



## **Order under Section 31 Residential Tenancies Act, 2006**

**Citation:** Webster v Capital 3 Inc, 2026 ONLTB 1636

**Date:** 2026-01-12

**File Number:** LTB-T-059581-22

**In the matter of:** 3, 160 PENROSE ST  
SARNIA ON N7T 4V2

**Between:** Randall Webster Tenant

**and**

Fraser Pollock Landlord

**and**

Capital 3 Inc. Former Landlord

Randall Webster (the 'Tenant') applied for an order determining that Fraser Pollock (the 'Landlord') and Capital 3 Inc. (the 'Former Landlord'):

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.
- harassed, obstructed, coerced, threatened or interfered with the Tenant.
- withheld or interfered with their vital services or care services and meals in a care home.

This application was heard by videoconference on March 3, 2025.

Only the Tenant and the Landlord attended the hearing. The Tenant was represented by Melissa F. Bradley. The Landlord was represented by David A. Price. The Former Landlord did not appear.

### **Determinations:**

1. This and four related applications in files LTB-T-059493-22, LTB-T-061470-22, LTB-T-000213-23, and LTB-T-014625-23 came before me on the same day. Following case management discussions with the parties, I determined I would hear them one after the other.
2. On hearing submissions and considering the factors identified in Rule 21.8 of the Board's *Rules of Procedure*, I denied the Landlord's request for an adjournment so he might secure the attendance of an agent, officer or employee of the Former Landlord. The Landlord had already been granted an adjournment at the first appearance on May 7, 2024 to investigate and identify the necessary parties. On September 25, 2024, all parties

appeared before the Board for a case management conference represented by licensees of the Law Society. They consented to an order releasing the individual respondents associated with the Former Landlord. Under the circumstances, I found the Landlord's expectation that Phil Pacheco would appear to give evidence was unreasonable given that no one had served him a summons.

3. The Tenant opposed any further adjournments pointing out that the passage of time has been prejudicial. A full day of hearing time had been allocated for this and the companion applications marked peremptory on all parties. Therefore I determined that no further adjournment was required to permit an adequate hearing.

### **Theory of the Case**

4. The Tenant alleges that when the Former Landlord agreed to sell the residential complex to the Landlord, together they embarked on a campaign to drive him out of his unit so the Landlord could renovate and re-rent for more money. When the sale transaction closed, the Landlord redoubled those efforts by making unsolicited and unwelcomed offers of compensation in return for vacant possession, giving notices of entry and notices of termination culminating in an N13 notice of termination requiring the Tenant to vacate for necessary repairs. All the while, the Landlord was doing construction in the other two residential units in this 3-unit complex that substantially interfered with the Tenant's right to quiet enjoyment and, in combination with the other untoward conduct, ultimately forced him to vacate.
5. The Tenant says this pattern of conduct has also harassed, coerced, threatened and interfered with him.
6. The Landlord denies there was anything improper about his one "cash-for-keys" offer or his notices and submits that he was forced to give the N13 notice of termination by municipal authorities who had condemned the building. The Landlord disavows a knowledge of or responsibility for the actions of the Former Landlord.

### **Evidence**

#### *Pressure Tactics*

7. The Tenant had been living in the basement unit for years when the Landlord bought the residential complex from the Former Landlord on or about May 9, 2022. The Tenant left the unit sometime in December 2023. The Tenant alleges that he was subjected to improper pressure tactics.
8. The Tenant mentioned his age and the passage of time to explain that he may not have a very clear memory of the exact sequence of events. The Tenant was allowed to refresh his memory using a journal of contemporaneous notes he'd made and disclosed. Much of his testimony was prompted by leading questions from his representative which I allowed because the Landlord did not object and I determined to make what allowances I could for the Tenant's failing memory. I have assessed the veracity and reliability of the Tenant's testimony with this in mind because every witness is entitled to have their credibility

assessed according to criteria appropriate to their mental capacity and ability to communicate.<sup>1</sup> Where possible, I have attempted to reconstruct gaps in the Tenant's presentation with other evidence that I accept.

