



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

File Number: LTB-T-064835-25

In the matter of: 3, 240 MISSISSIPPI CRT
CARLETON PLACE ON K7C4R1

Between: Jason Hobbs Tenant

And

Paul Gagnon Landlord

Jason Hobbs (the 'Tenant') applied for an order determining that Paul Gagnon (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on April 27, 2026.

The Landlord, the Landlord's Legal Representative Lorrie McCullough and the Tenant and the Tenant's Legal Representative Dara Saunders attended the hearing.

Determinations:

The Adjournment Request

1. At the outset of the hearing the Tenant's Legal Representative requested an adjournment. She explained that one of the Tenant's key witnesses was a former neighbour who the Tenant's Legal Representative intended to summons. However, she has been unable to reach this witness, and the Tenant's whole case was based around this witness.
2. The Tenant's Legal Representative also explained that it had somehow been missed within her office that she was scheduled for an in person hearing in Belleville, which she only became aware of this morning, and she was not certain how long this proceeding would take to conclude.
3. The Tenant's Legal Representative explained that the Tenant originally retained the services of another paralegal who was no longer able to represent him. She testified that she had taken over this representative files, and had tried to reach out to the Tenant starting in March, but he believed her communications were spam, and she had only become retained the weekend prior to the hearing.
4. At the time of the adjournment request the Tenant was not present.

5. Interpretation Guideline one states:

Parties are expected to make any necessary arrangement to proceed with a case management or merits hearing on the date set out in the Notice of Hearing. The granting of adjournments is at the discretion of the Member hearing the application or the Hearing Office conducting the case management. Pursuant to s. 21 of the *SPPA*, an adjournment will only be granted by the Board if it is required to permit an adequate hearing to be held.

Where the Member is satisfied that the party has received sufficient notice of the hearing and has been provided with an adequate opportunity to prepare their evidence and submissions, summons witnesses and obtain counsel ahead of the hearing date, an adjournment is not usually granted unless there are exceptional circumstances.

The specific factors the Member may consider in deciding whether to grant an adjournment include:

1. the reason for the adjournment and position of the parties;
2. the issues in the application;
3. any prejudice that may result from granting or denying the request;
4. the history of the proceeding including other adjournments or rescheduling;
5. the LTB's obligation to adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter.

The Member may consider the conduct of the party opposing the adjournment. For example, if the party opposing the request has shown bad faith or refused to provide information about their case to the other party which would allow them to prepare quickly for the hearing, this may affect the Member's decision.

Adjournment to Allow Representation

Section 10 of the *SPPA* states that a party may be represented by a representative at a hearing. However, the right to representation is not absolute and an adjournment is not automatically granted when it is requested on this ground. The onus is on the party wishing to be represented to make all reasonable efforts to find a lawyer or paralegal able to represent them at the hearing once they become aware of the hearing date.

A short adjournment may be allowed where a representative has been retained but is unavailable on the date set for the hearing, or where the party can demonstrate that they have made reasonable efforts to retain a lawyer or paralegal before the hearing but have not yet been able to do so.

