



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

File Number: LTB-T-095420-25

In the matter of: BSMT/LOWER UNIT, 4 ALBERT STREET
LANGTON ON N0E1G0

Between: Stan Butler
Carrie Butler
Tenants

And

Shane Jackson McCartney
Landlord

Stan Butler and Carrie Butler (the 'Tenants') applied for an order determining that Shane Jackson McCartney (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on June 5, 2026.

The Landlord, the Landlord's Legal Representative, Lisa Barber, the Tenants, and the Tenants' Legal Representative, Joseph Kazubek, attended the hearing.

Determinations:

1. For the reasons set out below, I find the Tenants did not prove the allegations contained in the application on a balance of probabilities. Therefore, the Tenants' application is dismissed.

Preliminary Issues:

2. At the outset of the hearing, the Landlord's Legal Representative objected to the fact that the Tenant, Carrie Butler, had named herself as a Tenant on the tenancy agreement. The Landlord's Legal Representative relied upon the Lease Agreement found under Tab 1 in DOCUMENT ID 7848416, Exhibit 1. This Lease Agreement signed in December 2018 only names Stan Butler as the Tenant.

3. Furthermore, the Landlord's Legal Representative submitted that she had previously sent correspondence to the Tenant, as well as the Tenant's former Legal Representative, stating very clearly, and I quote: "that Ms. Carrie Butler is not a tenant on the lease and the Landlord will not accept rent payments or instructions from her or any other occupant of the rental unit. Moreover, the landlord will not communicate with her or any other occupant of the rental unit directly about tenancy matters. All requests for maintenance and all rent payments must be made directly by you, should Ms. Butler continue to attempt to interject herself onto the landlord as a tenant that interaction will be met with total rejection and denial."
4. The Landlord's Legal Representative submitted that Carrie Butler was previously a tenant in one of the Landlord's other units in the residential complex. She was evicted from that unit, after which at some point, she began to live in the basement unit, which was rented by her father, the named Tenant, in the Lease Agreement. Exhibit 1 shows that she attempted to pay the rent owed for the rental unit directly to the Landlord and communicate with him with respect to maintenance and other issues, from October 2022.
5. The Landlord's Legal Representative also submitted that on all applications and Orders issued by the Landlord and Tenant Board with respect to this rental unit only name Stan Butler as the Tenant and that Carrie Butler has not been named as a Tenant in any of the pleadings or Orders.
6. The Landlord's Legal Representative also referred to an email exchange in Exhibit 1, between herself and the Tenants' former Legal Representative, Kimberley Farrell, where Kimberly confirmed in writing that "Carrie Butler is an authorized agent of Stan Butler and will be acting on her father's behalf for ALL issues moving forward, including sending the rent."
7. Subsection 103(2) of the *Residential Tenancies Act, 2006* states:

103(2) A landlord does not create a tenancy with an unauthorized occupant of a rental unit by accepting compensation for the use and occupation of the rental unit, unless the landlord and unauthorized occupant agree otherwise.
8. However, the Tenants' Legal Representative disputed this under subsection 104(4) of the Act. Subsection 104(4) of the Act states:

104(4) A person's occupation of a rental unit shall be deemed to be an assignment of the rental unit with the consent of the landlord as of the date the unauthorized occupancy began if,

- a) a tenancy agreement is not entered into under subsection (1) or (2) within the period set out in subsection (3);
- b) the landlord does not apply to the Board under section 100 for an order evicting the person within 60 days of the landlord discovering the unauthorized occupancy; and
- c) neither the landlord nor the tenant applies to the Board under section 101 within 60 days after the end of the subtenancy for an order evicting the subtenant.

9. No evidence was provided by either party that an application for eviction for unauthorized occupancy of the Carrie Butler, had been brought before the Board. Therefore, by virtue of s. 104(4) of the Act I find Carrie Butler to have been a valid Tenant in the rental unit.
10. An issue was raised by the Landlord's Legal Representative, who indicated she had not been served with the Tenant's Evidence Brief. A review of the Tribunals Ontario Portal ("TOP") confirmed that no such brief had been uploaded. Following a brief recess, the Tenant's Legal Representative uploaded two Evidence Briefs (Document IDs 8103674 and 8103696). Upon further review, the Landlord's Legal Representative confirmed receipt of the brief identified as Document ID 8103674, which has been admitted into evidence as Exhibit 2. As there is no evidence that she or the Landlord were served with the brief identified as Document ID 8103696, that document is not admitted into evidence.