9. I shall set out the facts as chronologically as the evidence allows because the Tenant relies on the sequence of events as circumstantial evidence in support of his claims.
10. In January 2022, the Former Landlord gave the Tenant an N12 notice of termination stating he had agreed to sell the residential complex and that a purchaser required the rental unit for personal occupation. The notice was signed and dated on January 26, 2022 by one Phil Pacheco who identifies himself as a representative of the Former Landlord. It appointed April 30, 2022 as the date of termination. The Tenant took advice and determined he would not vacate.
11. The Landlord testified he did not cause this notice to be issued. He never communicated any intention to live in the rental unit to the Former Landlord or to anyone else.
12. The Former Landlord transferred title to the Landlord on May 9, 2022.
13. A person who the Tenant later learned was a legal representative of the Landlord made an unannounced visit to the rental unit to offer the Tenant money if he agreed to terminate his tenancy. The offer included forgiveness of rent arrears as well. The Tenant did not provide any more details about the substance or manner of his conversation with the representative.
14. On June 5, 2022, the Tenant received a letter from the Landlord's legal representative advising of the change in ownership followed shortly thereafter with two notices of entry for the purposes of inspection. The Tenant took advice and determined he would deny the Landlord entry taking the position that the notice of entry was not proper. The Landlord gave the Tenant a voidable N5 notice of termination alleging he had substantially interfered with the Landlord's lawful rights by denying entry. Later the Tenant granted admission to the Landlord's agents who inspected the rental unit and took photos. Around the same time, the Landlord also served an N4 Notice of termination alleging that rent for June 2022 had not been paid. The Tenant neither confirmed nor denied whether he was in fact in arrears of rent when the N4 was served. He mentioned a possible misunderstanding or gap in the rent payment because he was not comfortable paying his rent by e-transfer. That problem was resolved.
15. The Landlord agreed that he also served a voidable N5 notice dated June 16, 2022 that alleged hoarding. The Landlord filed an application in support of that notice which he withdrew before it came on for hearing nearly a year later. The Landlord testified that he had observed what he considered dangerous amounts of clutter in the rental unit. The Tenant challenged the testimony of the Landlord by suggesting he could not have observed undue clutter without entering the rental unit. Nothing else is in evidence surrounding the circumstances of this notice. The Tenant led no evidence that might

---

<sup>1</sup> *R. v. W. (R.)*, [1992] 2 S.C.R. 122 at 134.

suggest that the allegation contained in the notice may not have been true or that it was given for some other improper purpose.

16. In September 2022, the Tenant received a written offer of termination on letterhead from the Landlord's legal representative. The offer included cash compensation and forgiveness of rent arrears. The Tenant submits that this is also evidence of harassment, coercion, obstruction, coercions, etc. because it was unsolicited and unwelcome. It's part of the part of conduct showing the Landlord was intent on getting him out.

### *The Construction*

17. The Tenant testified that the two vacant units were under construction from June to September 2022. The Landlord confirmed photographs posted to his company's social media page show construction as of June 2022. The Tenant refreshed his memory using an undated letter from the Landlord's property manager to testify that the construction was still ongoing as of September 2022.
18. The Tenant observed workers removing walls and taking away construction waste. The Landlord confirmed he gutted the two empty units but he says he did so properly and with the necessary building permit.
19. The building permit was issued on September 14, 2022 describing the work as:

Repair and modernize the interior of unit 1. New flooring, trim, drywall, windows, and paint. Includes a new kitchen, bathroom, and updated exterior with painted siding.
20. This permit pertains to Unit 1, which was the main floor unit. The Landlord testified that once work began, its scope expanded as he discovered defects not disclosed to him by the Former Landlord.
21. It seems the Landlord exceeded the scope of his building permit or breached some other regulation because the municipality ordered him to stop the construction. The Stop Work Order is dated February 17, 2023. It required the Landlord to stop all construction work until he complies with another process issued to him by the municipality described as Order to Remedy Unsafe Building. That order in turn required the Landlord to restrict access to building immediately. It also required the Landlord to obtain a building permit supported by the report of a Professional Engineer; or to demolish the residential complex by March 23, 2023. It cited the following infractions:

The structural integrity appears to be compromised, including but not limited to framing alterations and the deflection of the existing structure at the above property. If left, conditions could be hazardous to the health or safety of persons in the building (including tenant below).