6. While this guideline is not binding on me, I find no reason to deviate from it here. I am not satisfied that the Tenant's Legal Representative has demonstrated that an adjournment is necessary.
7. The notice of hearing was sent to the parties on January 12, 2026, and I am satisfied that the Tenant has been aware of the hearing since at least that date. As the Tenant's initial representative was unable to proceed, and he was allegedly operating under the assumption that the messages from his new perspective representative were spam, I would expect that the Tenant would take reasonable steps to secure alternate representative, however, no evidence of such steps were put before me and the Tenant was not present to explain what steps if any were taken.
8. Additionally, this request for an adjournment appears to have arisen at least in part from a lack of due diligence on the part of the office of the Tenant's Legal Representative who were themselves unable to contact the Tenant, did not summons their key witness, and had mis-diarized another hearing on the same day as this proceeding.
9. I am also not satisfied that it is appropriate to adjourn the hearing to allow the Tenant's Legal Representative an opportunity to summons a particular witness. The Tenant's Legal Representative has clearly been aware of this proceeding since March and has had ample opportunity to request a summons, or coordinate with the witness to ensure their attendance. While I accept that this would have been complicated by the lack of a formal retainer, the Tenant's Legal Representative has nevertheless had ample time to summons or coordinate any potential witnesses.
10. I also accept that the Landlord has been waiting several months for the hearing and the Landlord's witness has taken time off to attend the proceeding.
11. Therefore, I am satisfied that both the Tenant and Tenant's Legal Representative have had ample time to prepare for this proceeding, which is based on the Tenant's own application and am not satisfied an adjournment is appropriate.
12. However, I elected to stand the matter down to allow the Tenant's Legal Representative to complete her other proceeding before the matter was heard on the merits. I also note that while the proceeding was stood down the Tenant's proposed witness Sylvia Davey was able to attend. Therefore I am satisfied that there was no prejudice to the Tenant in proceeding with the hearing.

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13. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.
14. 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.
15. The Tenant did not prove no person referred to in subsection 48(1) of the Act occupied the rental unit within a reasonable time after the Tenant vacated.
 16. The Tenant testified that he received an N12 Notice of Termination from the Landlord in August 2024 and vacated on the termination date in the notice, which he could not recall. He testified that after he vacated, he had difficulty securing a new rental unit and stayed in hotels, and lived in his van, and spent time staying with friends after he vacated as he had only been able to secure a new unit for his mother and daughter, not for himself.
 17. He testified that after four months he realised that the N12 had been served in bad faith, as that was adequate time for the Landlord to perform any renovations, and in spite of this he had not yet observed any signs of occupation within the rental unit. He testified that he started to drive by the rental unit approximately every two weeks, but did not see any signs of occupation or renovation other than a rough repair conducted on the deck.
 18. The Tenant confirmed that he never knocked on the door when he drove by, as he never saw a car in the driveway and typically passed the rental unit in the afternoon or early evening.
 19. A witness for the Tenant Sylvia Davey testified that she lived beside the Tenant for four years and he asked her to keep an eye on the unit after he vacated. She testified that she periodically saw people coming and going and doing sporadic restorations, but she never saw a vehicle parked there consistently or overnight.
 20. She also testified that over the winter there was a foot or two of snow in the laneway of the rental unit and she began piling her own snow there and no one came to complain, and she did not see tire tracks in the snow from the rental unit.
 21. She also testified that she spoke to the Landlord in March 2025 who informed her that he planned to sell the rental unit in August 2025.
 22. She testified that as far as she knows the Landlord's son is staying at the rental unit with his girlfriend a few nights a week but she did not see any furniture brought into the rental unit.
 23. She testified that she is a stay-at-home mother with insomnia, whose office is in her garage, and she uses her front door everyday so it would be nice to her if someone were coming and going.
 24. The Landlord testified that after the Tenant vacated, he and his son renovated the property and his son occupied the rental unit while the renovations were being performed. He testified that that Tenant vacated August 10, 2024, and his son moved into the rental unit immediately.
 25. He testified that he and his son renovated the unit by replacing drywall, replacing a bathroom vanity, and replacing flooring within the unit among other changes. He testified

that after his son moved into the rental unit the utilities were transferred into his name and his son paid those bills.

