



Order under Section 57 Residential Tenancies Act, 2006

Citation: Keaney v Remax Realty A Team, 2026 ONLTB 47900

Date: 2026-06-24

File Number: LTB-T-031606-24

In the matter of: Unit 7, 126 BELMONT DR
LONDON ON N6J4W1

Between: John Keaney Tenants
Kelly Keaney

And

Heather Gunn Landlord

John Keaney and Kelly Keaney (the 'Tenants') applied for an order determining that Heather Gunn (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on November 21, 2024 and concluded on June 16, 2026.

The Landlord, the Landlord's Legal Representative, Timothy Mobberley, and the Tenants attended the hearing.

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.

Determinations:

Preliminary Issue: Amending the Application

1. At the November 21, 2024 hearing, the parties requested on consent to remove "Remax Realty A Team" ("Remax") as a named Landlord on the application. Remax is the Landlord's former employer, and the rental unit is owned solely by the Landlord, Heather Gunn. Having considered the parties' submissions, I found it appropriate to grant the request under Rule 15.4 of the Board's Rules of Procedure. The amendment is therefore reflected in the style of cause of this order.

T5 Application:

2. As explained below, the Tenants proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenants **\$11,693.04**, inclusive of the cost of filing the application.
3. Subsection 57(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') requires the Tenants to prove each of the following on a balance of probabilities:
 1. The Landlord gave the Tenants an N12 notice of termination under section 48 of the Act;
 2. The Tenants vacated the rental unit as a result of the N12 notice of termination;
 3. No person referred to in subsection 48(1) of the Act occupied the rental unit within a reasonable time after the Tenants vacated; and
 4. The Landlord served the N12 notice of termination in bad faith.
4. The rental unit is described as a two-story townhouse with basement containing three bedrooms and one-and-a-half bathrooms.
5. The parties do not dispute that the Landlord gave the Tenants a N12 notice with a termination date of June 30, 2022. The Landlord subsequently filed a L2 application that was granted via Board order on March 21, 2023 (LTB-L-035123-22). The Tenants were to vacate the unit by June 30, 2023, though they did not actually vacate until July 31, 2023. The intended occupant of the rental unit was to be the Landlord's son, Bryce Faulds ('BF'). The parties do not dispute that BF did not move into the rental unit after the Tenants vacated. Therefore, I am satisfied that the first three parts of the test under subsection 57(1)(a) have been met. The issue then turns to whether the Landlord served the N12 notice in bad faith.
6. The Landlord testified that BF was initially to move into the rental unit with two of his friends as roommates who would then pay rent to BF. However, by the time the L2 application was heard and an order issued, BF's intended roommates decided not to move into the unit. The parties do not dispute that, instead, the Landlord secured the daughter of a family friend to occupy the unit with her family. The new occupants moved into the unit on or about August 20, 2023 and paid \$2,000.00 in rent to the Landlord each month until they vacated on or around June 30, 2024. The Landlord classifies the new occupants as BF's roommates, whereas the Tenants submit the Landlord entered into a new tenancy agreement immediately after they vacated the unit.
7. Subsection 57(5) of the Act states:

For the purposes of an application under clause (1)(a), 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,

- (a) advertises the rental unit for rent;
- (b) enters into a tenancy agreement in respect of the rental unit with someone other than the former tenant;**
- (c) advertises the rental unit, or the building that contains the rental unit, for sale;
- (d) demolishes the rental unit or the building containing the rental unit; or

(e) takes any step to convert the rental unit, or the building containing the rental unit, to use for a purpose other than residential premises.

