



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

**Citation:** Burgess v Rashidkhani, 2024 ONLTB 9302

**Date:** 2024-02-12

**File Number:** LTB-T-067981-22

2024 ONLTB 9302 (CanLII)

**In the matter of:** Upper, 6 Aishford  
Bradford Ontario L3Z3E3

**Between:** Debbie Burgess Tenant

**And**

Manochehr Rashidkhani Purchaser

June Psarros Landlord  
Kris Peterke Landlord

Debbie Burgess (the 'Tenant') applied for an order determining that her landlord, June Psarros and Kris Peterke (the Landlord) gave her a Form N12 Notice to End your Tenancy in bad faith, claiming that the Purchaser, Manochehr Rashidkhani (the Purchaser), or a member of the Purchaser's immediate family, intended to move into the rental unit

This application was heard by videoconference on November 16, 2023.

The Landlord, the Tenant and the Purchaser attended the hearing.

The Tenant was represented by Richard Hissey.  
The Landlord was represented by Matthew Tubie  
The Purchaser was represented by Sassan Emam  
The Purchaser's daughter was a witness, Parna Rashidkhani.  
The Purchaser's Real Estate Agent was a witness, Shawn Ghorbani. Arshia Soleimankhan was the Translator for the Purchaser.

**Determinations:**

1. As explained below, the Tenant has proved the allegations contained in the application on a balance of probabilities, against the Purchaser only.
2. Therefore, the Purchaser must pay a rent differential, rent abatement and costs to the Tenant.

**Background Facts:**

3. The parties did not dispute the following facts.
4. The rental unit is the upper floor of a house in Bradford.
5. The Tenant was a tenant of the Landlord at the rental unit.
6. The tenancy began in 2018.
7. The Landlord and the Purchaser entered into a Sale and Purchase agreement (SPA) for the sale of the house, on August 10, 2021. Closing was set for November 16, 2021. Under the terms of the SAP, the Landlord was required to give vacant possession of the house to the Purchaser upon completion.
8. On August 16, 2021, just 6 days after the SPA was executed, the Landlord served an N12 Notice of Termination (the N12) on the Tenant, claiming that they required vacant possession of the rental unit because the rental unit had been sold, and the Purchaser intended to move into the unit on completion.
9. The N12 had a termination date of October 31, 2021, requiring the Tenant to move out on or before that date.
10. After receiving the N12, the Tenant realised that she had to find a new place to live. Accordingly, she conducted a search for a new residence, and found a place.
11. She signed her new lease on September 2, 2021.
12. She vacated the rental unit and moved into her new place on October 31, 2021, as she did not want to lose the opportunity.
13. There were moving costs associated with the move in the amount of \$1,356.
14. Her rent at the new place was higher, at \$1,700.00/month. Her previous rent at the rental unit had been only \$1,664,63.
15. Whereas she did not have to pay for utilities at the rental unit, she was now required to pay utilities at her new place, resulting in further expenses.

16. After the Tenant moved out of the rental unit, she was told by a former neighbor, that the rental unit was up for lease.
17. She went to the rental unit and took a picture of the for lease sign, as evidence, on November 19, 2021.
18. The rental unit was also up for lease on the internet, with photos of the unit posted, dated 1 December 2021. She took a screen shot of the internet advertisement as further evidence.
19. The Purchaser finally moved into the rental unit in July 2022.
20. The Tenant filed a T5 application, on 26 January 2022, alleging that the landlord served an N12 notice of termination to terminate the tenancy *in bad faith*, because a member of the Purchaser's immediate family intended to move into the rental unit, but did not within a reasonable time.
21. The application was initially brought only against the Purchaser.
22. The Tenant later added the Landlord as a party to these proceedings, after the T5 was filed<sup>1</sup>.

**The Relevant Statutory Provisions:**

23. The Tenant's T5 application is brought pursuant to ss. 57(1)(b) of the *Residential Tenancies Act*, 2006 (the RTA).
24. Subsection 57(1)(b) of the RTA requires the Tenant to prove each of the following, on a balance of probabilities standard, in order to succeed in this application:
  - The Landlord gave the Tenant an N12 notice of termination under section 49 of the RTA;
  - The Tenant vacated the rental unit as a result of the N12 notice of termination;
  - No person referred to in subsection 49(1) or 49(2) of the RTA occupied the rental unit within a reasonable time after the Tenant vacated; and
  - The Landlord served the N12 notice of termination in bad faith.
25. Subsection 49(1) of the RTA is also relevant to this application, which deals with the landlord serving the N12 notice of termination on behalf of the purchaser of the unit, if the purchaser, in good faith requires possession of the residential complex or the unit for the purpose of residential occupation by, in this case, the purchaser or a member of the purchaser's family.

