



Order under Section 57 Residential Tenancies Act, 2006

Citation: Simoes v DASILVA, 2026 ONLTB 50069

Date: 2026-06-26

File Number: LTB-T-014090-26

In the matter of: 2ND FLOOR, 138 DAY AVE
YORK ON M6E3W3

Between: Suzana Simoes Tenant

And

Agostinho Dasilva Landlords
Carla Dasilva

Suzana Simoes (the 'Tenant') applied for an order determining that Agostinho Dasilva and Carla Dasilva (the 'Landlords') gave a notice of termination in bad faith.

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

The Landlords, the Landlords' Legal Representative Maria Sturino, the Tenant and the Tenant's Legal Representative Samila Waslat 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. 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.
3. The Landlords served an N12 notice of termination on the Tenant, which stated that the Landlords' child in good faith, required possession of the rental unit for the purpose of residential occupation for a period of at least one year. The N12 notice of termination contained a termination date of July 31, 2024.

4. It is undisputed that the Tenant vacated the rental unit on March 31, 2025 pursuant to an Order on consent issued on December 17, 2024 in relation to the Landlords' L2 application based on the N12 notice of termination.
5. It is further undisputed that the Landlord's son Daniel Dasilva did not move into the rental unit.
6. The Tenant submits that the Landlords' application was brought in bad faith as the Landlords' son did not move into the rental unit as indicated on the Landlords' N12 notice of termination and supporting declaration.
7. On an application to the Board, the person who alleges a particular event occurred has the burden of proof to establish that it is more likely than not that their version of events is true. In this application, the burden typically falls on the Tenant to establish that the notice of termination was served in bad faith.
8. However, the Landlord Carla Dasilva testified that the Landlords entered into a new tenancy agreement with their son's girlfriend and her mother within one year of the Tenant vacating the rental unit, creating a rebuttable presumption that the Landlords served the N12 notice in bad faith. In other words, in this case, the burden falls on the Landlords to establish that they served the N12 in good faith.

Rebuttable Presumption of Bad Faith

9. Section 57(5) and 57(6) establish a rebuttable presumption of bad faith on the following ground:

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,

(b) enters into a tenancy agreement in respect of the rental unit with someone other than the former tenant...

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.

10. The rebuttable presumption is engaged as the Landlords admitted to entering into a tenancy agreement with their son's girlfriend and mother.
11. The Landlords dispute that the N12 Notice was served in bad faith as the Landlord Carla Dasilva testified that her son did not move into the rental unit after the Tenant vacated due

to an unforeseen change of circumstances that led to the rental unit being rented to someone other than the former tenant.

12. The Landlord Carla Dasilva testified that after the Tenant vacated the rental unit the Landlords planned to perform some repairs to the rental unit including painting, and replacing the appliances and carpeting prior to their son Daniel moving in. The Landlords anticipated these repairs would take approximately 2 months to complete.
13. She further testified that late in the evening on April 21, 2025 Daniel collapsed and was taken to a hospital where it was determined that as a result of a hole in Daniel's heart a blood clot travelled to his brain causing him to suffer a stroke. The Landlords provided medical documentation in support of Daniels medical episode.
14. Both Daniel Dasilva and Carla Dasilva testified that after Daniel was discharged from the hospital on April 29, 2025 he had multiple follow-up appointments, and required assistance as he could no longer manipulate stairs independently, operate a motor vehicle or live independently until he had fully recovered.
15. Daniel provided testimony that he did intend to move into the rental unit to get some independence as he was residing with his parents prior to suffering a stroke.
16. Daniel further testified that he currently resides with his mother as his parents have separated. He states that the stroke has affected him physically and mentally including loss of motor function, memory loss and sleep issues and that he still does not feel comfortable residing on his own.
17. The Landlords did not notify the Tenant that Daniel didn't move into the rental unit after suffering the stroke as they were still hopefully that he would be able to in time.
18. The Landlords rented the rental unit to Daniel's girlfriend and her mother in the fall of 2025 after it was apparent that Daniel was not in a position to move in.
19. The Tenant questions Daniel's condition after the stroke as the Landlords went on a vacation to Portugal from July to September leaving Daniel behind.
20. The Landlords testified that the vacation was booked prior to Daniel's medical episode and they contemplated cancelling, but they had to deal with personal matters in Portugal and decided to still go as they felt comfortable leaving Daniel in the care of his brother who is a medical doctor.

Analysis

21. I find on the basis of the Landlords' testimony and evidence submitted have rebutted the presumption of bad faith and that they did serve the N12 notice in good faith. In other words, the evidence establishes that at the time the Landlord gave the Tenant the N12, their son genuinely wanted to move into the rental unit for independence. This was supported by the L2 application the Landlords filed which was resolved on consent.
22. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is genuine intention to occupy the premises and not the reasonableness of the Landlord's proposal. This principle was upheld in *Salter v. Beljinac* 2001 CanLII 40231 (ON SCDC),

where the Court held that the “good faith” requirement simply means that the Landlord sincerely intends to occupy the rental unit. The Landlord may also have additional motives for selecting a particular rental unit, but this does not affect the good faith of the Landlord’s notice.”

23. I also agree with the following statement from the Board’s order TST-87742-17RV, which states: “the Landlord’s obligation to act in good faith extends beyond the time the notice of termination is served”. I take this statement to mean that bad faith is not confined to the moment in time when a landlord gives a tenant an N12 Notice. I find that bad faith can extend to the period between when the N12 Notice was given, and the time when a tenant moves out.
24. In many other cases, the Board has found that an unforeseen change in circumstances that results in the person listed in the N12 Notice being unable to occupy the rental unit does not constitute bad faith (see, for example, TST-66921-15, TST-87559-17, TST80046-16). I agree that this is a case where an unforeseen change of circumstances resulted in the Landlords’ son Daniel Dasilva failing to take occupancy of the rental unit. This change of circumstances was as a result of the Landlords’ son suffering a stroke and resulting limitations after the Tenant vacated the rental unit. I am satisfied that the Landlords did not foresee this happening when they served the N12 Notice.
25. In my view, the Landlords delivered the N12 notice in good faith, and the Landlords’ son genuinely wanted move in and remain in the unit for residential occupation for at least one year, and was unable to do so due to unforeseen circumstances. As a result this application must be dismissed.

It is ordered that:

1. The Tenant’s application is dismissed.

June 26, 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.