



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

**Citation:** Clements v Capital 3 Inc., 2026 ONLTB 1637

**Date:** 2026-01-09

**File Number:** LTB-T-061470-22

**In the matter of:** 2, 310 MITTON STREET SOUTH  
SARNIA ON N7T 3E6

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|-----------------|------------------|-----------------|
| <b>Between:</b> | William Clements | Tenant          |
|                 | <b>and</b>       |                 |
|                 | Fraser Pollock   | Landlord        |
|                 | <b>and</b>       |                 |
|                 | Capital 3 Inc.   | Former Landlord |

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

- entered the rental unit illegally.
- 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 Tenant called Tracy Debonis as a witness. The Former Landlord did not appear.

### **Determinations:**

1. This and four related applications in files LTB-T-059493-22, LTB-T-059581-22, LTB-T-000213-23 and LTB-T-014625-23 came before me on the same docket. 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 says that the Landlord bought this 5-unit residential complex from the Former Landlord with a view to renovating the units and re-renting them for more profit. To do that, they needed the Tenant to leave. So the Landlord and Former Landlord embarked on a course of harassment, obstruction, coercion and threats calculated to drive him from his home. When that didn't work, the Landlord started construction in the three other units that were vacant. Not only did the construction substantially interfere with Tenant's reasonable enjoyment of the unit, but it was also the final prong in the larger campaign to unlawfully dispossess him. The Tenant stood his ground but endured a great deal of emotional upset and other hardships for which he seeks to be compensated.
5. The Landlord responds that all he did was enter into an agreement to buy the residential complex from the Former Landlord. He denies that he colluded in any way with the Former Landlord and in fact disavows any knowledge of its actions. He acknowledges that he did renovations in the residential complex but denies he that caused any interference with the Tenant.
6. For reasons that follow, I find the Tenant has proven the respondents substantially interfered with his reasonable enjoyment of the rental unit. The remainder of the claims are dismissed.

### **Evidence**

7. The agreement of purchase and sale ('APS') between the Former Landlord as vendor and the Landlord as purchaser was not produced but I was told it contained a commitment to deliver vacant possession on closing. The parties agreed the transaction closed on April 27, 2022.
8. The Tenant argues that an N13 notice of termination given to him under false pretenses by the Former Landlord in combination with N12 notices of termination, offers of temporary accommodations and "cash-for-keys" offers prove that the respondents was prepared to resort to unlawful means to remove him. He argues that the chronology of events contains circumstantial evidence leading to an inference that the Landlord was complicit in this subterfuge.

9. The Tenant mentioned he has transglobal amnesia which interferes with his memory. He testified that given the passage of time and his health challenges, some details in his testimony may not be accurate. 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 fill gaps in the Tenant's presentation with other evidence that I accept. I also allowed the Tenant's representative to prompt his testimony with leading questions because the Landlord did not object and I considered that an appropriate device for refreshing the witness's memory under the circumstances.
10. The Tenant filed the N13 notice of termination given to him by agents of the Former Landlord. It's dated April 21, 2022 and purports to be signed by one Phil Pacheco who identifies himself as representative of the landlord Phil Pacheco. It describes extensive construction work with the phrase "Demo Throughout" and says the plumbing, structural framing, drywall and floors will be demolished. It states that Phil Pacheco requires the rental unit to be vacant to do repairs or renovations so extensive that a building permit is required. It goes on to state that no permit or other authorization is required for this demolition.
11. The Tenant testified that he was in regular communication with agents of Phil Pacheco whom he knew to be a principal of the Former Landlord. Those persons told him he must move out because another family needed to move into his unit. The Tenant mentioned two N12s notices of termination that were given to him but he wasn't sure when or by whom. He did not produce them. The Tenant did not vacate in response to these demands because he knew them not to be genuine. He knew that some of the other tenants in the complex had received similar N12 notices which could not all be true. That one person would want the whole residential complex for his or her residential occupation made no sense.
12. The Tenant also showed me an N11 form signed and dated by the Landlord on June 6, 2022 proposing a termination date of July 31, 2022. The Tenant testified that he has never met the Landlord or communicated with him directly. The Landlord confirmed that someone acting on his instructions presented the N11 form to the Tenant as an offer to terminate the tenancy. The offer included monetary consideration. The Tenant did not accept the proposal because he did not want his tenancy terminated.
13. The Tenant also testified that someone on behalf of either the Former Landlord or the Landlord (he wasn't sure which or when) at some unspecified point offered him temporary accommodation so repairs and renovations could be carried out in his unit. The repairs were estimated to take a few months. The offeror was prepared to pay the costs of temporary storage of the Tenant's belongings but not the costs associated with moving his belongings. The Tenant was not interested.
14. The Tenant explained that he did not want to live in a motel even temporarily and he wasn't able to move his belongings unassisted. But principally the Tenant was not interested because he was told he likely couldn't afford the rental unit once the repairs and renovations were completed. The Landlord testified he had and still has no knowledge of

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

this offer. In the absence of any evidence to the contrary, I accept this offer was made by the Former Landlord alone without the participation of the Landlord.