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<sup>1</sup> The amendment was made pursuant to Rule 15.1 of the Rules of Procedure of the Landlord and Tenant Board, on June 20, 2022.

## Recent Jurisprudence from the Ontario Court of Appeal on T5 Applications:

26. These provisions of the RTA have recently been the subject of extensive commentary by the Ontario Court of Appeal in *Elkins v. Van Wissen*, 2023 ONCA 789.

27. In that case, the Court of Appeal dealt with the issue of how the Board is to determine bad faith within the meaning of s. 57(1)(b) when the Landlord serves an N12 on behalf of a purchaser. The Court of Appeal found that:

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- (i) when ss. 49(1) and 57(1)(b) of the RTA are read together, it is clear that the object of those provisions is to prevent the sale of a property from being used to unlawfully evict a tenant;
  - (ii) the Board must consider all the evidence before it that is relevant to the landlord's bad faith under s. 57(1)(b).
  - (iii) it is an error of law for the Board to restrict its consideration to the evidence at the point in time when the landlord gives the tenant a s. 49 termination notice
  - (iv) When deciding a T5 application relating to an N12 served for purchaser's own use, the LTB must consider whether the purchaser "in good faith" required the rental unit for residential occupation. It is insufficient to assess only whether the landlord acted in bad faith in serving the N12.
  - (v) If the LTB finds that the purchaser acted in bad faith where the N12 was served for purchaser's own use, s.57(3)4 of the RTA gives the LTB the power to make an order against the purchaser. Therefore, remedies can be issued against the purchaser alone, the vendor landlord alone or against both depending on who is found to have acted in bad faith.

### *The Correct Approach to this Application, as set out in Elkins:*

28. In my view, adopting the approach set out by the Court of Appeal in *Elkins*, and in applying the test contained in section 57(1)(b), I must consider whether the following facts are proven by the Tenant on a balance of probabilities, by looking at the totality of the evidence relating to the period of time from before the N12 was served, through to the time the Tenant filed this application, with a particular emphasis on any evidence of bad faith by the Landlord or any bad faith by the Purchaser:

- 1) whether the Tenant received an N12 notice of termination under s. 49(1);
- 2) whether the Tenant moved out of the rental unit as a result of the notice;
- 3) whether the notice was given in bad faith, taking into consideration the actions of both the Landlord and the Purchaser, whether jointly or severally;

4) whether the person who was supposed to move into the rental unit (the Purchaser) failed to occupy the unit within a reasonable period of time after the Tenant moved out; and

5) if bad faith is found, should the Landlord or Purchaser be liable for any remedy awarded to the Tenant.

29. In my view, there is no dispute that the Tenant did receive an N12 notice of Termination, nor that the Tenant moved out as a result of the N12. Therefore, this leaves just three questions for consideration.

30. Before addressing these questions, I now turn to the evidence of the parties to this application.

31. I have organised the evidence according to the various time periods, following the guidance provided by the Court of Appeal.

### **The Evidence of the Tenant, Landlord, Purchaser, Purchaser's Realtor and Purchaser's Daughter**

#### *Events before the N12*

32. Events before the N12 was served show the Landlord being alive to the Tenant's issues and needs. For example, the Landlord, Ms. Psarros, cross examined the Tenant on events which occurred prior to the N12 notice, in an attempt to establish context. As noted above, events which happened prior to the N12 must be weighed in the calculus in assessing bad faith.

33. For example, the Tenant was asked whether the Landlord had communicated to the Tenant that they hoped they would be able to find a purchaser who would take the Tenant on. The Tenant agreed. In my view, this demonstrates that the Landlord was sensitive to the Tenant's needs, and wanted to be able facilitate the extension of her tenancy under the Purchaser's assumption of the ownership of the rental unit. The Landlord also kept the Tenant up to date, and told her when the house was listed and sold.

