



**Order under Section 57
Residential Tenancies Act, 2006**

File Number: LTB-T-101012-25

In the matter of: Basement, 383 DOMINION DR
HANMER ON P3P0A9

Between: Sylvianne Krucker Tenant

And

William McCaffrey Landlord

Sylvianne Krucker (the 'Tenant') applied for an order determining that William McCaffrey (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on May 4, 2026.

The Landlord, the Landlord's daughter, Sonia McCaffrey, and the Tenant attended the hearing.

Determinations:

1. As explained below, the Tenant did prove the allegations contained in the T5 application on a balance of probabilities. Therefore, the Landlord must provide compensation to the Tenant as set out in this Order.
2. As explained below, I find that the Tenant met the burden of proof in a one of the issues raised in her maintenance application (T6) and therefore the Tenant's T6 application is partly granted.

Preliminary Issues

3. The Tenant raised some maintenance issues in the T5 application. I informed her that maintenance issues are properly raised in a T6 application. If the Landlord consents, then the Tenant may amend this application to be both a T5 and a T6 application. The Landlord consented, and subsequently, the Tenant's application was amended to a T5/T6 application.

4. The Landlord served two N12 Notices on the Tenant. The 1st N12 Notice was served on July 1, 2025, with a termination date of August 31, 2025. The reason cited on the N12 Notice for terminating the tenancy was that the Landlord's daughter was going to be moving into the rental unit. In accordance with s. 69(2) of the *Residential Tenancies Act, 2006* (the "Act"), a landlord must file the application with the Landlord and Tenant Board within 30 days of the termination of tenancy date in order to evict a tenant. Since an L2 application was not filed within the 30-day period, this N12 is void.
5. The Tenant testified that the Landlord then served her with a 2nd N12 Notice on September 30, 2025. This 2nd Notice was not entered as evidence, but the Landlord did not dispute the 2nd N12 Notice was for the purpose of purchaser's own use. He testified his son intended to purchase the unit. Again, the Landlord did not file an application to terminate the tenancy, but the Tenant vacated the rental unit prior to the termination date on the 2nd N12 Notice. Therefore, this is the N12 Notice upon which this Order pertaining to the T5 application is based.

Relevant Law, Burden of Proof and Admissions for T5 Application

6. Subsection 57(1)(b) of the *Residential Tenancies Act, 2006* (the 'Act') requires the Tenant to prove each of the following on a balance of probabilities:
 - a) The Landlord gave the Tenant an N12 Notice of Termination under section 49 of the Act;
 - b) The Tenant vacated the rental unit as a result of the N12 Notice of Termination;
 - c) No person referred to in subsection 49(1) or 49(2) of the Act occupied the rental unit within a reasonable time after the Tenant vacated; and
 - d) The Landlord served the N12 Notice of Termination in bad faith.
7. When questioned, the Landlord agreed that the Tenant moved out of the rental unit because of the N12 Notices that she was served with.
8. The parties disagreed whether the 2nd N12 Notice was given in good faith.
9. In her testimony, when describing the events that took place, the Tenant stated that when she was served with the 1st N12 Notice, her response to the Landlord was that even though she had been looking for a new rental unit for some time, she was unsure how quickly she could move out of the rental unit and that he should file an application with the Landlord and Tenant Board. The Landlord did not file an application with the Board.
10. When the Tenant went to pay her October rent on September 30, 2025, the Landlord then served her with a 2nd N12 Notice with a termination date of November 30, 2025. This time he said that the home had already been sold to his son. However, he did not provide any documentation to the Tenant nor to the Board to confirm this nor was any Declaration provided stating that the purchaser required the rental unit for their own use.
11. Section 49(1) states: "A landlord of a residential complex that contains no more than three residential units who has entered into an agreement of purchase and sale of the residential complex may, on behalf of the purchaser, give the tenant of a unit in the residential

complex a notice terminating the tenancy, if the purchaser in good faith requires possession of the residential complex or the unit for the purpose of residential occupation by,

- (a) the purchaser;
- (b) the purchaser's spouse;
- (c) a child or the parent of the purchaser or the purchaser's spouse; or
- (d) a person who provides or will provide care services to the purchaser, the purchaser's spouse, or a child or parent of the purchaser or the purchaser's spouse, if the person receiving the care services resides or will reside in the building, related group of buildings, mobile home park or land lease community in which the rental unit is located."