22. These orders were posted at the residential complex by the authorities. They caused the Tenant to fear that he would lose his home especially as contractors warned him that he would lose his home.

23. On or about February 21, 2023, the Landlord gave the Tenant an N13 notice of termination asking the Tenant to move out by June 30, 2023 because the Landlord requires vacant possession to do necessary repairs ordered by the City. The Landlord confirmed he gave this notice because he felt compelled to remove the Tenant as ordered by the City.
24. The Tenant did not vacate. He testified took legal advice and determined he doesn't need to comply. He added that he couldn't find a suitable place to move to.
25. The Tenant testified that that work of some kind continued throughout the months of February and March 2023. He refreshed his memory using his journal of contemporaneous notes. The Tenant's journal records that on March 3, 2023, the Landlord's management company requested access to the unit for their engineer to assess the structural integrity of the complex. The Tenant declined but the engineer came nonetheless. On March 11, 2023, the engineer was granted access to the unit. On March 27, 2023, one Trevor who worked for the Landlord used power tools in one of the other residential units.
26. The Tenant also mentioned that personnel from the Electrical Safety Authority came because of cables hanging outside the house.
27. The Tenant testified that at some unspecified time, some unspecified person showed up to say the he was occupying the rental unit without permission.
28. The Tenant vacated December 2023. He testified the City removed him. He added that the noise and dust from the construction made continued living in the unit unbearable.

## **Analysis**

### *Substantial Interference with Reasonable Enjoyment*

29. I find the evidence is sufficient to prove on a balance of probabilities that the Tenant vacated the rental unit because the Landlord had undertaken unsafe construction. It also shows that the construction substantially interfered with the Tenant's reasonable enjoyment while he was living there. The remainder of the allegations are dismissed because I find the evidence insufficient to proven them on a balance of probabilities.
30. It's undisputed that the construction that began in June 2022 continued for some months. I also accept the Tenant's testimony that it was loud and dusty.
31. The Landlord did not argue that the construction engaged the operation of section 8 of Regulation 516/06. That provision makes certain exemptions available to landlords who do necessary repairs in a reasonable manner with timely notice. For that provision to apply, the Landlord would have to prove certain criteria. The Landlord led no evidence on those criteria and made no submissions that he is relying on the exemptions contained in that provision. There is no evidence that the Tenant was notified of the construction. He was not told when it would begin or what it would entail or when it was expected to end. I find the exemption does not apply on the facts of this case.

32. I have admitted and relied on the hearsay statements contained in the City's orders for the truth of their contents. They contain the independent observations of competent authorities in the execution of their legislated duties. Their authenticity is not in question. That evidence shows that the Landlord's construction work was done in breach of applicable regulations and compromised the safety of the residential complex. The authorities had to intervene and ordered the building evacuated.
33. The Landlord's testimony that he only discovered defects in the building after work had begun is no answer. He offered this evidence to say that the work originally entailed superficial updates and clean-up to the two empty units. Once that began, he learned more extensive repairs were needed which prompted him to take out the building permit in September 2022. Regardless of when the Landlord learned of the need to do extensive repairs, the fact remains that he did so in a manner that substantially interfered with the Tenant's right to quiet enjoyment and eventually rendered the building unsafe.
34. Nor can the Landlord take cover behind his N13 notice of termination. The City condemned the building because the Landlord compromised its safety.

