



Order under Section 57 Residential Tenancies Act, 2006

Citation: Henry v Schiffner, 2026 ONLTB 41468

Date: 2026-06-02

File Number: LTB-T-012393-23

In the matter of: #2, 42 Pearson Avenue
Toronto ON M6R1G1

Between: Joanna Henry Tenant

And

Paul Schiffner Landlord
Nancy Demian Purchaser

Joanna Henry (the 'Tenant') applied for an order determining that Paul Schiffner (the 'Landlord') and Nancy Demian (the 'Purchaser') gave a notice of termination in bad faith.

This application was heard by videoconference on February 25, 2026.

The Landlord, the Landlord's legal representative B. Burd, the Purchaser, the Purchaser's legal representative, A. Rivet, and the Tenant attended the hearing.

Determinations:

1. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.
2. The Landlord served the Tenant with an N12 notice of termination to vacate the rental unit on March 31, 2022, because the purchaser required the rental unit for their own residential use. The Landlord provided the Tenant with one month rent compensation as required by sections 49.1 and 55.1 of the *Residential Tenancies Act, 2006* (the 'Act').
3. The Tenant lived in the rental unit, a two bedroom, upper unit, of a house since 2014. Her monthly rent at the time she moved out was \$1,446.00.
4. It is undisputed that the Tenant also signed an N11 agreement to terminate the tenancy on March 31, 2022, after it was sent to her by the Landlord. The Tenant admits that she received no legal advice during the time of vacating the rental unit. She said that she signed the N11 agreement to terminate because she wanted to be on good terms with the

Landlord so that he would pay her the one month's rent compensation he had promised. She was unaware that she was entitled to receive the one month's rent as a result of being served an N12 notice of termination. The Landlord said that he was told by his legal representative that it was appropriate to give the Tenant an N11 agreement to terminate.

5. All the evidence from all parties, during the hearing, was submitted on the basis that this was a T5 application filed by the Tenant alleging a bad faith eviction on the basis of an N12 notice of termination. It is undisputed that compensation of one month's rent was paid by the Landlord to the Tenant. None of the parties asserted that the application should be dismissed because the parties had signed an N11 agreement to terminate.
6. As it happens, the Tenant does not dispute that she signed the N11 agreement to terminate of her own free will. If I were only to consider the N11 agreement to terminate, the application would be dismissed.
7. However, for the purpose of this application I will disregard the signed N11 agreement to terminate. Neither party appeared to understand the distinction between terminating a tenancy via an N12 notice of termination or terminating a tenancy with an agreement to terminate. I proceeded on the basis of a T5 application filed by the Tenant alleging that the N12 notice of termination she received was in bad faith.
8. The Tenant said that she had a long-term, good, relationship with her Landlord. She testified that she was shocked when her Landlord called her in January 2022 and informed her that the tenancy would be ending by March 31, 2022. He told her he was selling the house.
9. The Tenant said that the process of selling the house was "very aggressive" with up to nine showings per day, and there were many showings by the middle of January 2022. She said that the house was sold by January 17, 2022, after about 40 showings. She said that showing her unit was a "full-time job". The Tenant works from home. The Tenant said that the purchaser was "aggressive" in coming to inspect the rental unit throughout February 2022.
10. The Tenant said that she was served the N12 and N11 notices on January 18, 2022, and she cooperated with the Landlord at all times because she wanted to ensure that she would get the one month extra rent compensation, and also that the Landlord would provide her with a good reference. She signed the N11 agreement to terminate. She also said that she immediately began to look for somewhere else to live.
11. The Tenant said it was extremely difficult to find a new unit. She said that she could not move "just anywhere" because her niece was coming to live with her while attending an acting academy in the Junction. She said that she looked in the Junction, but she also looked all over the city. She said there was a shortage of places, and it was like the "Hunger Games" to find a unit during Covid. The Tenant said that she required a two bedroom unit, and she had to significantly up her budget. She said she eventually found a place in March, and she moved to a main floor unit at 97 Eileen Ave, near Scarlett and St. Clair. It was a two bedroom unit for \$3,250.00 per month.
12. The Tenant said that she believes the eviction was in bad faith because the purchaser, N. Demian (ND) did not move into the rental unit. The Tenant said that she walked by the

rental unit weekly and it was completely unused, and she saw no activity in either the upper or lower units. She said the bins were never out, and when she went to collect the mail there was no one there, and all the vegetation was overgrown.