12. In *Elkins v. Van Wissen*, 2023 ONCA 789, the Court of Appeal for Ontario held that when deciding a T5 application relating to an N12 served for purchaser's own use under section 49 of the Act, the LTB must consider both the landlord's and the purchaser's good faith. After making both those determinations, the LTB must then consider what orders to make in respect of the landlord and the purchaser.
13. The Tenant referred to DOC ID 7740628, Exhibit 1, which was the Parcel Register for the house dated April 9, 2026. This register confirmed that the home was still in the Landlord's name, and no transfer had taken place to his son in September of 2025.
14. When providing his testimony, the Landlord referred to DOC ID 7847600 – Exhibit 2, which he described was his timeline of the events and also, he included a Declaration signed by his daughter pertaining to the 1st N12 Notice that was served. No declaration was provided by his son. The Landlord testified he lived with his spouse in the upper unit of the complex whereas the Tenant lived in the basement unit. The Landlord's written timeline does not identify if and when a 2nd N12 Notice was served to the Tenant, but there was no dispute from the Landlord the 2nd N12 was served on the Tenant. The Landlord described how after he got a new job out of town, his son and girlfriend sold their house and moved into the upper unit to live with him and his spouse. At the time the 2nd Notice was served on the Tenant, the Landlord's son and girlfriend lived in the upper unit and the Landlord and his wife had moved out.
15. The Landlord testified that his son and girlfriend broke up and therefore his son, although living in the upper unit, did not complete the purchase of the property although there was no dispute about him having moved into it. Hence, the parcel register still shows that the complex belongs to the Landlord.

The Landlord did serve the N12 Notice in bad faith

16. The Landlord testified that he served the 1st N12 Notice because his daughter was going to move into the rental unit.
17. Just over a year ago, the Landlord had accepted a position out of town and was leaning towards moving and buying a house near his job. The Landlord was travelling and would

return to the rental complex on weekends. The Landlord claimed that before buying a second property, his son and girlfriend needed to sell their house and move into the Landlord's unit.

18. The termination date of the 1st N12 Notice was August 31, 2025. The Landlord's daughter intended to move into the rental unit on September 1, 2025. Both parties agreed the Tenant failed to vacate the rental unit by the end of August. Consequently, the Landlord's daughter had to make other living arrangements.
19. In September 2025, the Landlord's son and girlfriend sold their home moved into the Landlord's home. The Landlord stated that in that same month, he had an oral agreement with his son and future fiancé with respect to purchasing the house in its entirety.
20. The Landlord agreed the Tenant had told him she would not be moving out of the unit and that he would need to file an application with the Landlord and Tenant Board.
21. Accordingly, the Landlord served the Tenant with the 2nd N12 Notice. The Landlord testified that he understood the Board process could take many months and he served the notice to have his bases could take Landlord made it very clear that his intent was always to have his daughter move into the rental unit.
22. After the Tenant vacated the rental unit, his daughter moved into it. She continues to live there. I find that the Landlord's intent to have his daughter live in the rental unit to be a genuine one. The 1st N12 was served in good faith.
23. However, I find that the Landlord's 2nd N12 Notice was not served in good faith. The reason I say this is because the at the time of serving the 2nd N12, no formal Agreement of Purchase and Sale had been entered into between the Landlord and his son. The Landlord's son was already living in the upper unit. He never intended to move into the Tenant's unit. If the purchase agreement had proceeded, the Landlord's son would have owned the complex but not necessarily have moved into the Tenant's lower unit. Even if I accept that there a material change in circumstances through the break-up, I am not satisfied the Notice of Termination for Purchaser's own use included the couple moving into the basement suite. This explains why the Landlord's daughter moved into the rental unit after the Tenant vacated. In the absence of an agreement, either in writing or persuasive understanding, I am not certain the Landlord served the 2nd N12 Notice in good faith. It is not enough to simply say, "I was covering my bases." An Agreement of Purchase and Sale is required by the Act when serving an N12 Notice for Purchaser's Own Use.
24. Consequently, I find that the Tenant has demonstrated all the required elements under subsection 57(1)(b) and that the 2nd N12 Notice was not served in good faith.

T6 Application Issues

25. Subsection 20(1) of the Act states that: "A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards."

26. The T6 application must be made within one year of the date the alleged breach occurred.

27. The Tenant raised the following issues:

- a) The Landlord failed to plough the driveway snow in a timely manner;
- b) The Landlord failed to cut the grass on her side of the house; and
- c) The Landlord failed to address the sewage smell in the rental unit for several months.

28. The Landlord responded to the issue pertaining to ploughing the driveway. He testified that on December 5, 2024, he received a text from the Tenant (as he was out of town) at 8.51am after the snowfall and by 11.22am, the Landlord had taken care of this issue.

29. The Landlord did not respond to the grass and sewage smell issues that the Tenant raised and nor did he attempt to dispute them.