15. The Former Landlord transferred title to the Landlord on April 27, 2022.
16. The Tenant testified that a contractor sent him a text message on May 11, 2022 describing the construction work that needed to be done. It may have included notice that water and electricity would be disrupted. The text message was not produced.
17. The Tenant also testified that he received regular letters from a property management company representing the Landlord about the work that needed to be done. The Tenant mentioned that because of difficulties with his memory, he would be relying on his partner Tracy Debonis to supply additional details. The Tenant testified that Ms. Debonis had kept that correspondence and would be able to speak to it.
18. As it happened, the testimony of Ms. Debonis offered no further clarity. She explained that the source of her information was the Tenant. I admitted this hearsay evidence of prior consistent statements given the frailties in the Tenant's memory in the hope that it might clarify the chronology of events but it proved unhelpful. It consisted of forceful repetitions of the Tenant's theory of the case but without details. The witness mentioned various dollar amounts to show that escalating offers of money were made to the Tenant to entice him vacate. She described the respondents' conduct as preposterous and ridiculous and totally illegal. This witness has no legal qualification but has knowledge of housing law gained through her experience as a landlord.
19. Ms. Debonis confirmed the Tenant's testimony that he was offered temporary accommodation and storage for his household effects but that the Tenant felt he had no guarantees he could return after the construction. Ms. Debonis did not produce the correspondence mentioned by the Tenant and did not speak of them in her testimony.
20. Eventually, construction began in the residential complex but not in the Tenant's unit. The Tenant could not recall when or by whom the construction was done but the Tenant estimated the construction went on for five to six months. The Tenant saw that the work involved replacing the lawn with paved parking space and removing construction waste.

### **Substantial Interference**

21. 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 with timely notice and in a reasonable manner. Certain criteria would need to be proven for the Landlord to benefit from those exemptions. I heard passing reference to a notice of some description having been given by text message on May 11, 2022 but nothing else. The Landlord led no evidence on the criteria identified in section 8 of the *Regulation*. Therefore I find that exemption does not apply on the facts of this case.
22. I accept the Tenant's testimony and find that the construction in the residential complex substantially interfered his reasonable enjoyment of the rental unit and the residential complex by causing excessive noise. This is a breach of section 22 of the Act.

23. For reasons that follow, I also find the Tenant has proven on a balance of probabilities that the Former Landlord engaged in underhanded machinations with a view gaining possession of the rental unit and I further accept that this conduct also substantially interfered with the Tenant's right to reasonable enjoyment of the unit.
24. I find that the N13 notice given to the Tenant by Phil Pacheco was disingenuous. It is irregular on its face for containing contradictory statements about whether the intended demolition needed building permits.
25. I can also infer that the N13 notice was not sincere as no one filed an application to pursue it. The timing of the N13 notice also allows me to infer that it was more likely than not it was a deception on the part of Phil Pacheco. It's dated April 21, 2022, and was served around that time. The Former Landlord needed to deliver vacant possession or risk being in breach of the APS. Therefore, I find the Tenant has proven on a balance of probabilities that N13 notice was a ruse calculated to compel him to vacate.
26. I am also prepared to disregard the outward form of this notice and the separate corporate existence of the Former Landlord and attribute this notice to the Former Landlord because there is sufficient evidence to prove on a balance of probabilities that Phil Pacheco who signed the N13 is an agent of that corporation.

### **Harassment, Obstruction, Coercion, Threats and Interference**

27. The Tenant alleges that the actions of one or both of the respondents has harassed, obstructed, coerced, threatened or interfered with him contrary to section 23 of the Act.
28. Although he did not produce either of the N12 notices he mentioned, I am prepared to accept the Tenant's testimony that someone, or possibly more than one person, at some point, or possibly at more than one point, told him he had to leave the rental unit to make space for someone else. These efforts, accompanied by monetary offers of compensation, convinced the Tenant that the respondents were determined to repossess his unit by any means possible. The Tenant had observed his neighbours in the residential complex being driven from their homes and lived in fear of the possibility that the respondents would eventually succeed in driving him out of his home too.
29. I accept that the Tenant reacted in this way but cannot find that he was harassed, coerced, threatened or interfered with within the meaning of section 23 of the Act. There is no evidence that the objectionable N13 notice, or that the N11 cash-for-keys offer or any of the other communication was accompanied by threats or any other form of compulsion or intimidation.
30. I accept that the Tenant considered the offers presented to him to be unwelcome but there is no evidence that the Tenant, or anyone on behalf of the Tenant, ever mentioned his subjective response to the respondents.
31. The Tenant feels that having declined one offer, the respondents ought to have known that he considered subsequent offers unwelcome. As indicated, I have insufficient evidence of the circumstances surrounding those subsequent offers. Even accepting that subsequent proposals were presented with escalating offers of money, there is nothing in evidence to suggest this was improper in any way. Nor is there anything in the surrounding

