



Order under Section 57 Residential Tenancies Act, 2006

Citation: Rice v Resto, 2026 ONLTB 40323

Date: 2026-05-20

File Number: LTB-T-059600-25

In the matter of: 15 Empire Parkway
St. Thomas ON N5R0E9

Between: Christine Rice Tenant
Amber Bury
John Bury
Skylar Bury
Zach McQuiggan

And

Elias Resto Landlord
Ninorta Moshy

When the capitalized word "Landlord" is used in this order, it refers to all persons or companies identified as a Landlord at the top of the order. When the capitalized word "Tenant" is used in this order, it refers to all persons identified as a Tenant at the top of the order.

Christine Rice, Amber Bury, John Bury, Skylar Bury and Zach McQuiggan (the 'Tenant') applied for an order determining that Elias Resto and Ninorta Moshy (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on March 12, 2026.

The first named Landlord (ER), the Landlord's legal representative Susana Pereira and all of the Tenants attended the hearing.

Determinations:

1. As explained below, the Tenants proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenants \$5,308.53 as outlined below.

Background

2. The Tenants moved into the 3-bedroom 3.5 bath unit on February 1, 2023, the lawful rent prior to vacating was \$2,460.00 plus hydro, water and gas utilities.

The T5 application

3. On or about March 23, 2025 the Landlords served the Tenants a N12 notice of termination on the basis that the unit was required for their own family use with a termination date of May 31, 2025.
4. The Tenants submitted that they vacated the rental unit on May 31, 2025 pursuant to the N12 notice as served upon them by the Landlord.
5. The Tenants became aware that the rental property was listed for sale on Realtor.ca on or about June 30, 2025 for \$539,900.00 as seen on page 18 of DOC-7515903 as uploaded in the Board's record and was subsequently confirmed to have been sold in July 2025. The Tenants drove by to confirm and saw the sign for sale on the lawn of the rental property.
6. The Landlord does not dispute that the property was sold. That the decision was made on the basis of a number of considerations which gave rise to a change in personal circumstances.
7. Specifically, the Landlord (ER) submitted that:
 - His family wanted to move back into the rental unit because they wanted to sell the property they had moved into which was a new build and had many deficiencies inclusive of leaks, issues with ventilation among other issues which were being addressed with Tarion and the builder.
 - He was experiencing gambling problems and finances were strained.
 - Once the Tenants vacated, they did a walkthrough and realized that there was a lot of work to be done and as there are allergies in the family, seeing cat hair in the vents and in carpets was a "big problem";
 - His wife was experiencing post partum depression following the birth of their child, they were facing many concurrent issues.
 - They had no money to spend on the rental property, that they painted the house cleaned the carpets and listed the property for sale.
 - They had hoped to keep the rental property in the family.
8. The Landlord evidenced bank records, exchanges with the home builder which he and family occupied outlining deficiencies, and medical records among other documents in support of the submissions and the change in circumstances from when the notice was issued to when the decision was made to list the home. These were contained in DOC-7509825.
9. It was uncontested by the Landlord that:
 - the Landlord did not move into the rental unit;
 - they did not notify the Tenant of their material changes in circumstances, and

- they did not permit the Tenants to move back into the rental unit.

10. The Tenants moved into two separate 2-bedroom rental units not being able to find suitable housing. The new combined rent is \$3,200.00 per month, the leases were evidenced in (DOC-7515903), this representing an increase of \$790.0.00 per month plus all utilities except for gas which is included in the lawful rent.

Analysis

11. Pursuant to [section 57\(1\) of the Residential Tenancies Act, 2006, S.O. 2006, c17](#) (the 'Act'), the Board may make an order against a landlord 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 ... 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.

12. 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.

13. 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 Tenant to establish that the notice of termination was served in bad faith.

14. However, the fact that the rental unit was listed for sale within one month of the Tenants vacating 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 should apply.

Rebuttable Presumption of Bad Faith

15. Subsections 57(5) and 57(6) establish a rebuttable presumption of bad faith on the following ground:

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,

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

(c) advertises the rental unit, or the building that contains the rental unit, for sale;...

The period referred to in subsection (5) is the period that,

(a) begins on the day the landlord gives the notice of termination under section 48; and

(b) ends one year after the former tenant vacates the rental unit.

