



## Order under Section 57 Residential Tenancies Act, 2006

**Citation:** PORTER v RAMANI (CHANDIRAMANI), 2023 ONLTB 68653

**Date:** 2023-10-30

**File Number:** LTB-T-049322-22

**In the matter of:** BASEMENT, 2468 RIDEAU DRIVE  
OAKVILLE ON L6H7R1

**Between:** JENNIFER PORTER Tenant

**And**

JAGDISH RAMANI (CHANDIRAMANI) Landlord

JENNIFER PORTER (the 'Tenant') applied for an order determining that JAGDISH RAMANI (CHANDIRAMANI) (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on September 11, 2023.

The Landlord, the Landlord's Legal Representative, Lisa Barder, and the Tenant attended the hearing.

The Landlord called Farideh Shabamilalani as a witness.

### Determinations:

1. The Tenant brought a T5 application claiming the Landlord gave her an N12 notice of termination in bad faith. The Application was filed on April 12, 2021. The Tenant seeks the payment of general compensation in the amount of \$1,100.00 from the Landlord; rent differential in the amount of \$7,800.00, as well as expenses related to moving.
2. Pursuant to section 57(1) of the *Residential Tenancies Act, 2006* ("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, and no person referred to in clause 48 occupied the rental unit within a reasonable time after the former tenant vacated the rental unit.
3. To be successful in their T5 application, the Tenant must establish all three of the requirements of subsection 57(1)(a) on a balance of probabilities:

First, that the Landlord gave a notice of termination under section 48 of the Act (the N12 notice) in bad faith;

Second, that the Tenant vacated the rental unit as a result of the N12 notice;

Third, that the person named in the N12 notice did not move into the rental unit within a reasonable time after the Tenant vacated.

4. For the reasons outlined below, I find that the Tenant has proven, on a balance of probabilities, that the notice of termination was given in bad faith.
5. The Landlord's Form N12 was served by the Landlord on the Tenant in late February 2021, with a termination date of April 30, 2021. The Form N12 stated that the Landlord's parent was going to move into the rental unit.
6. The Tenant testified that following receipt of the Form N12, she vacated the unit on April 12, 2021.
7. The Tenant testified that she believed the main reason she was given the N12 was because her niece had started living with her due to the niece's mental health issues. Further, the Tenant testified that the Landlord had requested, in a series of text messages, that the Tenant pay \$30.00 a day for any guest who stayed longer than 3 days and that the Landlord refused to allow the Tenant to ever have anyone else move into the unit.
8. The Tenant further submitted a voice recording that was taken on or around June, 20, 2023 of a telephone conversation between her and the Landlord in which the Landlord states in part "she goes back and forth. She stays here every couple of weekends... It doesn't mean she has to stay here permanently." The Landlord goes on to state: "So what if she's not living there, she comes back and forth. So what if she's not living there, she comes back and forth. She comes on weekends. It doesn't mean she has to live there"
9. After vacating the unit, the Tenant states that she contacted two of the neighbours who lived across the from the rental unit and both neighbours stated that they had not seen an elderly lady living at the unit. While this evidence is hearsay, the Landlord did not dispute that his mother does not live in the unit full-time.
10. The Landlord testified that previously, his mother was residing full time with his sister but his sister was no longer able to care for his mother full time and they could not afford to put her into a nursing home. Therefore, he and his sister started sharing the responsibility of caring for their mother.
11. The Landlord testified that he brings his mother in through the garage and down to the basement unit when they return from errands and medical appointments and so the neighbours would not have seen his mother often. The Landlord further testified that she had not moved in for about a month as he had to do some repairs to the unit to make it suitable for his mother to live in the unit.
12. The Landlord's witness, Farideh Shabamilalani, a PSW for the Landlord's mother, testified that she has been attending the unit to care for the Landlord's mother approximately 25 hours a week since June 2021 and this was done mostly on weekends.