34. Also, the Landlord testified that she spoke to the Tenant at the end of July, before listing the house for sale on 8 August 2021. The Landlord put the Tenant in touch with her real estate agent, Roddie. They wanted a buyer to assume her as a tenant, but did not have control over this. Termination of the lease was not discussed at this time, as the Landlord did not know, at the time of the listing, whether the purchaser would want vacant possession or not. The Landlord gave a reference to the Tenant's new landlord, and she testified that this was before the house was sold.

35. In terms of whether the Landlord acted in bad faith prior to the listing, I find that the Landlord did attempt to look out for the Tenant in the sale of the house. In so finding, I find the Landlord did discharge their duty of due diligence to the Tenant prior to the sale.

*Listing of the house for sale: August 8, 2021*

36. According to the Landlord, she was that told the Purchaser needed vacant possession and this was a term of both the offer to purchase the unit and of the Agreement for Sale and Purchase (ASP). She testified that she was told to serve an N12 because the Purchaser needed vacant possession. She did not specify who told her this, but presumably, it was her realtor Roddie, who told her this as she was professionally represented.
37. The Tenant stated that she started to look for a new place, after she was told by the Landlord in July 2021 that the house would be sold.
38. The house was sold on August 10, 2021. The Tenant testified that she signed her lease with her new landlord on September 2, 2021.
39. I find that the Tenant started to look for a new place before the N12 was served. The reason she started to look was because the Landlord intended to sell the house and told this to the Tenant.
40. The listing and sale of the unit, set in place a chain of events, leading to the service of the N12, which led the Tenant to seek out a new lease and to vacate.
41. As for the Purchaser, at the time of the listing, the Purchaser lived in Aurora with his wife and daughter.
42. The Purchaser testified that at the time of the sale, they planned to move into the rental unit, "100%".
43. The Purchaser was asked at the hearing by his Counsel if anything changed after the sale. He said that due to Covid, his daughter was attending university online. Her plans then changed. She would have to drive to The Ontario College of Art and Design University (OCAD), from Bradford, where the house was, to attend classes in person at OCAD in Toronto.
44. He was paying for rent in Aurora. It was financially stressful to pay the mortgage at the house and the rent in Aurora, at the same time. He testified that two months after closing (around 16 January 2022), their plan to move to the house was delayed, because it would be difficult for his daughter to drive from Bradford to OCAD.
45. I find this testimony does not sit well with the evidence as a whole. He listed the house for lease around November or December 2021. It was leased by December 29, 2021. There was a sign on the property, listing it for lease, as early as November 2021, according to the Tenant. As a result, it could not have been his daughter's change of plans, in January 2021, which led him to put the unit up for lease, because it was already listed by November 2021.

46. His realtor Mr. Ghorbani was also a witness. Mr. Ghorbani testified that his client, the Purchaser, was looking for a place to stay and move in. He was told by the Landlord that the house was available with or without a tenant.
47. He denied that he asked Roddie, the Landlord's realtor, to serve an N12 on the Tenant. He said he was "*surprised that the Tenant was forced out with an N12*" by the Landlord.
48. A few days after the sale was confirmed on August 10, 2021, the Purchaser told Mr. Ghorbani that he might have an issue with his daughter, and he was asked if the Tenant might want to stay longer. Mr. Ghorbani then called Roddie, and asked him to ask the Tenant if she wanted to stay longer. Roddie told him to let him talk to her. A few days later, he called Roddie for news, who told him that it was all arranged and that the Purchaser would get vacant possession as the Tenant was moving out. He said these oral conversations took place about 10 days after the deal was finalised on August 10, 2021.
49. Mr. Ghorbani's evidence appears to be internally inconsistent. If his client, the Purchaser, was looking for a place to stay and move in, why would the APS not provide for vacant possession? If his client wanted to move in, why would he not direct the Landlord to serve an N12, as is required if vacant possession was to be given to the Purchaser? I do not accept that he did not direct Roddie to serve the N12 because I find his own evidence internally inconsistent on this point. I prefer the Landlord's evidence here, that she was directed to serve the N12 on August 16, 2021, because the sale and purchase agreement provided that the Purchaser was to get vacant possession at closing.
50. There was a sudden change in the way the realtors communicated – which seems implausible. The mode of communication between realtors about the alleged offer to allow the Tenant to stay on, was suddenly done verbally. There was evidence of text messages between Roddie and Mr. Ghorbani, and yet, although every other conversation about the sale was by text, this one conversation about the Purchaser wanting the Tenant to stay on was verbal. This does seem somewhat implausible, but I assign little weight to this observation.
51. I asked Mr. Ghorbani if he knew the house was tenanted, and he said the listing said clearly that the unit was tenanted. I then asked him, if he knew that an N12 would be needed to get vacant possession. To this he said that no one told him and he did not know about Debbie, the Tenant, and her situation. All that he knew was that he sent an offer requesting vacant possession. Again, I do not find Mr. Ghorbani to be credible. It makes no sense that he knew the house was tenanted, he knew his client wanted vacant possession at the time of the agreement, yet he did not know an N12 would need to be served. If the house was tenanted, some legal process would be necessary to remove the Tenant. I find that by making an offer with a condition requiring vacation vacant possession, Mr. Ghorbani, by implication, caused the service of the N12 by the Landlord. I find him not credible when he says he did not know about the N12. I accept the Landlord's evidence that she was told at the time of the offer and ASP that she would need to serve an N12.