Relevant Law, Burden of Proof and Admissions

11. On an application for service of a N12 Notice of Termination for landlord's own use in bad faith, subsection 57(1)(a) of the Act requires a tenant to prove each of the following on a balance of probabilities:
 - a) The Landlord gave the Tenants an N12 Notice of Termination under section 48 of the Act;
 - b) The Tenants vacated the rental unit as a result of the N12 Notice of Termination;
 - c) No person referred to in subsection 48(1) of the Act occupied the rental unit within a reasonable time after the Tenants vacated; and
 - d) The Landlord served the N21 Notice of Termination in bad faith.
12. The parties agree the Landlord gave the Tenant, Stan Butler, an N12 Notice on May 1, 2022, with a termination date of July 31, 2022.
13. However, the Tenants vacated the unit or around November 15, 2024. The Sheriff's notice of vacant possession dated December 6, 2024, has been provided in page 25 of DOCUMENT ID 784816 and has been admitted into evidence as Exhibit 3. The Landlord testified that the Tenants never returned the keys of the rental unit to him.
14. The initial application brought by the Landlord to pertaining to the N12 Notice was resolved by Order LTB-L-027125-22 issued on March 20, 2024.
15. After the Order was issued, the Tenant, Stan Butler, requested a review of it and that the Order be stayed until the request to review the Order is resolved. On June 17, 2024, Interim Order LTB-L-027125-22-RV-IN was issued, staying the Order issued on March 20, 2024.
16. The review request was heard on August 1, 2024, during which the parties mutually agreed to resolve all matters at issue in the application and requested an Order on consent. On consent of the parties, it was ordered that:

- Order LTB-L-027125-22-RV-IN be cancelled and the stay of Order LTB-L-027125-22 be lifted immediately;
 - Order LTB-L-027125-22 issued on March 20, 2024, be cancelled and replaced with the Order issued on August 21, 2024; and
 - The tenancy between the Landlord and Tenant be terminated and the Tenant must move out of the rental unit by November 15, 2024.
17. When the N12 Notice was served on the Tenant, Stan Butler, it identified the Landlord as the intended occupant of the rental unit. It was not denied at the hearing that the Landlord failed to move into the rental unit after the eviction of Stan Butler.
18. Consequently, I find this cannot satisfy the requirement that an individual indicated on the N12 Notice must have moved into the rental unit within a reasonable time after the Tenants vacated.
19. What remains disputed is whether the N12 Notice was served in bad faith.
20. Section 57(5) of the Act provides that if after a N12 Notice is given and within 12 months of the tenant vacating a landlord advertises the rental unit for sale (among other activities) then, unless the contrary is proven on a balance of probabilities, it is presumed that the Landlord served the N12 Notice in bad faith.
21. I find the evidence of the parties accorded insofar as the rental unit was listed for sale within one year of the time the Tenants vacated. As a result, it is the Landlord who bears the burden of demonstrating they genuinely intended to occupy the rental unit for a period of at least one year.

The Landlord did not serve the N12 Notice in bad faith:

22. The Landlord had initially purchased a restaurant with a capacity to seat around 100 people, a few years ago. Along with the restaurant came a 2-bedroom residential unit and a 3-bedroom basement unit and the Landlord owns this entire complex. The Landlord's intention was always to live in the rental unit at some point.
23. The Landlord's position in essence is that he intended to move into the rental unit, acted in accordance with his intention, that circumstances prevented him from moving immediately and that it was only after increased financial pressures that he decided to sell the property.
24. The Tenants' position is that the Landlord never intended to move into the rental unit and that he wished to evict the Tenants, so that he could sell the property and maximise his profits. The Landlord already has a much larger home and so there was no need to evict the Tenants and sell the rental unit.
25. The Landlord did not dispute that he owns a house, but he genuinely wanted to move into the rental unit as he wanted to live in the same complex as his restaurant.

26. The Tenants' Legal Representative submitted that the rental unit was listed for sale on multiple occasions and evidence of the listings have been provided on pages 45 to 61 of Exhibit 2. These listings are dated April 11, 2025, and November 11, 2025, respectively in the Exhibit. Furthermore, the second listing shows that there was a price reduction of \$100,000 from the original listing price. As of today, the Tenants' Legal Representative submitted that the rental unit is still listed for sale with another price reduction.
27. As the rental unit was listed for sale in less than 12 months from the eviction date, there is automatically a presumption of bad faith on the Landlord, which now needs to be explored further.
28. The Landlord testified that he purchased the residential complex together with the restaurant and after some time, he decided it would be better for him if he moved into the rental unit so that he could run his restaurant and be close to it. Hence, he served the N12 Notice in May 2022.
29. Once the Landlord was in receipt of the Sheriff's notice of vacant possession, he began renovations on the rental unit around December 15, 2024. The Landlord testified the Tenants had damaged the rental unit and left a lot of garbage behind. In order to be able to move into the rental unit, the Landlord needed to have the damages, as evidenced on pages 34-39 of Exhibit 1, repaired. Receipts for the renovations and repairs were not provided to the Tenants nor the Board.
30. The Tenants disputed the Landlord's claims that extensive repairs and renovations had taken place in the rental unit and referred to pages 50 and 51 of Exhibit 2.
31. The Landlord testified that the repairs and renovations were carried out in the basement unit, which is the rental unit, but not in the residential unit upstairs. When asked why the Landlord didn't move into the residential unit whilst the repairs were ongoing in the rental unit, he testified that the residential unit was occupied by his business partner, Connie.
32. The Landlord testified that Connie, although living in the residential unit, is not a tenant and does not pay rent. As a part of her partnership contract with the Landlord, she was able to live in the residential unit without having to pay rent. Even though the restaurant is now closed and they are no longer business partners, Connie currently still lives in the residential unit.
33. However, between the time the N12 Notice was served, and the Tenants vacated the unit, the Landlord testified that he saw a decline in his restaurant business. This decline was most noticeable during the fall of 2024. The restaurant used to have up to 15 employees but during the decline, the Landlord had to let some employees go and work on a reduced staff schedule consisting of 8-10 employees only. No evidence to support this claim was provided by the Landlord.
34. The Landlord testified that in late January 2025, he made the decision not to live in the unit as he ran into financial difficulties and related mortgage issues and had to sell the property. The Landlord testified that he had to put his mortgage payments on hold for

