



Order under Section 57 Residential Tenancies Act, 2006

Citation: Stuart v Kazem Motlagh, 2026 ONLTB 41862

Date: 2026-06-10

File Number: LTB-T-019835-24

In the matter of: 75 Queens Wharf Road 1606
Toronto ON M5V0J8

Between: Amanda Stuart Tenant

And

Maryam Kazem-Motlagh Landlord

Amanda Stuart (the 'Tenant') applied for an order determining that Maryam Kazem-Motlagh (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on April 15, 2026, and concluded on May 15, 2026. The Landlord, Represented by Mohsen Ameli, and assisted with translation by Amndana Goudarzian, and the Tenant, Represented by Kent Wakely, attended the hearing.

This matter was heard concurrently with LTB-T-081214-23 (T2 application).

Determinations:

Preliminary Matter:

1. The Tenant filed two requests to amend her application. The first was filed on May 27, 2025; the second was filed with the Board on April 20, 2026. The second amended application was served on the Landlord's Representative on April 20, 2026. The second amended version was largely the same as the first amended version. The second amended copy specified an amount of \$25,824.00 for general compensation and clarified the request of \$8,400.00 is for "disgorgement" of the Landlord's unjust enrichment.
2. The Landlord did not offer any objections at the April 15, 2026, hearing but sought to clarify that this latest version superseded any prior applications or amendments. The Tenant's Representative confirmed the April 20, 2026, amended version was the final iteration.
3. The Landlord was served with the amended application just about three weeks before the hearing and largely clarified the remedies sought as opposed to adding new remedies. I am not of the view that this would have prejudiced the Landlord because the same hearing preparation would have been necessary regardless of the quantum of the remedies.

When I consider the reasons for the amendments, I am satisfied that the amendments are appropriate and made in good faith, did not prejudice any party, and are consistent with a fair and expeditious proceeding.

Tenant's T5 Application

5. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay to the Tenant \$25,395.50.
6. By way of background, the tenancy began in March 2017. The rental unit was a one-bedroom condominium unit with a den in a new building. The building also had amenities such as underground parking, free fitness classes, concierge, hot tub, etcetera.
7. The Tenant says the problems began in December 2018. The Landlord asked for an illegal rent increase and said if the Tenant refused to pay this, she would put the unit up for sale. This was followed up with multiple messages from various agents of the Landlord, or the Landlord herself, asking the Tenant to help the Landlord pay the mortgage on the property. At one point, the Landlord withheld keys necessary for storage. The Tenant called the Rental Housing Enforcement Unit and was finally given the keys after they became involved. The Tenant also states that in 2020, the Landlord accused her of not paying her rent on time although she had provided the Landlord with post-dated cheques. In the summer of 2022, the Landlord refused to conduct repairs at the rental unit. The Tenant called bylaw officers, and only once bylaw became involved did the Landlord do the necessary repairs. The Tenant adds that in May 2020 she was accused of having not paid the rent on time, although the Landlord had been provided with post-dated cheques for the period in question, but had failed to deposit the cheques.
8. 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.
4. Further, section 57(5) of the Act creates a rebuttable presumption that a notice of termination given under s. 48(1) of the Act was given in bad faith if the property is advertised for sale or rent. A rebuttable presumption means that the landlord is assumed to have acted in bad faith unless the landlord can provide an explanation that satisfies the Board as to what changed after the tenancy terminated, that affected the landlord's ability to move in or remain in the rental unit.
9. The Tenant testified that on she was given an N12 notice of termination for the Landlord's child on October 14, 2023, with a termination date of December 14, 2023 (Doc-2913577, Doc-2913578). This was submitted into evidence, and the Landlord does not contest that she gave the N12 notice to the Tenant.