52. The Purchaser's daughter also testified that it was a change in her circumstances which caused her family not to move in, as they had originally planned. In August 2021, she was a student at OCAD. Her lessons were online, due to the pandemic. This situation remained the same until mid October, 2021. In mid October 2021, she was told her classes would change to in person in downtown Toronto. She testified that this had the result of changing her parent's plan. It would be hard for her to drive from Bradford, where the house was, to downtown Toronto everyday. It would be easier to get on the 404 from Aurora, directly south to the university. She wanted to find a place downtown, to save travelling time. In September 2022, she eventually found a friend who would let her stay with her downtown when she had classes there. Moreover, her family moved to Bradford in July 2022. She had the whole summer of 2022 to find a place downtown, as her classes were suspended during the summer.
53. I accept the evidence of the Purchaser's daughter that she knew, as of October 2021, that her classes would be in person. This is yet another reason to reject Mr. Ghorbani's evidence. He claims he talked to Roddie about the Purchaser's change of plans around the 20<sup>th</sup> August 2021. And yet, the daughter did not know until October 2021, that her classes would change to in person.

*The N12 Notice: August 16, 2021*

54. The Landlord testified that she was told the new Purchaser would reside in the unit.
55. Mr. Ghorbani testified to verbal conversations between himself, and Roddie, some 10 days after the deal was sealed on August 10, 2021. He said he followed up a few days later with Roddie, who told him he had not heard from the Tenant, and that she was already gone. This does not sit with the rest of the evidence. The Tenant did not vacate until October 31, 2021. She did not sign her new lease until September 2, 2021. She was not gone by August 20, 2021, as Mr. Ghorbani testified.
56. Based on the evidence before me, and the problems with Mr. Ghorbani's evidence, I find that he did not have a conversation with Roddie, 10 days after the deal was sealed, about the Tenant staying on.
57. I reject his evidence on this point.

*The Tenant moves out: 31 October 2021*

58. It appears that the Landlord and the Tenant entered into a settlement agreement on 13, December 2021. She received an offer to settle from the Landlord. She was given the equivalent of a month's rent, (\$1600) but it was not called the N12 compensation of one month's rent. The issue of moving costs was not raised by the Tenant at the time. It was apparently to be an agreement to settle *all* issues between the parties. The Tenant, did not pay rent for the last month, October 2021.



59. I find this evidence difficult to assess. The Landlord served an N12 and never revoked it. She was required to pay compensation equal to one month's rent under section 49.1 of the RTA. And yet, she maintained the position that the one month's compensation and free rent for October were not compensation under the RTA, as required to be paid to the Tenant before the date of termination. Nonetheless, compensation was paid, albeit, late. I find that this evidence does not, by itself, suggest that the Landlord served the N12 in bad faith.
60. The Tenant testified that she was never given the option to stay in the unit, after it was sold on August 10, 2021 to the Purchaser. She testified that she was told she could *not* stay, as the Purchaser needed vacant possession, under questioning from Mr. Eman, the Purchaser's counsel.
61. She denied that anyone had told her that the Purchaser was happy for her to stay.
62. I accept that this proposal for extension of her lease was not made to the Tenant, based on her testimony and because I have rejected the Purchaser's realtor's evidence on point.

