



Order under Section 57 Residential Tenancies Act, 2006

Citation: Tate v Brazier, 2026 ONLTB 41588

Date: 2026-05-26

File Number: LTB-T-081424-25

In the matter of: 128 GIBBONS ST
OSHAWA ON L1J4Y2

Between: Gillian Tate
Bailey Woodroffe Tenants

And

Callahan Brazier Landlord

Gillian Tate and Bailey Woodroffe (the 'Tenants') applied for an order determining that Callahan Brazier (the 'Landlord') gave a notice of termination in bad faith.

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

The Landlord and the Tenants attended the hearing.

Determinations:

1. As explained below, the Tenants did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.
2. Subsection 57(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') requires the Tenants to prove each of the following on a balance of probabilities:
 - The Landlord gave the Tenants an N12 notice of termination under section 48 of the Act;
 - The Tenants 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. It was uncontested that the Landlords served the Tenants with a notice of termination under section 48 of the Act and that the Tenants moved out because they received this notice.

4. The main issue between the parties is the allegation that the Landlord did not move into the rental unit within a reasonable period of time after the Tenants vacated the.

Tenant's Evidence

5. The Tenant Gillian Tate (GT) testified that the Landlord gave them an informal N12 notice of termination giving them 90 days to vacate the unit. A copy of the email request was submitted as evidence.
6. GT testified that they tried to find an alternative unit but were unable to find anything affordable or comparable.
7. GT testified that she asked the Landlord for a reference letter to help them find a new unit, but the Landlord refused and without the letter they were unable to find a place.
8. GT testified that she told the Landlord that he needs to serve them with a formal N12 notice if he wanted them to move out and as a result the Landlord served them an N12 notice of termination, for personal use, on September 27, 2024, they found a place that day and vacated the unit on October 4, 2024.
9. GT testified that between October 2024 and January 2025, they would drive past the unit and see that no one had moved in. Photos, videos and a detailed list of observations from January 2025, through to June 29, 2025 when they seen the u-haul box, and then to May 4, 2025 showing continual signs of someone living in the unit.
10. GT testified that the in June 2025, the Landlord moved in, 9 months after they had vacated the unit.
11. GT testified that the move has caused financial hardship in many ways including rent which increased from \$1,650.00 to \$2,350.00, plus \$300.00 pre month for electric heat, the inability to work rom home due to unreliable internet and the loss of business because the unit is too far for clients to travel to.
12. GT testified that above the rent differential in the amount of \$8,400.00, they are seeking \$200.00 in moving expenses and \$723.20 in general compensation.

Landlord's Evidence

13. The Landlord testified that he moved into the unit immediately, he did some repairs and painting and stayed in the unit except for nights he spent at his girlfriends due to paint fumes.
14. The Landlord testified that he works long hours, goes to the gym, visits family and friends and often gets home late.
15. The Landlord testified that the pictures and videos the Tenant submitted were during the day while he was at work. He further testified that the picture showing the snow not shoveled was of snow accumulation while he was at work and the photo showed previously piled snow.

16. The Landlord testified that the Tenants could have called, sent a text or came to his door and they would have been able to see his furniture in the unit, including the new bed for the second bedroom.
17. The Landlord testified that the uhaul box they seen in June 2025 was when his girlfriend was moving in with him.

Analysis

18. The Tenants must prove on a balance of probabilities the 4 elements contained in subsection 57(1)(1) of the Act as outlined above.
19. The first and second elements of section 57(1)(a) are uncontested; the parties agree that the Tenants moved out of the rental unit as a result of an N12 notice served by the Landlord under section 48 of the Act.
20. With respect to the issue of whether the Landlord moved into the unit with a reasonable time after the Tenants vacated, I find that the Landlord provided straightforward and consistent evidence establishing that he did move into the rental unit immediately after the Tenants moved out and still resides in the unit currently.
21. GT also gave straightforward and consistent evidence with respect to the lack of activity seen at the rental unit for the first nine months after they vacated the unit. I find this testimony consistent with the Landlord's evidence that he moved into the unit, works late hours and may not always return directly home.
22. Therefore, I do not find that GT's testimony regarding the lack of activity within the rental unit determinative on whether he moved in. For these reasons, I find on a balance of probabilities that the Landlord did occupy the rental unit within a reasonable time after the Tenants vacated.
23. The Tenants have not proven all of the elements of the test required for their application to be successful; therefore the application is dismissed.

It is ordered that:

1. The Tenant's application is dismissed.

May 26, 2026
Date Issued

Brenda Mercer
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.