10. The parties also agree that the Tenant vacated the rental unit on December 1, 2023.
11. There is some contention about the circumstances surrounding the Tenant's termination; however. After receiving the N12 notice, the Tenant found a new rental unit to move into and signed a lease on October 23, 2023, with the tenancy to begin on December 1, 2023. On November 13, 2023, the Tenant gave the Landlord an N9 notice terminating the tenancy effective December 1, 2023 (Doc-4534225, pgs 21-23).
12. However, the Landlord's former legal representative had sent the Tenant correspondence via e-mail dated November 17, 2023 (Doc-5696165). In that correspondence, the former representative advised the Tenant that the Landlord was no longer pursuing the L2 application and will be withdrawing the application for the time being.
13. Based on the evidence before me, I am satisfied that the Tenant terminated her tenancy in accordance with the N12 notice. There was no evidence before me to suggest the Tenant had been looking for another rental unit until she was given the N12 notice. Her evidence was she signed the new lease on the 23rd of October. She was given the N12 on October 14, 2023 (Ex. 1 pg 18, 19).
14. The Tenant submitted into evidence a copy of an MLS listing for her rental unit (Doc-4534225, pgs. 24-26). The details indicate the contract began on March 3, 2024, and that the rental unit was re-leased with a new tenancy commencing April 15, 2025. The rent was now \$2,850.00, which was \$750.00 more each month than it had been when she was living there.
15. The Landlord points to the November 17, 2023, letter to demonstrate that her needs had changed and she would no longer require the rental unit. The Landlord explains that she wanted the rental unit for her daughter to use. In August 2023, her daughter had a job offer to provide physiotherapy services to an individual in their home, and the rental unit was more conveniently located. However, the job was to start in November which then was pushed back to December, and she was still not given a contract.
16. While her daughter waited on the contract, the rental unit sat empty. After a few months, the Landlord could no longer wait for her daughter and decided to re-rent the rental unit because she still had to pay mortgage and taxes on the vacant unit. It is not clear to me whether her daughter eventually took the job, or not.

Analysis

17. Section 202 of the Act states:

202 (1) In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so,

- (a) may disregard the outward form of a transaction or the separate corporate existence of participants; and
- (b) may have regard to the pattern of activities relating to the residential complex or the rental unit.

18. Although the case of *Elkins v. Van Wissen*, 2023 ONCA 789 ('*Elkins*') dealt with the analysis of a bad faith eviction following the termination of a tenancy pursuant to s.57 of the Act where the purchaser wished to occupy the rental unit, I find it useful to consider this case in applications where the good faith intention of a landlord to occupy the rental unit is called into question. The Court of Appeal provides guidance in par. 45:

[45] It could be argued that s. 57(1)(b) implicitly limits Board scrutiny to the Vendor Landlord's knowledge when it gives the s. 49 termination notice. However, such an interpretation runs afoul of s. 202(1) of the RTA. Under s. 202(1), the Board is 2023 ONCA 789 (CanLII) required, when making findings on an application, to ascertain the "real substance of all transactions and activities relating to...a rental unit and the good faith of the participants". **Limiting the assessment of a Vendor Landlord's bad faith to that single point in time when the s. 49 termination notice is given precludes the Board from both ascertaining the true substance of the transaction between the Vendor Landlord and the purchaser and conducting a fair assessment of their good faith.**

19. The standard of proof in proceedings before this Board is "proof on a balance of probabilities." By that standard, the party bearing the burden of proof must show with evidence that, "more likely than not", their assertions are true. Where the evidence of the opposing party is as believable as that of the party bearing the burden of proof, that burden cannot be said to have been discharged.
20. In this matter, the Landlord bore the onus of proving, on a balance of probabilities, that her daughter had a legitimate job offer. When I consider the evidence, I am not persuaded that the Landlord rebutted the presumption of bad faith. It is not clear to me whether the Landlord's daughter had a job offer or not. Her daughter was not called to testify and no corroboratory documentary evidence, such as copies of the correspondence between her daughter and potential employer, were submitted into evidence.
21. The Landlord's oral testimony was that her daughter had a job offer. However, she also said that she had sent "them her resume." At the very least, I find that the Landlord gave the N12 notice prematurely where her daughter had no firm offer of employment and had not signed any documentation.
22. Although not binding on me, I find the following case *TET-69036-16*¹, by Vice-Chair Ruth Carey, to be instructive:

"64. Landlords are professionals operating a business and are deemed to know something about the law governing their business. At a bare minimum a landlord ought to know that he or she is subject to laws and when conflict arises with a tenant there is a positive obligation to seek information and advice about those laws."

23. What this suggests is that the Landlord had an obligation to ensure that not only was she familiar with the law, but she had an obligation to ensure that she was not giving her Tenant a premature N12 notice where there was a serious question as to whether the job

¹ TET-69036-16 (Re), 2017 CanLII 49115 (ON LTB)

offer would materialize. Given the Landlord's evidence, it is not clear whether her daughter actually had a job offer, or whether she had simply sent in her resume and was waiting for a response from the employer.