some time as is evidenced in Exhibit 1. Page 27 in Exhibit 1 provides evidence of the Landlord having taken out a second mortgage on the property on or around January 29, 2025. The condition placed on the second mortgage was that the property was to be listed for sale.

35. The Landlord testified that the restaurant closed around the same time the property was listed for sale. The Landlord then worked as a social worker from March 2025 to December 2025.
36. Due to stress, anxiety, the closing down of the restaurant, and this ongoing issue with the Tenants, the Landlord went on sick leave and started receiving Employment Insurance ("EI") payments around January 2026. A statement of receipt of EI payments is provided on page 32 of Exhibit 1. The Landlord is not receiving any other form of income and is presently in the process of applying for Long Term Disability. The Landlord testified he now suffers from anxiety and depression.
37. When questioned by the Tenants' Legal Representative, the Landlord testified that the intention was to sell his "St. Williams" property and move into the rental unit, but because of the financial challenges he faced with the restaurant, he decided to list the rental unit for sale as opposed to the St. Williams property.
38. The Landlord was asked by the Tenants' Legal Representative why, when he knew he was not going to move into the rental unit, he did not offer it back to the Tenants whilst waiting for the property to be sold. Initially, the Landlord did not have a response to this question, but upon further questioning, the Landlord testified that his realtor advised him it would be worthwhile for him to sell the residential complex and the restaurant together as a package as this property is in a secluded location and for a potential restaurant owner, this would be a better sell.
39. The Landlord reiterated he had every intention to move into the rental unit, but due to a change in financial circumstances, he had no choice but close the restaurant down and sell the property in its entirety.

Law and Analysis:

40. I find that there was evidence to support that the Landlord was faced with financial hardship pertaining to the restaurant and that it made practical and financial sense to sell the restaurant with the residential complex as a whole package. I also note that although conduct and motive may be considered as part of the good faith analysis, a landlord's motivations or desire to move into a rental unit for 12 months need not be reasonable and are largely irrelevant – what is required is that the Landlord genuinely intend to live in the property for 12 months; [see *Fava v. Harrison*, 2014 ONSC 3352 (CanLII) at para 17., citing *Salter v. Belijinac*, 2001 CanLII 40231 (ON SCDC)].

41. Further, I find that a deviation or change from a genuine intention to occupy a rental unit for a period of 12 months is insufficient to comply with the Landlord's continuing duty of good faith unless the change takes place after the Tenants vacated.
42. The Tenants' Legal Representative raised that this eviction process was just a means to sell the property and maximise his profits. Had the Landlord's plan been to profit financially, I do not see why he would have let the rental unit sit empty until he found a buyer for it.
43. I am satisfied that the documents submitted by the Landlord's Legal Representative together with the Landlord's credible testimony supports the Landlord's position that he was facing financial constraints and as a result, in these changed circumstances he felt he had no option but to close his restaurant. If the restaurant is closed, then there is no longer any purpose for him to move into the rental unit.
44. The fact that the rental unit is still unoccupied further supports that the Landlord's sole purpose to evict the Tenants was to genuinely occupy the rental unit himself.
45. I find the Landlord has demonstrated it is more likely than not that she genuinely intended to move into the rental unit for a period of one year before the Tenants vacated. I therefore find that, on a balance of probabilities, the Landlord has rebutted the presumption of bad faith and find that the N12 Notice was served in good faith.
46. As a result, the Tenants' application must be dismissed.

It is ordered that:

1. The Tenants' application is dismissed.

June 26, 2026
Date Issued

Farzana Kanji
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.