[Emphasis added]

8. Pursuant to subsection 57(6) of the Act, the period referred to in subsection (5) is the period that begins on the day a landlord gave the notice of termination and ends one year after a tenant vacated the rental unit. The L2 order states that the Landlord gave the N12 notice to the Tenants on April 22, 2022. Therefore, the period under consideration in this instance is April 22, 2022 to July 31, 2024.
9. Given that BF never moved into the unit, I am not satisfied that the new occupants could be considered as “roommates”. Subsection 2(1) of the Act defines a “tenant” to include a person who pays rent in return for the right to occupy a rental unit. The substance of the N12 notice and legislative tests in both subsections 48(1)(c) and 57(1) of the Act are in relation to BF as the Landlord’s son being the intended occupant of the rental unit, not anyone else. It was also not BF who located the new “roommates” but the Landlord herself, and rent was paid by the new occupants to the Landlord directly. Consequently, I am satisfied that the Landlord entered into a tenancy agreement with someone other than the former Tenants; therefore, subsection 57(5) of the Act applies, and it is for the Landlord to prove on a balance of probabilities that they did not give a notice of termination under section 48 in bad faith.
10. The Landlord testified that she began renovating the basement of the rental unit in August 2023 in order for her son to move in. BF’s roommates would reside on the main and second floors, and BF would live in the basement. A bathroom and bedroom were added to the basement, and the renovations were completed by the end of October 2023. The new tenants were living in the upper part of the unit while the renovations were ongoing.
11. The Landlord further testified that BF was to move into the unit around November 1, 2023; however, on October 27, 2023, he was physically assaulted at a Halloween party that took place at the Landlord’s residence while she was not present. BF’s jaw was broken and several of his teeth had been knocked out. A few days after the incident, BF moved into his father’s house instead without telling the Landlord. BF no longer felt safe living in the home where he was assaulted, nor did he want to live with people in the rental unit who were essentially strangers. The Landlord submitted a sworn statement by BF into evidence that reiterated her statements.
12. The Landlord testified that once she became aware that BF no longer intended to move into the unit, she decided to sell her home and move in instead. She updated the new tenants in the unit on the situation and then took the winter to prepare her home for sale. The home was listed in the spring and sold on or around May 16, 2024. The new tenants vacated the unit by June 30, 2024, and the Landlord and her two daughters moved in on August 13, 2024. The Landlord lived in the unit until September 26, 2025, a total of approximately 13 months, after which she moved into the new home she purchased.
13. The Landlord emphasized that there was an unfortunate change in circumstances that resulted in her son not moving into the unit, though there was a genuine intention for him to do so up until he was assaulted. When the plans changed, the Landlord took steps to

mitigate the issue and act in her best financial interests by moving into the property herself with her two other children, thereby also complying with the intended spirit of the Act.

14. The Tenants reiterated that the Landlord immediately re-rented the unit for a higher rent within 20 days of them vacating. BF never moved into the unit, and the Landlord did not move into the unit herself until over a year later, which is far beyond the “reasonable time” contemplated in subsection 57(1)(a) of the Act.

Analysis:

15. The Ontario Divisional Court in *Beljinac v. Salter* 2001 CanLII 40231 (ON SCDC), [2001] O.J. No. 2792 (Div. Ct.), referring to Justice Steele’s reasons in *Feeney v. Noble* (1994), 19, O.R. (3d) (Div. Ct.), stated that: “...the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the landlord’s proposal.” Moreover, in *Kennealy v. Dunne*, the English Court of Appeal pronounced that a landlord need only establish a bona fide wanted and immediate intention to occupy the premises as a residence.
16. Here, the Landlord must prove that at the time the notice of termination was served to the Tenants, her son had a genuine intention to move into the rental unit after the Tenants vacated and remain there for at least one year. However, I may also take into consideration that bad faith is not confined to the moment in time when a landlord gives a tenant the notice of termination (see *TST-94914-18* and *TST-87742-17-RV*). I may take into account events during the notice period up until the date the Tenants vacated the unit.
17. While the Landlord emphasized that she and her daughters occupied the unit after BF informed her that he would no longer be moving in, the Landlord did not do so until over a year after the Tenants had vacated the unit. Regardless, the intended occupant listed on the N12 was BF, not the Landlord, as evidenced by BF’s sworn declaration that accompanied the L2 application; therefore, the focus of the analysis remains the change in circumstances for BF between the date the N12 notice was served and when the Tenants vacated the unit.
18. The Landlord testified that the original plan was for BF to move into the unit with his two friends as there were three bedrooms in the unit. However, neither the L2 order nor BF’s declaration in support of the N12 makes any reference to him intending to live with anyone else in the unit; this was only brought to light once the Tenants’ application was filed. The Landlord also stated that the basement underwent extensive renovations so BF could live on that floor, however, it was not clear why that was necessary as there were already three bedrooms in the unit and only three people (including BF) who were to move in. Furthermore, neither of BF’s two friends provided evidence about when they notified BF or the Landlord about not moving into the unit, and no timeline was provided besides to say that too much time had passed after the original N12 notice termination date of June 30, 2022. Without this additional evidence, the Landlord has not shown a clear timeline of when plans first started to change after the N12 notice was served and before the Tenants vacated the unit.