26. He also testified that approximately two weeks after his son moved in he brought him a bed from his own home.
27. He denied telling Ms. Davey that he intended to sell the rental unit and testified that all he told her was that he did not intend to re-rent the rental unit. He testified that his intention was always for his son to reside there.
28. The Landlord's son Nicholas Gagnon testified that he moved into the rental unit in Mid to Late August 2024. He testified that he had been struggling financially and had been staying with his brother who was charging him rent, and it was more convenient to have an entire home to himself.
29. He testified that he moved into the rental unit with almost nothing and initially slept on an air mattress and accumulated belongings such as furniture over time.
30. He also referred me to extensive text conversations with his father where they discussed his transferring the utilities into his name, and messages wherein he asked his father to deliver various furnishings to the home or coordinate delivery or repair of appliances and the ongoing renovation work.
31. He also referred me to a text message from August 8, 2025, wherein the Landlord asked him to provide a picture of his bedroom and living room to provide to the Tenant to prove he was living in the rental unit. The metadata attached to this image demonstrates that he was able to send the pictures to the Landlord within one minute, and that they were taken contemporaneously.
32. He testified that he spent two weeks at his father's house in February 2025 to take care of a dog, then returned to the rental unit. He testified that he leaves the unit around 5am and returns between 4pm and 7pm.
33. He also testified that he did not plow the driveway throughout the winter as his vehicle has four-wheel drive and only shovelled around the front door.
34. When questioned by the Tenant's Legal Representative as to why the utility usage in the rental unit was so low, he testified that he was trying to keep his usage low as he was on a budget. He confirmed that a gas bill from December 2024 depicted usage of 45m³.
35. He also explained that at some point the gas company had the wrong address and there was credit applied to each bill. He also explained that he had the pilot light off during the winter and only used air conditioning for one month, all in an attempt to save funds.

Analysis

36. 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.

37. I am not satisfied that the Tenant has demonstrated that no person referred to in subsection 48(1) of the Act occupied the rental unit within a reasonable time after the Tenant vacated or that the N12 was served in bad faith.

38. Despite the assertion of the Tenant's Legal Representative, the onus is not on the Landlord to demonstrate that his son occupied the rental unit. Instead, the onus remains on the Tenant to demonstrate this. Much of the Tenant's own testimony was speculative and amounted to an assertion that he did not observe occupation of the rental unit when he drove by every two weeks. The testimony of the Tenant's witness is similar, while I can accept that she would have been well placed to observe the rental unit, I am not satisfied that an assertion that the rental unit did not appear to be occupied is itself determinative that the Landlord's son did not occupy the unit, and I note that the witnesses own testimony was that she did see persons performing renovations on the home and that the Landlord's son had begun staying there occasionally with his girlfriend.

39. With respect to her assertion that the Landlord informed her he intends to sell the unit, this was denied by the Landlord and has clearly not occurred as the rental unit was not listed for sale. Therefore, I place little weight on this assertion.

40. While the strongest evidence of occupation seems to date from the summer of 2025, I note that as the Landlord and his son were unaware of the Tenant's Application until that time, they would not have had a need to document evidence of occupation prior to that date, and in spite of that there is strong evidence which suggests that the rental unit was occupied by the Landlord's son by August 2024.

41. While there appears to have been minimal utility usage until the summer of 2025, I note that the Landlord's son testified that he was on a low budget and was trying to keep utility usage to a minimum, which may account for the low usage and while I can accept that this low usage may suggest that the Landlord's son did not occupy the rental unit ultimately there is other ample evidence to support that the Landlord's son did occupy the unit by August 2024.

42. For example, there are text messages between the Landlord and his son from August 14, 2024 where the Landlord's son asks for a key to be cut for him, and indicating that he will move his air mattress and desk into the rental unit as soon as a bedroom is ready for him. Additionally, there are texts confirming that the Landlord's son had transferred the utilities into his name on August 16, 2024. There are also Texts discussing the renovations in the rental unit on October 1, 2024 and a text from December 11, 2025 which depicts the Landlord's son asking if his father has extra curtains he can have for the rental unit. All of these strongly suggest that the Landlord's son had occupied and was renovating the rental

unit and, supports his assertion that he moved into the rental unit with very little and accumulated his belongings over time.

43. Therefore, as the onus is on the Tenant to demonstrate that Landlord's son did not occupy the rental unit, I am not satisfied that they have done so as there is ample evidence which supports a finding that he occupied the unit by August 2024 and remained in the rental unit in August 2025.

44. Therefore, the Tenant's Application shall be dismissed.

It is ordered that:

1. The Tenant's Application is dismissed.

June 3, 2026
Date Issued

Reid Jackson
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.