*Closing of the Sale: 16 November 2021*

63. The Purchaser said that prior to closing, he told his real estate agent that they had changed their plans. He asked his realtor to contact the Landlord's realtor Roddie. He said that his realtor did contact Roddie, who was in touch with the Tenant, he said, about the change of plans.
64. I have already rejected the evidence of Mr. Ghorbani, that he had a conversation with Mr. Roddie about his client's change of plans. As a result, I also reject the Purchaser's evidence that he directed his agent to contact the Tenant about his change of plans.
65. The rejection of this evidence, is buttressed by the Purchaser's own inconsistent evidence. Two months after closing, the Purchaser said, it would be difficult for his daughter to drive from the rental unit to her university in Toronto. It would be easier to drive to Toronto from Aurora. As a result, the move to the house was delayed. Yet his daughter testified that she knew by mid October that she would have to travel downtown for her lessons. Their evidence is inconsistent, and I prefer the daughter's account.
66. As for the Landlord, I accept her testimony that she was not aware of the Purchaser's change of plans and was told the Purchaser wanted vacant possession. She was told to provide an N12, because the Purchaser needed to reside there. I find the Landlord's evidence here to be credible because it was consistent with the preponderance of the evidence as a whole.
67. The Purchaser said he found out that the Tenant had already moved out, at closing.
68. The Purchaser said the unit was vacant from 16 November 2021 to 1 January 2022.

*The Unit is put up for rent*

69. The Landlord denied any bad faith after closing as well. The Landlord testified that she did not know the Purchaser put the unit up for rent.
70. I accept her evidence on point. It stands to reason that she had no further involvement after the sale closed in November 2021.
71. As for the Purchaser, he testified that when he found out, at closing that the Tenant had vacated, although it would have been ideal for the Tenant to stay, he realised, at that point, that he would not move in, due to the difficulty in paying the rent at Aurora and the mortgage of the house. Yet at another point of the hearing, he said the decision not to move into the house was made two months after closing. Again, his evidence on this point was not credible.
72. So, he decided to put up the rental unit for lease.
73. The Purchaser leased the rental unit to a third party for a 6 month term. The lease was in evidence. It was dated 29 December 2021.

*The Purchaser moves in*

74. The Purchaser moved into the house at the end of June 2022/July 2022, and has been there ever since.
75. His driver's license carries the address of the house, as of July 28, 2022.
76. I now turn to the three questions I need to decide in this application.

**Was the N12 Notice given in bad faith: the Landlord**

77. I must decide whether the Landlord gave the N12 notice in bad faith.
78. I am of the view that she did not.
79. The Purchaser was adamant that it was his intention, initially, "100%" to move into the unit.
80. There is no evidence that this intention changed at any time up to the date of the sale and purchase agreement (August 10, 2021).
81. The sale and purchase required vacant possession. There was no evidence that it was ever amended.
82. I accept Ms. Psarros argument that she was under a contractual obligation to serve the N12. As a result, the Landlord served the N12, to ensure vacant possession at closing.

83. But I must also look past the date of service of the N12, for any other evidence of bad faith by the Landlord.
84. The Landlord had her own real estate agent, as did the Purchaser. This provides support for the inference that this was an arm's length property transaction, and that there was no collusion between the Landlord and Purchaser to evict the Tenant and raise the rent.
85. I have rejected the evidence of both the Purchaser and his realtor, Mr. Ghorbani, that the Landlord was told that they should tell the Tenant that the Purchaser would allow the Tenant to remain, and that there was a conversation between Roddie and Mr. Ghorbani about extending the termination date.
86. The result is, I find that the Landlord was never asked to revoke the N12.
87. Although the Landlord did attempt to cover up the one months' compensation, there was no evidence that this was done in collusion with the Purchaser.
88. In *Elkins*, the Landlord knew at closing that the property would be taken in the name of a corporation, and not the individual purchasers, and yet did not pass this information on to the Tenant, who moved out.
89. I also accept that if the Purchaser did have a change of circumstances, this might have an impact on my analysis. By the time the daughter knew she would return to in person classes in mid-October 2022, it was already too late as the Tenant had already signed a new lease. There was nothing the Landlord could do at that point.
90. As a result, I find the N12 was served by the Landlord, in good faith on behalf of the Purchaser, and that there is no evidence before me that the Landlord acted in bad faith, at any relevant time.
91. As a result, given she has paid one month's compensation to the Tenant, plus one month of free rent, I find she is not liable to the Tenant for any further compensation.