13. The Tenant said that on August 30, 2022, she saw some grass was cut and she observed what appeared to be a showing of the unit. She said she googled her address and saw a current ad for her unit for rent, and it even used her own staging photos. The Tenant submitted into evidence the ad for her unit from August 2022, for a monthly rent of \$2,800.00. She said that she messaged the renting realtor, and she was informed that the unit was leased.
14. The Tenant requests 12 months of the rent differential between her new unit and the old unit, or $12 \times \$1,804.00 = \$21,648.00$. She also requests general compensation based on the stress and anxiety she suffered looking for a new place and having to endure so many showings of her unit, in the equivalent of \$6,880.00. She also requests moving expenses of \$1,400.00.
15. The Tenant said that she believes there is bad faith on the part of both ND and her former Landlord because the sale of the house was completely dependent upon vacant possession, and the Landlord pursued the sale quickly and aggressively, and the purchaser did not move into the rental unit.
16. The Former Landlord, P. Schiffner (PSC) said that he served an N12 notice of termination for purchaser's own use on the basis of instructions from his real estate agent.
17. PSC said that he owned the property since 1987, and he was a good Landlord. He said that he decided to retire and sell the house, and he called the Tenant on January 3, 2022, in good faith, to alert her to the sale and the fact that she might have to move out. He said that he mentioned March 31, 2022, because he knew it was possible, and he just wanted her to be aware of the possibility. He said that he did not tell the Tenant that she would, for sure, be leaving by March 31, 2022.
18. PSC said that he never discussed with any one the possibility of selling the house as an investment property. He said that he just wanted to sell it for a good price. PSC said that he does not remember if the ad for sale of the house mentioned investment, but he believes it mentioned that there was a rental income from the house. He said that he is confident that the clause in the agreement for purchase and sell that mentions vacant possession was requested by the purchaser.
19. PSC's realtor, C. Pyke (CP) said that it was the purchaser's agent who insisted on a clause for vacant possession. CP said that it was she who informed the Landlord about an N11 agreement to terminate as well as an N12 notice of termination. CP said that the Landlord served the N12 notice in good faith, merely ensuring that the purchaser could move into the house with vacant possession. CP said that she asked the purchaser's real estate agent if the purchaser was moving in, and she ensured CP that the purchaser required vacant possession. She did not recall if she ever discussed the house as a good investment. However, she was certain that she advised the Landlord that the property had to be sold with the sitting tenants.

20. ND's husband, P. Short (PSH) testified that he moved into the residential complex with ND in June 2022, and they moved out unexpectedly two months later. He said that after they moved into the residential complex he proposed to ND. PSH said that they had been a couple since 2020, and when he proposed on August 6, 2022, it was a surprise. He said that between the move out date in March 2022, and June 2022, he and ND were getting the house cleaned and planning renovations. He said they took their time acquiring things. He said that he and ND at no time told the real estate agent to serve an N12 notice of termination because they were first-time buyers and they "did not know anything." He said that he works in film, and he knows nothing about obligations to tenants pursuant to the *Residential Tenancies Act, 2006* (the 'Act').
21. PSH said that upon moving in they were planning to renovate, but after the proposal they had to take stock and figure out what made sense financially. He said that they decided in August 2022 to rent out the house and save more money. He said they moved in with his in-laws because they had space.
22. PSH said that he and ND eventually completed their renovation, and they have lived in the residential complex since September 2025. He submitted photos to support his testimony about the renovation, and subsequent moving into the residential complex.
23. ND said that she was aware there were tenants living in the residential complex when she purchased the property, but she was told they were going to leave. She said that she knows nothing about the clause for vacant possession.
24. ND said that when she viewed the house she was looking for a place for her family to live, she was intending to live in the whole house, and she planned to immediately renovate. She submitted into evidence her UHaul receipt for moving into the residential complex on June 3, 2022. She said that when she bought the house her contractor was busy. ND said that she had a contractor in mind from before the purchase of the house. She said that an architect came to inspect in April 2022, and the contractor came to assess the job in July 2022, and it was then he said it would take a number of months before he could start the job. ND said that they slowly moved things between April and June 2022, and they were in constant discussion about what to do with the space. She said that she moved from her own condo into the residential complex, and then she and PSH moved in with her parents. ND married PS in January 2023.
25. ND said that once PSH proposed their plans changed.
26. It is undisputed that ND advertised the rental unit for rent in August 2022, and there were new tenants living in the rental unit as of September 2022. She said that the new tenants were always aware that ND intended to renovate and live in the house, that their tenancy was temporary, and then they discovered the black mould.
27. ND said that the tenants moved within six months because they found mould. She said that both upper and lower tenants moved out after about six months for the same reason. She said it was then that she completely gutted the residential complex and carried out a renovation. It took about six months to get permits.
28. ND said that the lawn may have been overgrown when the Tenant walked by because she, ND, received a notice from the City about overgrown grass, and she had to hire

someone to cut the grass. However, ND said that the residential complex was never vacant for long.