24. Section 202 states that in making my determinations, I may disregard the outward form of transactions and have regard to the pattern of activities. I find that the outward form of the job offer lacks reliability. I find the pattern of activities suggests, on a balance of probabilities, that the Landlord wished to terminate the tenancy to rid herself of what she believed to be a problem Tenant as evidenced by the Tenant's testimony about the history of issues between the parties going back to 2018.
25. I agree that the rental unit sat vacant for several months as evidenced by the date on the MLS listing. However, I am not satisfied the reason for this was because of the job offer. Even if this is the case, this still does not relieve the Landlord from the responsibility of giving the Tenant an N12 notice prematurely when her daughter did not have a firm job offer and contract.
26. When I consider the Court's guidance in *Elkins*, and I look at the behaviour before, during, and after the N12 notice was given, I find it was given in bad faith. I also do not find the letter of November 17, 2023, advising the Tenant the Landlord was withdrawing the application to be evidence of the Landlord's good faith or a material change of circumstances. I say this because the Tenant had already given her N9 notice, so the Landlord was aware that the Tenant had decided to move out. Further, I find the Landlord knew, or ought to have known, that the job offer was not firm, such that the N12 notice should not have been issued in the first place.

Remedies

27. The Tenant seeks the following remedies:

- Moving costs totalling \$395.50;
- Parking costs totalling \$295.50;
- Out of Pocket Expenses totalling \$2,000.00;
- General damages totalling \$34,224.00; and,
- An administrative fine.

Moving Costs

28. The Tenant seeks \$395.50 for moving costs. The Tenant provided a receipt from Takeoff Moving Company Inc. (Doc-4182643, pg 38).
29. In my view, the requested remedy is reasonable given my knowledge and experience of similar matters.
30. The Landlord shall pay to the Tenant \$395.50 for moving expenses.

Parking Costs/Out-of-Pocket Expenses

31. The Tenant seeks reimbursement for the cost of parking. She used to have underground parking included in her rent but now must pay for street parking.
32. The Tenant also seeks reimbursement of \$1,011.36, for the cost of a dishwasher as an out-of-pocket expense. This is because she had a dishwasher at the old rental unit, but she did not have one at her new rental unit and purchased one.
33. I am of the view that these two claims are not properly claimed as out of pocket expenses. Rather, I find these would be more accurately claimed under general compensation. Section 57(3)(1.2) states that the Board may order the landlord pay a specified sum to the former tenant for reasonable out-of-pocket moving, storage and other like expenses that the former tenant incurred or will incur. In my view, "other like expenses" would relate to the expenses incurred from moving as described earlier in the subsection such as moving and storage. However, the costs of parking and the loss of amenities have been considered in my assessment of general damages.

General Damages

34. The Tenant is seeking \$34,224.00 in general compensation. General compensation is intended to capture the intangible losses suffered by the illegal eviction. The Tenant's evidence was that the eviction had a significant impact on her. She agreed, in cross-examination, that she signed a new lease very quickly after receiving the N12. This was because the price was affordable, and she was worried about being priced out of a very competitive market.
35. However, her new rental unit does not offer many of the amenities she had at her previous unit. The new rental unit is the main floor of a 100-year-old house. The Tenant no longer has underground parking and has to plan ahead to purchase city parking permits. She does not have a den, balcony, air conditioning, or in-suite laundry, and estimates the rental unit to be about 20 – 25% smaller than her old rental unit.
36. The Tenant used the exercise facilities regularly at the condominium building, including fitness classes, and the hot tub, but these services are no longer closer or convenient. Before she was able to walk to almost everything she needed, for example groceries, but cannot in the new unit. The Tenant recalled being able to walk to see a Blue Jays game or go to the theatre. Now she must drive. Her daily commute to work is now twenty minutes longer each way because of the traffic from her new residence.
37. The Tenant reports the most significant detriment to her well-being was losing her social circle which she had at the old rental unit during a very difficult time. Not only did she lose her housing during the Covid-19 pandemic, she was providing care to her mother during a terminal illness.
38. In cross-examination, the Tenant was asked about her utility bills, because she had brought up during her in-chief that she pays for electricity, but not for water. However, I did not find this to be an illustrative line of questioning because the Tenant did not make a claim for electricity expenses, and her testimony did not focus on this. Rather, it was a

passing reference and not material to my findings, although the Tenant did indicate she pays slightly more for utilities now than she did before.

39. The Landlord submits the Tenant should not be reimbursed for the dishwasher, because it was the Tenant's choice to select a rental unit without the same amenities. I agree the Tenant selected a rental unit with a great deal fewer amenities than she had, and I also find that the Tenant did so to limit her ongoing financial risks. In my view, the Tenant could have selected a rental unit with more included features such as she had before, and it is equally as likely the monthly rent would have been significantly higher. This is demonstrated by the increase the Landlord herself charged for the Tenant's former unit. Had the Tenant done so, the Tenant would have been able to claim all of that as rent differential. However, since the Tenant did not, the claim is limited almost entirely to general compensation.
40. Although the guidance in *Offredi v. 751768 Ontario Ltd.*,² pertains to a lack of maintenance which constituted substantial interference with the tenants' reasonable enjoyment, I find the Divisional Court's guidance useful regardless.

