



Order under Section 57 Residential Tenancies Act, 2006

Citation: McMinn v Pupavac, 2026 ONLTB 47373

Date: 2026-06-19

File Number: LTB-T-091269-25

In the matter of: 331, 150 LOGAN AVE
TORONTO ON M4M0E4

Between: Luke McMinn
Jeannene Rumball Tenants

And

Momcilo Pupavac Landlord

Luke McMinn and Jeannene Rumball (the 'Tenants') applied for an order determining that Momcilo Pupavac (the 'Landlords') gave a notice of termination in bad faith.

This application was heard by videoconference on May 19, 2026.

The Landlord and the Tenants attended the hearing.

Determinations:

Amendment to Application

1. At the commencement of the hearing the Tenants sought to amend the application to reflect Momcilo Pupavac as the Landlord in accordance with an amended application previously filed with the Board and not Baytree Property Management. This amendment was on consent.

T5 Application

2. As explained below, the Tenants did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.
3. On or about July 31, 2025 the Landlord served the Tenants with an N12 Notice of Termination ("N12"). The N12 states that the Landlord in good faith, required possession of the rental unit for their own use for the purpose of residential occupation for a period of at least one year.

4. Pursuant to section 57(1) of the *Residential Tenancies Act, 2006* (the "Act"), the Board may make an order against a landlord if, on application by a former tenant of a rental unit, the Board determines that, the landlord gave a notice of termination under section 48 in bad faith, the former tenant vacated the rental unit as a result of the notice or as a result of an application to or order made by the Board based on the notice, and no person referred to in clause 48 (1) (a), (b), (c) or (d) occupied the rental unit within a reasonable time after the former tenant vacated the rental unit.
5. Subsection 57(1)(a) of 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 Tenants vacated; and
 - The Landlord served the N12 notice of termination in bad faith.
6. In this case, it is undisputed that the Landlord gave the Tenants an N12 and that the Tenants vacated the rental unit on September 29, 2025 as a result of the N12 served by the Landlord.
7. With respect to the issue of bad faith, subsections 57(5) and 57(6) of the Act establish a rebuttable presumption of bad faith on the following ground:

57(5) For the purposes of an application under clause (1)(a) and (c), it is presumed, unless the contrary is proven on a balance of probabilities, that a landlord gave a notice of termination under section 48 in bad faith, if at any time during the period described in subsection (6) the landlord,
(c) advertises the rental unit, or building that contains the rental unit, for sale;...

57(6) The period referred to in subsection (5) is the period that,
(a) begins on the day the landlord gives the notice of termination under section 48;
and
(b) ends one year after the former tenant vacates the rental unit.
8. In other words, if section 57(5) of the Act applies, the burden falls on the Landlord to establish that they did not serve the N12 in bad faith.
9. In this case it was undisputed that the rental unit was advertised for sale in late October, 2025, a month after the Tenants vacated the rental unit. Based on the evidence before me and the Landlord's admission of the rental unit being advertised for sale, I find that the presumption of bad faith under section 57(5) of the Act is engaged for this application. Therefore, the Landlord is required to prove their good faith on a balance of probabilities for the N12 served on the Tenants.

DOES THE LANDLORD'S EVIDENCE ESTABLISH IT IS MORE LIKELY THAN NOT THE N12 WAS SERVED IN GOOD FAITH?

10. The Landlord testified that he is 75 years old and is on a fixed income. He was suffering financially. To alleviate his financial distress he had decided to sell his primary residence and move into the rental unit. He listed his primary residence for sale in June, 2025, and subsequently served the Tenants with an N12 for the rental property.
11. The Landlord further testified that after the Tenants vacated the rental unit, the Landlord's financial issues continued and were exacerbated by the lack of a rental income, due to the Tenant's vacating the rental unit. Additionally his primary residence hadn't yet sold. Due to his dire financial circumstances the Landlord also listed the rental property for sale to see which property would sell first to address his financial burden.
12. The Landlord states that the rental property was only listed for sale for 11 days before the listing was cancelled. His primary residence eventually sold and he moved into the rental unit on December 10, 2025 where he still resides.

Analysis

13. Based on the evidence before me I find that the Landlord did not act in bad faith when he served the N12 on the Tenants. The evidence established that at the time the Landlord gave the Tenants the N12, he genuinely intended to move into the rental unit due to financial issues he was dealing with.
14. I therefore find that the Landlord rebutted the presumption of bad faith and additionally that the Tenants did not prove, on a balance of probabilities, that the Landlord served the N12 in bad faith.
15. Additionally, the Landlord moved into the rental unit within a reasonable time, being a little over two months after the Tenants vacated the rental unit. After his primary residence sold.
16. As such, the Tenants have failed to establish each part of the test contained in section 57(1)(a) of the Act, and the application must be dismissed.

It is ordered that:

1. The Tenants' application is dismissed.

June 19, 2026
Date Issued

Sean Ramage
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.