*Harassment, Obstruction, Coercion, Threats or Interfere*

35. Section 23 of the Act says a landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant. For reasons that follow, I find this claim has not been proven against either of the respondents.
36. The Tenant has proven on a balance of probabilities that the Landlord was very interested in getting vacant possession of the rental unit. There is also compelling circumstantial evidence to show that the Landlord wanted vacant possession so he can do repairs. He wanted to enhance its income potential. He had a profit motive and was self-interested. But I cannot find that the respondents actions viewed in aggregate amount to a breach of section 23.
37. I have no reason to discount the Landlord's testimony that he had no knowledge of the Former Landlord's actions and certainly no hand in the N12 notice given to Tenant. The Tenant said that as far as he knew, it was the Phil Pacheco, agent of the Former Landlord, that was intent on driving him out, not the Landlord.
38. As for the conduct of the Landlord, I see nothing improper about an owner wishing to inspect his newly-acquired property. I have no reason to disbelieve the Landlord's testimony and the contents of the notices of entry that say the Landlord intended to inspect the rental unit. Serving a voidable N5 notice under section 64 of the Act in furtherance of that aim is not abusive. Taking the Tenant's case at its absolute highest, the Landlord may even have had other reasons for wanting access to the rental unit, such as wanting to assess it for renovations coupled with a profit motive. Even assuming that were true, I do not agree that this amounts to harassment, obstruction, coercion threat, or interference because there is not evidence in the circumstances surrounding the notices to allow that inference.

39. Nor can I find the Landlord's "cash-for-keys" offer to a breach of the Act in anyway simply because it was unsolicited, unwelcomed and delivered on a paralegal's letter. There is no evidence that this offer was accompanied by or delivered in a context that could objectively suggest the Landlord was threatening or intimidating the Tenant. It sets out two options for the Tenant to choose from and invites him to make a counter if he would prefer. It does not dictate any particular date for termination nor does it state a deadline for expiry. There is nothing in either the tone, substance, or the circumstances surrounding this offer to suggest it was intended as a pressure tactic. The mere fact that the Landlord had also claimed arrears of rent is not enough; and certainly not without proof that the claims were false or otherwise improper.
40. I have already found that the Landlord undertook construction in a manner that substantially interfered with the Tenant's rights but I am not prepared to ascribe malice or any other abusive intent to the actions of the Landlord simply because he had a profit motive. His actions were not accompanied by threats or any other form of coercion. Making a good faith offer of termination is not enough. This Board has consistently held that serving notices of entry or notices of termination or otherwise exercising one's rights under the Act is not abusive unless it's proven to be unreasonable. There is insufficient proof of to show objectively that the Landlord's actions were abusive. In fact, the evidence tends to suggest that the Tenant did not feel any subjective compulsion either for he remained in rental unit between February 2023 when he was told the building was condemned until December 2023. During that time, he had the benefit of professional legal advisors and the assistance of community services agency.
41. As for the conduct of the Former Landlord, the Tenant's lengthy pleadings contain many allegations against it and against Phil Pacheco but no cogent evidence was presented to support them.
42. The Tenant did testify that the Former Landlord offered to organize temporary accommodation for him during repairs or renovations but he didn't have the details. It appears from the Tenant's journal that offer involved events that occurred in 2021. Its connection to the events in this application is remote. It seems the Tenant feels this was perhaps the opening salvo in the Former Landlord's campaign to drive him out of his unit using unlawful means. This is not an inference I am prepared to make because there was no evidence of the surrounding context or circumstances and certainly nothing to show on a balance of probabilities that there was anything improper about the offer.
43. The only thing that the Tenant has been able to prove on a balance of probabilities as regards the Former Landlord is that it served a purchaser's N12 Notice in January 2022 and then sold the complex to the Landlord in May 2022. That, without more, is not a breach of the Act. There is no evidence, even circumstantial evidence, to connect the N12 notice of January 2022 to this particular transaction. The agreement of purchase and sale was not produced and the Tenant did not question the Landlord about it. I wasn't told when negotiations began, what offers were exchanged, when the agreement was entered into, what closing date was contemplated, whether it was extended, what communication the Landlord and Former Landlord had in connection with it, etc. The only evidence on this subject is from the land titles office showing the Former Landlord transferred title to the

Landlord on May 9, 2022. I cannot infer from this evidence that the N12 given by the Former Landlord was improper much less that the Landlord was complicit in it.

44. Therefore, I find the claims against the Former Landlord must be dismissed because they have not been proven on a balance of probabilities.