13. The Landlord submitted that there was no law that required his mother to live in the unit everyday of the month and that because his mother is technically the owner of the house, she can come and go as she pleases.
14. To the extent that the Landlord submits that occasional use of the rental unit constitutes “residential occupation” within the meaning of section 48 of the Act, I disagree.
15. The Board’s *Interpretation Guideline 12: Eviction for Personal Use, Demolition, Repairs and Conversion* refers to a number of Board and court decisions in which occasional or infrequent use has been held not to constitute residential occupation within the meaning of section 48 of the Act.
16. In *MacDonald v. Richard*, [2008] O.J. No. 6076, the Divisional Court held that the Board had not erred in finding that a temporary 4-month occupancy did not constitute residential occupation. In *Kohen v. Warner*, 2018 ONSC 3865, the landlord’s son wished to occupy the rental unit on the weekends during the school year and full-time in the summer. The Divisional Court similarly confirmed that the Board had not erred in concluding that this was occasional occupation that did not satisfy section 48. Guideline 12 refers to a number of other Board cases drawing similar conclusions.
17. Board decisions are not binding on me, but they can offer helpful guidance. There is a consistent line of Board decisions interpreting and applying *MacDonald* as meaning that where a landlord’s intended use of the rental unit is to live in it temporarily or on an occasional basis, the landlord’s intended use is not “residential occupation” for the purposes of s.48 of the Act. I see no reason to depart from this line of case law.
18. These cases generally addressed whether the Landlord required the rental unit for the purposes of residential occupation. This application, however, is for an order that the Landlord served a notice of termination in bad faith. To be successful, the Tenant must establish, among other things, that the Landlord served the N12 in bad faith and also that his mother did not occupy the rental unit within a reasonable period of time. In my view the Tenant has established both.
19. Here, the Landlord is representing his mother’s residential occupation as temporary and occasional. I find that this proposed temporary and intermittent use of the rental unit does not satisfy the “residential occupation” requirement of section 48. In my view, the Tenant has proved its case because the Landlord’s N12 sought possession for a purpose other than residential occupation within the meaning of section 48. That also means that when his mother “moved in”, they did not “occupy” for he unit within the meaning of section 57(1)(a). To find otherwise would, in my view, ignore legislative intent that good faith N12s be served for the purpose of “residential occupation”. For these reasons, I am satisfied tha the Tenant has proven its case.

### Remedies

20. The Tenant claimed a rent differential between her former rental unit and her new unit. The Tenant established on the balance of probabilities that the rent differential between his

current “new” accommodation and the rental unit was \$650.00 per month. I find that the units are comparable and the differential was established through the Tenant’s evidence. Therefore, I will order the Landlord to pay the Tenant \$7,800.00 for the increased rent that the Tenant has incurred or will incur for a one-year period after the Tenant moved out of the rental unit because of the Landlord’s N12 notice.

21. The Tenant also claimed moving expenses. The Tenant established on the balance of probabilities, through receipts entered into evidence, that she had incurred moving expenses of \$1,391.37. I find these expenses to be reasonable. Therefore, I find that the Landlord must pay the Tenant \$1,391.37 for the reasonable out-of-pocket moving expenses that the Tenant has incurred as a result of the Landlord serving a notice of termination in bad faith.
22. The Tenant claimed lost wages in the amount of \$400.00 from taking time off work to move. This was substantiated by evidence presented at the hearing. I find this reasonable and warranted as this was incurred as a direct result of the Tenant having to move out of the rental unit. I find that the Landlord must pay the Tenant \$400.00 for lost wages.
23. While the Tenant made a claim for general compensation for two weeks of lost wages as a result of contracting COVID, I did not find that the Tenant led sufficient evidence to support her claim that she contracted COVID as a result of the Landlord serving the notice of termination in bad faith. As she failed to meet the burden of proof to establish entitlement to general compensation, this claim is denied.
24. This order contains all of the reasons in this matter and no further reasons will be issued.

**It is ordered that:**

1. The total amount the Landlord shall pay the Tenant is \$9,644.37. This amount represents:
  - \$7,800.00 for increased rent the Tenant has incurred for the one-year period from May 2022 to April 2022.
  - \$1,391.37 for the reasonable moving, storage and other like expenses that the Tenant has incurred as a result of having to move out of the rental unit.
  - \$400.00 for lost wages.
  - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by November 15, 2023.
3. If the Landlord does not pay the Tenant the full amount owing by November 15, 2023, the Landlord will owe interest. This will be simple interest calculated from November 16, 2023 at 7.00% annually on the balance outstanding.

**October 30, 2023**

**Date Issued**

15 Grosvenor Street, Ground Floor  
Toronto ON M7A 2G6

---

Colin Elsby

Member, Landlord and Tenant Board

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

2023 ONLTB 68653 (CanLII)