30. Therefore, I find that as a result of not having rectified the sewage issue for several months, the Landlord should pay to the Tenant a rent abatement of 25% for four months of rent. The key legal test here is whether this problem “seriously interfered with the Tenant’s reasonable enjoyment of the unit.” A sewage smell can be a habitability and health issue as sewer gas exposure can cause headaches, nausea, and respiratory irritation.

Other Issues

31. The Tenant raised harassment and intimidation issues during the hearing. These issues are not properly raised on a T5 or T6 application.

32. The Tenant raised an issue pertaining to internet services that the Landlord failed to provide her with internet that he was obligated to provide during the last 2 months of her tenancy. Again, this issue is not properly plead on a T5 or T6 application.

33. The Tenant raised an issue pertaining to her car being constantly blocked in the driveway thereby restricting her ability to get out of the driveway. This issue is not properly plead on a T5 or T6 application.

Remedies

34. The Tenant was paying \$1,550.00 per month in rent to the Landlord. The Tenant’s new rent is now \$1,600.00 per month, which amounts to a \$50.00 per month increase in rent. Therefore, I find that the Landlord must pay the Tenant \$600.00 for the increased rent that the Tenant is incurring for a one-year period after the Tenant moved out of the rental unit.

35. The Tenant had Wi-fi in the rental unit and since moving into a new rental unit, she needs to pay \$67.80 per month for Wi-fi. Therefore, I find that the Landlord must pay the Tenant one year's worth of her Wi-fi fees which amounts to \$813.60 ($\67.80×12).
36. The Tenant had incurred moving costs of \$600.00 as a result of having to vacate the rental unit. Therefore, I find that the Landlord must reimburse the Tenant \$600.00 for the moving costs she incurred.
37. If the Tenant meets all 3 elements of the legal test in subsection 57(1) of the Act, then the Board may award a general compensation of up to 12 months rent last charged for the rental unit, which in this case was \$1,550.00 per month. The tenant has asked for \$14,387.00 in general compensation. The Landlord's claim is that he did not serve the N12 Notice in bad faith and therefore, it would appear that his position would be that he does not owe any monies to the Tenant in the form of general compensation. Due to the fact that the 2nd N12 Notice to Terminate the tenancy was served in bad faith, I find that the Landlord must pay the Tenant some amount of general compensation. Having heard from both the Landlord and Tenant, I believe the general compensation should be equal to an amount of 3 months' rent that was last charged for the rental unit which is a total of \$4,650.00. This figure is reasonable, and I have based the amount on the stress and inconvenience put to the Tenant having to move and by the Landlord's bad faith behaviour.
38. Covering your bases because of a lengthy process is not a satisfactory reason to serve a Tenant with an N12 Notice to evict them. I find the Landlord to have served the 2nd N12 Notice in bad faith and consequently, I believe the Landlord should pay a fine to the Board to deter him from engaging in such behaviour again. Therefore, I find that the Landlord must pay a fine to the LTB of \$500.00.
39. As the Landlord did not respond to nor dispute the sewage smell issue the Tenant raised, I find the Tenant should be given some abatement of rent. Therefore, I find that a rent abatement of \$1,550.00 is appropriate in the circumstances. I find this amount to be appropriate because exposure to sewer gas can cause several health issues and should not be considered as a simple or minor inconvenience.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$8,213.60. This amount represents:
 - \$600.00 for increased rent the Tenant is incurring for the one-year period from November 1, 2025, to October 31, 2026;
 - \$813.60 for the Wi-fi cost she is incurring for the one-year period from November 1, 2025, to October 31, 2026;
 - \$600.00 for the reasonable moving costs that the Tenant has incurred as a result of having to move out of the rental unit;
 - \$4,650.00 for general compensation;
 - \$1,550.00 for a rent abatement.

2. The Landlord shall pay the Tenant the full amount owing by June 5, 2026.
3. If the Landlord does not pay the Tenant the full amount owing by June 5, 2026, the Landlord will owe interest. This will be simple interest calculated from June 6, 2026, at 4.00% annually on the balance outstanding.
4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.
5. The Landlord shall pay to the Landlord and Tenant Board an administrative fine in the amount of \$500.00 by June 5, 2026.

June 1, 2026
Date Issued

Farzana Kanji
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.

Payment of the fine must be made to the LTB by the deadline set out above. If not paid, the outstanding amount may be sent to a collection agency and/or the party owing the money may not be permitted to file a new application until it is paid in accordance with section 196 the Act.

The fine can only be paid by money order, bank draft or certified cheque payable to the "Minister of Finance". The payment can be mailed or couriered to the LTB at 25 Grosvenor Street, Ground Floor, Toronto, ON M7A 2G6 or dropped off at most Service Ontario locations.