[15] It is well recognized in the authorities that there is no neat formula for determining an appropriate amount by way of abatement. In other words slide rule precision is not possible. (...) The ultimate objective is to set an amount that is fair in all the circumstances.

41. When I consider the impact, this move had on the Tenant during a very stressful and emotional time in her life, the loss of the amenities, smaller rental unit, increase to commute time, and the loss of community, I am of the view the appropriate remedy is \$25,000.00. This award is in keeping with other orders of this Board (See *Adapa v Singh*, 2026 ONLTB 7310).
42. The Tenant also argued that the Landlord should not be allowed to profit from the eviction and seeks the "income" which was over and above the old rent as part of the damages and seeks restitution. In support of this argument, the Tenant submitted an excerpt from *Minas v. Adler*³, par. 66. I am not of the view that the excerpt provided supports the Tenant's position. The case of *Minas* is about the proposition of whether a tenant can be ordered back into possession in the situation where a new tenant is now occupying the rental unit.
43. The Landlord also submitted an excerpt from *Atlantic Lottery Corp. Inc. v. Babstock*⁴, at par. 23, which states (in-part): "restitution is the law's remedial answer to circumstances in which a benefit moves from the plaintiff to the defendant, and the defendant is compelled to restore that benefit." However, I find the head of damages claimed, that being restitution or "disgorgement" is not a head of damages found within the framework of the Act. I do agree that the Board has the jurisdiction to award "any other order that the Board considers appropriate."

² *Offredi v. 751768 Ontario Ltd.*, 1994 CanLII 11006 (ON SCDC)

³ *Minas v. Adler*, 2022 ONSC 6706 (Div. Ct.)

⁴ *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19

44. The case of *Pettkus v. Becker*⁵, pertained to a matrimonial matter, but the Supreme Court of Canada provides guidance on the application of restitution to matters at hand, stating:

“It is not enough for the court simply to determine that one spouse has benefited at the hands of another and then to require restitution. It must, in addition, be evident that the retention of the benefit would be “unjust” in the circumstances of the case.”

45. I am not of the view that the retention of the benefit by the Landlord is unjust in this case. The quantum of the award is well over the \$8,400.00 the Tenant claims is the earnings from the new rent after the Tenant vacated. In effect, the extra income has been accounted for in the general compensation. Further, the Act is remedial and intended to put the Tenant back in the position she would have been had the unlawful eviction not taken place, not put the Tenant in an advantageous or greater position than that been if not for the unlawful eviction.

Administrative Fine

46. The Tenant also seeks an administrative fine to the maximum jurisdiction of the Board.

47. The Board's Guideline 16 speaks to the situations in which a fine can be administered and refers to the member considering the nature and severity of the breach, the effect the breach had on the Tenant, and any other relevant factors. It goes on to state that “An administrative fine is a remedy to be used by the Board to encourage compliance with the *Residential Tenancies Act, 2006* (the “RTA”), and to deter landlords from engaging in similar activity in the future. This remedy is not normally imposed unless a landlord **has shown a blatant disregard for the RTA and other remedies will not provide adequate deterrence and compliance**. Administrative fines and rent abatements serve different purposes. Unlike a fine, a rent abatement is intended to compensate a tenant for a contravention of a tenant's rights or a breach of the landlord's obligations.”

[Emphasis added]

48. I am not persuaded that a Board administrative fine is necessary in these circumstances. I am not satisfied that the Landlord's behaviour meets the test of “blatant disregard for the RTA”. Although I do find that the breach was serious and had a significant impact on the Tenant, I am of the view that the remedy awarded sufficiently addresses future deterrence and compliance with the Act.

49. The Tenant paid \$48.00 to file the application is entitled to reimbursement of this fee.

50. I have considered all of the evidence presented at the hearing and all of the oral testimony, and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.

51. This order contains all of the reasons within it. No further reasons shall issue.

⁵ *Pettkus v. Becker*, 1980 CanLII 22 (SCC), [1980] 2 SCR 834

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$25,443.50. This amount represents:
 - \$395.50 for out-of-pocket expenses for moving;
 - \$25,000.00 for general compensation; and,
 - \$48.00 for the cost of filing this application.
2. The Landlord shall pay the Tenant the full amount owing by June 21, 2026.
3. If the Landlord does not pay the Tenant the full amount owing by June 21, 2026, the Landlord will owe interest. This will be simple interest calculated from June 22, 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.

June 10, 2026
Date Issued

Jane Dean
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.