



Order under Section 57 Residential Tenancies Act, 2006

File Number: LTB-T-070030-25

In the matter of: 2, 118 EASTWOOD RD
TORONTO ON M4L 2C9

Between: Mark Kozar Tenant

And

Axel Thumm Landlord

Mark Kozar (the 'Tenant') applied for an order determining that Axel Thumm (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on May 7, 2026.

The Tenant's legal representative, Jahne Baboulas, the Tenant, the Landlord's legal representative, Carrie Aylwin, and the Landlord attended the hearing. Lori Schnare and Paul Raymont appeared as witnesses for the Landlord.

Determinations:

1. As explained below, the Tenant has failed to prove the allegations contained in the application on a balance of probabilities. Therefore, the Tenant's application is dismissed.
2. On August 28, 2023, the Landlord gave the Tenant a notice of termination (N12) under section 48 of the *Residential Tenancies Act, 2006* (the 'Act') on the basis that he required possession of the rental unit for the purpose of his residential occupation. The termination date on the N12 notice was November 30, 2023.
3. The Tenant vacated the rental unit on February 1, 2025 because of the N12 notice and pursuant to a consent agreement dated January 15, 2025.
4. The Tenant alleges the Landlord did not move into the rental unit and that the N12 notice was given in bad faith because the Landlord advertised the rental unit for sale.
5. Subsection 57(5) of the Act states:

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;*
- (d) demolishes the rental unit or the building containing the rental unit; or*
- (e) takes any step to convert the rental unit, or the building containing the rental unit, to use for a purpose other than residential premises.*

6. Pursuant to subsection 57(6), the period referred to in subsection (5) is the period that begins on the day a landlord gave the notice of termination and ends one year after a tenant vacated the rental unit. In this case, the period began on August 28, 2023 and ended on February 1, 2026.
7. The Landlord does not dispute he listed the residential complex for sale on June 9, 2025. As the listing was during the prescribed period, it is presumed the notice was given in bad faith. The Landlord must prove, on a balance of probabilities, that at the time the N12 was given to the Tenant, he genuinely intended to reside in the rental unit.

Landlord's evidence

8. The Landlord testified that after the Tenant vacated, he completed some cleaning and small renovations and moved into the rental unit. He maintained that he continues to reside in the rental unit.
9. It was the evidence of the Landlord that he has always wanted to occupy the rental unit when the Tenant was residing since purchasing the property 19-years ago. He testified that he placed the property for sale in June 2025 as he was facing financial challenges after separating from his wife and carrying the mortgage alone. Additionally, he was required to take a reverse mortgage due to the financial challenges. The Landlord testified that he informed his realtor he wanted to remain in the rental unit as a tenant or employee of the new owner. The property was taken off the market when he did not sell and remains off the market.
10. Lori Schnare ('LS') appeared as a witness for the Landlord. She testified that she resides in unit 1 at the property and confirmed the Landlord currently lives at the rental unit. She stated that the Landlord moved in almost immediately after the Tenant vacated after he completed cleaning and minor renovations. She further testified that she is at the property every day and sees the Landlord several times a week.
11. The Landlord's realtor, Paul Raymont ('PR'), testified that he has been a realtor for 37-years. He assisted the Landlord in listing the rental unit for sale. He indicated that the Landlord was occupying the rental unit and described having to move his belongings from rooms to ensure the property showed well. He referred to page 30 of the Tenant's evidence package to confirm his testimony.

12. PR stated that the Landlord was clear that he wanted to remain in the rental unit after the sale of the property. He states that he chose the wording in the listing to attract potential buyers, and states that he informed all potential buyers that the Landlord intended to reside in the rental unit. He further testified that the property was placed for sale on June 9, 2025 and was taken off the market on December 8, 2025.

Tenant's evidence

13. The Tenant did not present any documentary evidence to challenge the Landlord's testimony that he has not resided at the rental unit since the Tenant vacated and that continues to reside at the rental unit. The Tenant only expressed that he did not believe that the Landlord was residing in the rental unit.

Analysis

14. I found the Landlord and his witnesses to be credible and unwavering. LS and PR provided specifics and details with respect to the Landlord's residential occupation of the rental unit, and their evidence supported the Landlord's testimony. I do not believe the fact the address on the Landlord's driver's license did not contain a unit number establishes the Landlord does not reside in the rental unit. As both the Landlord and Tenant testified that there was only one mailbox for the residential complex, I do not believe this disproves the Landlord resides within the rental unit.
15. Based on the evidence before me, I am satisfied the Landlord moved into the rental unit shortly after the Tenant vacated and that the Landlord continues to reside in the rental unit. As such, I find the N12 notice was given in good faith.
16. I did consider the Landlord's actions as he listed the residential complex for sale five months after the Tenant vacated. I find, however, that there was an unforeseen change in the Landlord's financial circumstances that led to his decision to place the residential complex for sale and that the Landlord genuinely intended to continue to reside in the rental unit even had the residential complex sold. Therefore, I find that due to the unforeseen circumstance, the presumption would be rebutted, with this said, I find the N12 notice was given in good faith.
17. This order contains all of the reasons within it and no further reasons will be issued

It is ordered that:

1. The Tenant's application is dismissed.

May 29, 2026
Date Issued

Angela Smith
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.