#### *Withholding Vital Services*

45. The application includes a claim under section 21 of the Act. The Tenant mentioned the hot water was shut off during the construction. He did not say when he was without hot water and for how long. I did not understand him to mean he was without hot water the entire time for he did not pursue the subject and led no other evidence in support of it. The Landlord testified that he or his workers always gave the Tenant advance notice of disruptions to water and electricity. This claim must be dismissed because I find there is insufficient credible evidence to establish that either of the respondents withheld the reasonable supply of a vital service.

#### **Remedies**

46. Having proven that the Landlord breached section 22 of the Act, the Tenant is entitled to those remedies that he can prove on a balance of probabilities. The Tenant seeks an abatement of rent and general compensation.
47. As indicated, the evidence had a great deal of gaps in it. Still, as trier of fact I am required to assess damages even where the task is made difficult by the quality of the evidence. I must make my best estimate on the available evidence.<sup>2</sup>
48. The evidence about the type, nature, and duration of the disruptions occasioned by the construction was vague and disjointed. The Tenant mentioned shaking and banging and dust and water leaking into his unit but offered no details. There was no corroboration of any kind whether from testimony, photographs, or videos. I can however glean from the building permit of September 2022 that the work was not modest. It involved replacing walls, windows, floors, kitchen and bathroom. I can therefore accept the Tenant's evidence and find as a fact that the construction caused noise and dust.
49. The Tenant gave evidence of the impact of the breach focused mostly on how the fear of losing his home impacted him psychologically. He also described the hardships he has endured since vacating the rental unit.

#### *Right of First Refusal*

50. In the "Remedies" portion of this T2 application, the Tenant has included additional narrative alleging that the Landlord has failed to honour the Tenant's right of first refusal

---

<sup>2</sup> *Penvidic Contracting Co. v. International Nickel Co. of Canada*, [1976] 1 S.C.R. 267 at 279-80. *Meldazy v. Nassar* 2025 ONCA 590 at para. 53.

under section 53 of the Act. Claims of that nature of normally pleaded on the Board's form T5 and must disclose certain particulars about the allegations.

51. The Tenant has included this pleading under Remedy 2—his request for a cease and desist order—in these terms:

The tenant states he wishes to remain in his unit. Should the landlord wish to complete renovations to the tenants unit he must serve the proper N13 and the tenant submits in right to first refusal.

52. In this T2 application, the Tenant has not marked "Remedy 9" asking to be reinstated. He has not alleged that the N13 notice was given in bad faith or that his rights under section 53 have been breached. Therefore I find that this application does not disclose a properly pleaded claim under section 57 or section 57.1 in either form or substance. As these claims are not properly before the Board, I will not make any findings in respect of this feature of the Tenant's pleadings. I find these allegations irrelevant to the remedies claimed in this application. The remedies awarded here are intended as compensation for the breach was proven here. If the Tenant feels the Landlord has given a bad faith notice of termination or breached his right of return, his recourse lies in a properly pleaded T5 application.

#### *Abatement*

53. The Tenant has been proven that at some point starting in June 2022 and lasting to at least February 2023, the Landlord did construction work in an unreasonable manner that substantially interfered with the Tenant's enjoyment of the unit.
54. Although the Tenant could not prove a breach of section 21 of the Act, I am also prepared to accept that he was deprived of hot water at unspecified times for unspecified durations because the Landlord conceded that was the case.
55. The Tenant claims an abatement of 50% of his rent for the period May 2022 to July 2022 which he has calculated to be \$750.00. On the evidence presented, I find this claim to be fair and reasonable.

#### *General Compensation*

56. The Tenant seeks \$10,000.00 from each of the respondents for a total of \$20,000.00. This head of damages is intended to compensate the Tenant for mental distress, inconvenience and other intangible non-pecuniary losses arising from the Landlord's breach. It is akin to general damages for breach of the implied covenant of quiet enjoyment.<sup>3</sup> I must assess a fair and reasonable award considering the nature, severity and the impact of the breach on the Tenant.

---

<sup>3</sup> *Mejia v. Cargini*, 2007 CanLII 2801 at para. 18 (Ont. Div. Ct.); *MacKay v. Sanghera*, [2001] O.J. 2600 at para. 8 (Div. Ct.).