16. The Tenants take the position that the rebuttable presumption is engaged, as it is undisputed that the rental unit was advertised for sale less than a year after they vacated, in this case this was a matter of weeks and was subsequently sold.
17. The Landlord did not dispute that the rental unit was advertised for sale and that it was sold.
18. The Tenants proved all the requirements in subsection 57(1)(a), I say this as parts 1-3 of the test are uncontested. As relating to the 4th part of the test, the allegation of service of the N12 in bad faith, the Landlord failed to adduce sufficient evidence to rebut the presumption of bad faith.
19. Here, based on the financial records as shared, I do not doubt that the Landlord was gaming on various online sites as submitted to and that inevitably these activities contributed to the household financial distress testified to by the Landlord. I am also sympathetic to his wife's experienced depression at the time and that the home they purchased for over \$700,000.00 was not what they may have expected in terms of quality and craftsmanship. However, taken as a whole, I am not satisfied these circumstances support the good faith intentions of the Landlords. I say this as the rental property was listed for sale at \$539,900.00, no evidence was provided of the final selling price. It would make more practical sense that someone claiming financial stress like the Landlords, to have listed their own family property for sale noting the higher purchase price and then may have had enough proceeds to make any renovations as the Landlords had intended in respect of the rental property as this property was of lesser value.
20. I am also mindful that any issues arising from allergens in the rental unit could have been remedied by new floor coverings, furnace cleaning etc. to mitigate any health issues also raised by the Landlords as reasons they could not move into the rental unit. And the Landlords were aware that the Tenants had multiple cats at the outset of the lease.
21. I also take note of the timing of the transactions, I am not persuaded that the decision to list the rental property was made in less than 30 days, and if it were that after the Landlords realized that they were not moving into the property they still had the option to notify the Tenants accordingly. It is more likely than not, that the Landlords wished to liquidate the rental unit as an asset, and went about it by serving the N12 notice to the Tenants. As a result, the Tenants had to separate as a family and are now living in two rental units. The Landlords have remained residing in their family home to the best of my understanding. For these reasons, I prefer the evidence and testimony of the Tenants.
22. Based on the evidence before the Board, on a balance of probabilities the Tenants were served the N12 notice in bad faith.

Remedies

23. In the application, the Tenants requested the following remedies, totalling \$9,605.00. This amount represents:

- a) difference in their rent paid at the new properties \$9,480.00;
- c) Moving expenses of \$125.00
- d) other remedies – withdrawn at the hearing

24. Subsection 57(3) of the Act provides the following remedies for this type of application and states: The orders referred to in subsection (1) are the following:

1. An order that the Landlord pay a specified sum to the former tenant for all or any portion of any increased rent that the former tenant has incurred or will incur for a one-year period after vacating the rental unit. 1.1 An order that the Landlord pay a specified sum to the former tenant as general compensation in an amount not exceeding the equivalent of 12 months of the last rent charged to the former tenant. An order under this paragraph may be made regardless of whether the former tenant has incurred any actual expenses or whether an order is made under paragraph 2.

1.2 An order that the Landlord pay a specified sum to the former tenant for reasonable out-of-pocket moving, storage and other like expenses that the former tenant has incurred or will incur.

2. An order for an abatement of rent.

3. An order that the Landlord pay to the Board an administrative fine not exceeding the greater of \$10,000 and the monetary jurisdiction of the Small Claims Court.

4. Any other order that the Board considers appropriate.

25. Here the Tenants are now living in two separate rental units. The living space combined was submitted to be less than the total of the rental unit, despite now having 4 bedrooms versus three and 2 bathrooms versus 3.5. At the rental unit the Tenant's were responsible for all utilities which were stated to be approximately \$360.00 per month, the new properties are inclusive of utilities. And that the current rental units have a patio, while the rental unit had a porch, garage and backyard utility.

26. The Tenants agreed that given the inclusion of utilities the difference between the new and old rent is \$430.00. I find that as the Tenants were required to separate and effectively moved into properties which can not be said to be of equal value, despite having one more bedroom, the Tenants no longer have a garage and use one spare bedroom for storage. I also take note of the reduced outdoor space. Therefore, I find that the Landlords must pay the Tenant \$5,160.00 for the increased rent that the Tenants have incurred for a one-year period after the Tenants moved out of the rental unit.

27. The Tenants submitted an invoice for a U-Haul rental, while the claim was for \$125.00 the receipt is for \$100.53 as contained in DOC-7515903. Therefore, I find that the Landlord must pay the Tenants \$100.53 for the reasonable out-of-pocket moving, storage and other like expenses that the Tenants have incurred as a result of having to move out of the rental unit.
28. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$5,308.53. This amount represents:
 - \$5,160.00 for increased rent the Tenants have incurred for the one-year period from June 1, 2025 to May 31, 2026.
 - \$100.53 for the reasonable moving, storage and other like expenses that the Tenants have incurred as a result of having to move out of the rental unit.
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by May 31, 2026.
3. If the Landlord does not pay the Tenant the full amount owing by May 31, 2026, the Landlord will owe interest. This will be simple interest calculated from June 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 20, 2026
Date Issued

Alicia Johnson
Member, Landlord and Tenant Board

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