no further reasons will be issued.

It is ordered that:

1. The total amount the Landlord shall pay the Tenants is \$16,853.00. This amount represents:
 - \$16,800.00 for increased rent the Tenants have incurred for the one-year period from May 1, 2022, to April 30, 2023.
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenants the full amount owing by June 30, 2026.
3. If the Landlord does not pay the Tenants 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.

4. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

May 19, 2026
Date Issued

Colette Myers
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.