19. BF also did not testify to provide more details as to why he needed two roommates in the first place, what other attempts he made to find other roommates once his friends said they would no longer be moving in, or why he himself did not move into the unit right after the Tenants vacated when there were three available bedrooms. Although a sworn statement by BF was submitted as evidence, this did not address the aforementioned issues and could not be cross-examined regardless, thereby carrying less evidentiary weight. BF's testimony, as the intended occupant, would have been crucial to providing this missing information regarding his change in circumstances.
20. Given the above issues and the application of subsection 57(5) of the Act placing the burden of proof onto the Landlord, I am not satisfied on the balance of probabilities that the Landlord has shown that the N12 notice of termination was served in good faith. Therefore, the legal test in subsection 57(1)(a) of the Act has been met, and the Tenant's application is granted.

Remedies

21. The Tenants submitted a copy of the rental agreement for their new residence that commenced on August 1, 2023 as evidence. The parties do not dispute the rent difference between the old unit and new unit being \$931.67 per month. However, the Landlord's Legal Representative argued that as there was an additional third tenant named in the new lease, the Tenants seek to claim rent difference for a larger unit contrary to the intent of the remedy in the Act. The Tenants maintained that the new unit is a smaller three-bedroom unit in a semi-detached house as opposed to a townhouse. The Tenants had space for two cars at the old unit, whereas the new unit only has a single-lane driveway.
22. Regardless of whether a third tenant was added to the new rental agreement, I am satisfied that the new unit is of a comparable size given that it contains the same number of bedrooms as the old unit. Therefore, I find that the Landlord must pay the Tenants \$11,180.04 ($\931.67×12 months) for the increased rent that the Tenants have incurred or will incur for a one-year period after the Tenants moved out of the rental unit.
23. The Tenants also claimed \$1,244.00 for reasonable out-of-pocket moving, storage and other like expenses they incurred as a result of having to move out of the rental unit. The parties did not dispute that the Tenants incurred \$460.00 for the cost of a moving bin, but the Landlord did challenge the additional \$784.00 for the Tenants' alleged lost wages. The Tenants claimed two days of lost wages, though the Tenant, John Keaney, testified it actually took him seven days to pack the storage bin by himself, as the other Tenant, Kelly Keaney, was unable to physically assist. The Tenants did not provide any supporting documentation to substantiate the cost, which work days were used, and why they had to be used for the moving process. Consequently, I find the additional \$784.00 in costs too remote to claim as a moving expense. Therefore, the Tenants are granted only \$460.00 for reasonable out-of-pocket moving expenses.

It is ordered that:

1. The total amount the Landlord shall pay the Tenants is \$11,693.04. This amount represents:

- \$11,180.04 for increased rent the Tenants have incurred for the one-year period from August 1, 2023 to July 31, 2024.
 - \$460.00 for the reasonable moving, storage and other like expenses that the Tenants have incurred as a result of having to move out of the rental unit.
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenants the full amount owing by July 5, 2026.
 3. If the Landlord does not pay the Tenants the full amount owing by July 5, 2026, the Landlord will owe interest. This will be simple interest calculated from July 6, 2026 at 4.00% annually on the balance outstanding.
 4. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

June 24, 2026
Date Issued

Fotoula Hatzantonis
Member, Landlord and Tenants Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.