Reasons and Analysis:

29. I find that neither the Former Landlord PSC nor the Purchaser ND served the Tenant with a notice of termination in bad faith for the following reasons.
30. 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:
 - The Landlord gave the Tenant an N12 notice of termination under section 49 of the Act;
 - The Tenant vacated the rental unit as a result of the N12 notice of termination;
 - 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
 - The Landlord served the N12 notice of termination in bad faith.
31. 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.
32. It is true that subsection 57(5) provides a *presumption* of bad faith in the case where the rental unit is advertised for sale within one year of the Tenant vacating. I will not consider whether there is a presumption of bad faith that has, or has not, been rebutted in this case because subsection 57(5) applies to a notice of termination pursuant to section 48 of the Act, not an N12 notice served pursuant to section 49 of the Act. In any case, even were the presumption to apply here, I find it is rebutted for the reasons given below. In particular, the purchaser moved into the rental unit within a reasonable time after the Tenant vacated the rental unit, she moved out temporarily because of a sudden change of plan, and it was always the purchaser's intention to live in the rental unit, and the purchaser does now live in it (see below).
33. It is undisputed that the Landlord gave the Tenant an N12 notice of termination under section 49 of the Act, and the Tenant vacated the rental unit as a result of the N12 notice of termination.
34. It is before me to determine whether a 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. That is, did either the purchaser or the purchaser's spouse move into to the rental unit within a reasonable time after the Tenant vacated?
35. The Tenant said that she walked by the house frequently in the summer of 2022, and she saw no activity and no one appeared to be living there. ND and PSH both testified that they slowly moved their belongings from April to June 2022, and then they moved more stuff on June 3, 2022. They had a UHaul receipt for a moving truck dated June 3, 2022.

The pick up location of the UHaul is in the vicinity of the residential complex. ND and PSH said that they got engaged on August 6, 2022, and they had a Facebook posting to support that testimony. They had photos of some of their belongings in the residential complex in August 2022. ND said that the residential complex was inhabited at all times from at least June 2022, but she did, in fact, get an order from by law to cut the grass, and she did so by August 2022. The Tenant had no photos, nor did she supply dates she walked by the allegedly deserted residential complex to support her allegation that the residential complex was uninhabited. I am mindful that the onus is on the Tenant to prove her allegations in this application, and she had no documentary evidence to contradict either ND's or PSH's testimony.

36. ND does not deny that the rental unit was re-rented by September 2022, but she said that it was the result of a drastic change in plans, that is getting engaged, discovering that her contractor would not be able to renovate immediately, and a sudden need to save more money because of a wedding and a major renovation.
37. Neither ND nor PSC appear to have really educated themselves about N12 notices and the appropriate situation in which to serve one, and they both relied on real estate agents for advice about vacant possession, when they perhaps should have more intently focused on their obligations as either Landlord or Purchaser of a property with sitting tenants. Nevertheless, I find that the evidence supports ND's evidence that she purchased the property for her own use and occupation. The fact that ND carried out a major renovation and she now lives in the property supports, on a balance of probabilities, that it was always her intention to fully move into the entire residential complex after a major renovation. There is no doubt that ND may not have completely thought through what would happen when she first bought the property in April 2022, but all the evidence supports her testimony that once she had thorough discussions with her architect and contractor, and once she was unexpectedly engaged and planning a wedding, her renovation project became a longer term plan than she may have originally considered. However, I find on a balance of probabilities, that moving into the residential complex for her own use was always ND's plan. ND was a bit cavalier about moving in for only a few months, casually renting the property out again for a very temporary period, but I do not find that establishes that the Tenant has proved bad faith service of the N12 notice on the part of either ND or PSC.
38. Therefore, I find, on a balance of probabilities, that a person referred to in subsections 49(1) or 49(2) of the Act occupied the rental unit within a reasonable time after the Tenant vacated. Even were the rental of the rental unit in September 2022 to demonstrate a presumption of bad faith, less than a year after the Tenant moved out, ND has rebutted that presumption by establishing, on a balance of probabilities, that she always planned to renovate and live in the residential complex. She does, in fact, currently live in the residential complex. I also find that the evidence supports PSC's submission that he gave the N12 notice of termination for purchaser's own use which he believed to be the appropriate notice. His real estate agent, CP, testified under oath that she did in fact inquire whether the purchaser was planning to move into the residential complex.

It is ordered that:

1. The Tenant's application is dismissed.

June 2, 2026
Date Issued

Nancy Morris
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.