**Was the N12 Notice given in bad faith: the Purchaser**

92. I have rejected the Purchaser's evidence and his realtor's evidence about an alleged verbal conversation in which it was decided to ask the Tenant if she wanted to stay on.
93. I draw an adverse inference about the Purchaser's good faith because both he and his realtor gave evidence, which I find not credible. It also suggests that they were trying to cover up their true intentions with respect to the property.
94. The daughter's evidence was also problematic. The Purchaser's daughter was a student studying online due to the pandemic.

95. In mid October 2021, prior to closing, she knew that she would have to return to classes in person, in January 2022.
96. She testified that it was quicker to get to OCAD from Aurora than from Bradford.
97. As per Google maps, the distance from Aurora to OCAD, is about 50 km, taking 47 minutes. It is traversed by taking the 404 directly south, as she said.
98. But there is no appreciable difference to the travelling to OCAD from Bradford. The distance is just 27.4 km further, but the travel time is just 14 minutes longer. The route also involves a direct drive due south on the 400.
99. In my view, the objective evidence does not support the Purchaser's contention that they did not move into the rental unit after the Tenant vacated because it was far more convenient for the Purchaser to remain in Aurora.
100. There was also no evidence that the daughter made any attempt to find a new place to stay downtown, in October 2021, when she knew her classes would be in person.
101. I reject the evidence of the Purchaser and his daughter, that they did not move into the unit because it was more convenient to stay in Aurora.
102. The new lease sheds light on the Purchaser's intentions.
103. The lease the Purchaser entered into on 29 December 2021, with its new tenant, is a 6 month's lease. It states that the Landlord can terminate it after 6 months, if he requires renovations to be done. He need only give 2 month's notice.
104. Further, the new tenant was required to vacate in the event the Purchaser enters into a tenancy or sale and purchase of the unit.
105. There was no mention in the lease about the Landlord needing the house in the future for his personal use.
106. I find that the new lease suggests that it was the Landlord's intention to either keep the property tenanted, renovate it, or to sell it.
107. The lease is the best evidence of the Purchaser's intention at the time it was executed in December 2021 because it was documentary in nature, signed by the Purchaser, and specifically records what the Landlord intended with respect to the property.
108. The lease is silent on the Purchaser wanting to move in, though it specially reserves the Purchaser's rights to keep in tenanted, renovate it, or sell.

109. This evidence also casts doubt on his allegation that he intended to move into the house after the Tenant vacated as a result of the N12 notice served by the Landlord on his behalf.
110. Also, the new tenant had to pay utilities, which the Tenant did not have to pay, resulting in more income for the Purchaser, in addition to the \$600 rent hike. The rent the Purchaser collected was \$2,200 month, some \$600.00 more than the Tenant was paying, and he collected a rent deposit of some \$6,000.
111. The lease also provides that the Tenant was to pay utilities for the whole house until the basement was leased out, which further demonstrates the Purchaser's intention towards the basement.
112. The result of this collective evidence is that in my view, the Purchaser was not intending to move into the unit with a reasonable time after closing.
113. I find that the Tenant has proved the bad faith of the Purchaser.
114. The fact that the Purchaser did move in must also be considered and weighed in the balance, to which I now turn.

**Whether the Purchaser, failed to occupy the unit within a reasonable period of time after the Tenant moved out**

115. There is really no contention that the Purchaser did not move into the unit until late June/July 2022, and has been there ever since.
116. The Tenant vacated on October 31, 2023.
117. That makes almost 8 months before the Purchaser moved in.
118. The Tenant could have stayed for 9 more months, from November 2021 to July 2022.
119. I find that this was not a reasonable period of time.
120. It was a significant delay.
121. Had the Tenant been allowed to stay at the unit, she could have enjoyed 8 more months of less expensive rent, and saved on utilities.
122. Thus, the Purchaser did not move into the rental unit, within a reasonable period of time.
123. Instead, the Tenant paid higher rent from November 2021 to July 2022, had to move and incurred costs, and now had to pay additional utilities.