57. The Tenant testified that the noise from the construction interfered with his sleep and caused him stress. He lived with the fear that the Landlord would eventually succeed in driving him out of his rental unit.
58. When the Tenant left the unit in December 2023, he lived in a shelter for a while until a local non-profit health and wellness agency helped him get subsidized housing. The Tenant lost his affordable home and now feels insecure for worry that his housing subsidy could be withdrawn at any time. He gave no evidence suggesting that was a real danger but I can accept that subjectively he feels he has lost stable housing.
59. The Tenant relied on an “advocacy letter” of September 26, 2022 prepared by a Housing Connector at West Lambton Community Health Centre which is the non-profit organization that was helping him. The evidence contained in the letter recounts the Tenant’s self-report of the anxiety and stress he experienced for fear of losing his home and his possession. He reported not sleeping or eating well.
60. Ordinarily, prior consistent statements presented through the hearsay declarations of another person would be of very limited probative value. However, given the frailties with the Tenant’s memory, I have admitted and relied on this letter for the limited purpose of understanding the chronology of events and for better appreciating the impact of those events on the Tenant. I have done so on the assumption the events described were fresher in the Tenant’s memory when he reported them to the author than at the time of hearing. I have also taken care not to place undue weight on this letter and am mindful that the author does not describe any experience, training, or expertise that would qualify them to give any diagnoses. But the author includes their first-hand observation that the Tenant’s mental and physical health declined between June and September 2022 on account of fear and anxiety caused by receiving the notices of termination and the Landlord’s offer letter of September 11, 2022. It makes no mention of the bothersome construction.
61. The Tenant also disclosed that he had surgery in April 2023. He didn’t mean to suggest that the respondents caused or aggravated his illness but wanted to emphasize that he was under a great deal of strain around that time which I am prepared to accept.
62. The Landlord submitted that the award for general compensation should be no greater than the rent paid for the duration of the disruption. I see no principled reason why an award of general compensation should be limited by such a measure. The objective is to restore the Tenant to the condition he would have been in if the breach had not occurred with a fair and reasonable award.
63. On considering the totality of the evidence which I am prepared to accept, and my knowledge of similar cases decided by the Board, I award the Tenant \$10,000.00 as general compensation.

*Administrative Fine*

64. The Tenant requested the Board order the respondents to pay an administrative fine for breaching the Act. The Board’s Interpretation Guideline 16 dated December 15, 2018

states that an administrative fine is a remedy to be used to encourage compliance with the Act and to deter landlords from engaging in similar activity in the future. This Guideline is not binding on me but I accept it as the correct interpretation of clause 31(1)(d) of the Act.

65. An administrative fine is not normally imposed unless a landlord has shown a blatant disregard for the Act and other remedies will not provide an adequate deterrence and compliance. The objectives of deterrence involve both specific and general deterrence. I must consider the nature and severity of the breach, the effect of the breach on the Tenant, and any other relevant factors. In this case, I consider the Landlord's decision to start construction while the Tenant was in possession to be a relevant factor. It suggests a disregard for the Tenant's interests in preference to his own.
66. However, on considering the totality of the evidence, I am not persuaded that an administrative fine is needed in this case to encourage compliance with the Act. I find the substantial remedies ordered against the Landlord in this and the companion cases are sufficient to bring home to this Landlord and to landlords generally that subjugating tenants' rights to their own financial interests carries severe consequences.
67. The Tenant did not renew his request for costs originally made at the first appearance on May 7, 2024.
68. The Tenant did not incur a fee for filing the application.

**It is ordered that:**

1. The total amount the Landlord shall pay the Tenant is \$10,750.00. This amount represents:
  - \$750.00 for a rent abatement.
  - \$10,000.00 general compensation.
2. The Landlord shall pay the Tenant the full amount owing by January 23, 2026.
3. If the Landlord does not pay the Tenant the full amount owing by January 23, 2026, the Landlord will owe interest. This will be simple interest calculated from January 24, 2026 at 4.00% annually on the balance outstanding.

**January 12, 2026**  
**Date Issued**

---

Nersi Makki  
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.