124. The N12 Notice was therefore served in bad faith, due to the Purchaser's conduct, who gave no thought to forcing the Tenant to move, so he could deal otherwise with the unit over the course of 8 months before finally moving in.
125. On these facts, the Tenant would have had to move out, in July 2022, some 8 months after vacating, in any event. Moreover, her new lease started in November 2021. That makes 8-9 months of additional rent.
126. In my view, the consideration of whether the parties were acting in bad faith ends after the Purchaser did not move in within a reasonable time.
127. I am not required to consider what happened after that, because the legislation closes the door at the point the Purchaser does not move within a reasonable time.
128. The test in the legislation is not whether the purchaser ever moved into the unit, but whether or not they moved in within a reasonable time.
129. A remedy must then be considered.

#### **Who should be liable to the Tenant**

130. If bad faith is found, the question is should the Landlord or Purchaser be liable for any remedy awarded to the Tenant.
131. I have found that the Landlord acted in good faith at all times.
132. I have also found that the Landlord gave the Tenant the equivalent of two month's compensation.
133. I find that the Landlord is not liable for any other damages to the Tenant.
134. However, owing to their bad faith, I find that the Purchaser is liable to the Tenant.

#### **Remedies:**

135. The Tenant seeks remedies under s. 57(3) of the RTA.
136. Although s. 57(3) deals with the landlord's bad faith, of which there is none in this application, I find the remedies set out therein apply equally to a purchaser's bad faith, under s. 49(1) as found by the Court of Appeal in *Elkins*.

#### *Rent Differential*

137. The Tenant asks for the rent differential of \$35.37 for 12 months, under s. 57(3)(1).
138. I allow the rent differential of \$35.37, over 12 months, in the amount of \$424.44.

139. The Tenant had to pay a higher rent plus utilities as a direct result of the bad faith eviction.
140. I find that compensation over 12 months is reasonable, as she paid these amounts from November 2021 to at least July 2022, when the Purchaser moved in.

*Rent Abatement*

141. The Tenant also asked for general compensation of \$9,987.78, being 6 months' of her former rent under s. 57(3)(1.1).
142. This is only 6 months of general compensation under s. 57(3). She is permitted, under the legislation, to claim 12 months.
143. The Tenant's evidence is that moving was stressful and disruptive.
144. She had to look for a new place to live, make various offers, and then employ a moving company to help her move.
145. She had been in the unit for 9 years, and suddenly had to uproot herself.
146. She did the packing herself.
147. She had to take a week off work to complete the move.
148. I also bear in mind that the Landlord gave the Tenant a month of free rent, for October 2021, in addition to a month of compensation.
149. I accept that the Purchaser's bad faith did have an impact on the Tenant's well being.
150. Had the Purchaser not asked for vacant possession, only to allow a new tenant into the unit at a higher rent, the Tenant could have enjoyed more time in the unit, from at least November 2021 to July 2022.
151. I accept that her life became stressful as of July 2021, when she knew she had to move due to the sale.
152. Therefore, I find that a rent abatement of six months is appropriate in the circumstances, in the amount of \$9,987.78.

*Moving costs*

153. The Tenant also asks for moving costs in the amount of \$1,356.00.

154. I am not going to allow this because the Tenant was given a full month's rent for October 2021, and to allow a further \$1,356 amounts to double recovery.
155. Therefore, I find that the Purchaser must pay the Tenant a total amount of \$10,412.22, as the rent differential and general damages.

**It is ordered that:**

1. The total amount the Purchaser shall pay the Tenant is \$10,465.22.
2. This amount represents:
  - \$9,987.78 for a rent abatement.
  - \$424.44 for increased rent the Tenant has for the one-year period from start of new tenancy in September 2021 to August 2022.
  - \$53.00 for the cost of filing the application.
3. The Purchaser shall pay the Tenant the full amount owing by February 23, 2024.
4. If the Purchaser does not pay the Tenant the full amount owing by February 23, 2024, the Landlord will owe interest. This will be simple interest calculated from February 24, 2024 at 7.00% annually on the balance outstanding.
5. The Tenant has/have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

**February 12, 2024**

**Date Issued**

Grosvenor Street, Ground Floor  
Toronto ON M7A 2G6

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James Campbell

Member, Landlord and Tenant Board 15

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