circumstances to suggest that the respondents ought to have been on notice that their approaches were objectionable to the Tenant.

32. Rather, the evidence shows that the Tenant took advice from his legal advisor and from Ms. Debonis and correctly determined he had no obligation to vacate. He decided he would not accept any offers to terminate his tenancy and would contest any notice of termination. He did not testify that he or anyone on his behalf asked the respondents stop making offers.
33. Harassment is generally understood to be a course of conduct that a reasonable person knows or ought to know would be unwelcome. Therefore, I must not consider the respondents' actions in isolation but consider whether in aggregate they breached the Tenant's rights under the Act. In so doing, I have viewed the chronology presented by the Tenant. I have also accounted for the fact the construction began in the residential complex that substantially interfered with the Tenant's reasonable enjoyment of his unit. But there is no evidence that the construction was done for the purpose of harassing or pressing the Tenant or for any other illegitimate reason. There is also no evidence that the Tenant ever voiced any objection to the construction.
34. Considering those actions of the respondents which have been proven on a balance of probabilities, both in isolation and cumulatively, I find that the Tenant has not met his burden to prove on a balance of probabilities that either of the respondents harassed, obstructed, coerced, threatened or interfered with the Tenant contrary to section 23 of the Act.

### **Illegal Entry**

35. The Tenant testified that in the summer of 2022, he was subjected to unannounced visits by contractors whom he turned away. He described these as attempts of illegal entry. I find that the allegation of illegal entries has not been proven on a balance of probabilities.

### **Withholding the Reasonable Supply of Vital Services**

36. This claim turns on the fact that the construction necessitated shutting off the water, electricity and heat from time to time. Which service was interrupted at what time and for how long was not in evidence. Without these details it is impossible to know whether the interference was reasonable or unreasonable. I find there was insufficient evidence presented to prove this allegation on a balance of probabilities.

### **Remedies**

37. Having proven that the construction substantially interfered with his reasonable enjoyment contrary to section 22 of the Act, the Tenant is entitled to those remedies that he can prove on a balance of probabilities.
38. The frailties in the evidence makes assessment of fair and reasonable remedies problematic. In particular, there is no way to fix the dates for the construction with any degree of certainty making it difficult to appreciate the impact on the Tenant with reference to the duration and severity of the breach.

### *General Compensation*

39. The Tenant seeks general compensation in the amount \$10,000.00 from each of the respondents for a total of \$20,000.00. This head of damages is essentially general damages for breach of the contractual covenant of quiet enjoyment.<sup>2</sup> They are intended to compensate the claimant for non-pecuniary losses such as pain and suffering, emotional distress and inconvenience occasioned by the respondents' breach.
40. During the construction, the Tenant lived with the fear and anxiety that the Landlord would eventually succeed in driving him out. The fear and anxiety were compounded by notices of rent increase he has received. There is no pleading or evidence that he was subjected to any unlawful rent increase but he was worried that eventually he won't be able to afford the rental unit.
41. The Tenant is 54 years-old and relies on ODSP benefits. He also takes casual work as a handyperson when it's available.
42. The Tenant testified the construction also caused damage to his rental unit. He states there was a hole in ceiling and paint dripped into his unit. The paint has caused his cupboard doors not to close properly.
43. The workers were there 12 hours a day including on weekends. The workers would park their vehicles in the Tenant's parking spot depriving him the use of it. The noise from construction work and the constant traffic disturbed the Tenant's sleep and caused him headaches.
44. The Tenant gave evidence of the amenities he has lost. The Tenant filed a written caution given to him by the Former Landlord on November 21, 2021 stating that each unit in the complex is entitled to one parking spot only and that the parking spaces cannot be used as storage for other things. The changes to the parking structure at the residential complex have deprived the Tenant of the space he used to keep his snowmobile and recreational watercraft. He had to sell these. He was also told to remove the trailer he relies on for his work as a handyperson. These are privileges that he enjoyed historically. The Landlord denied any knowledge of such arrangements with the Former Landlord but he also accepted that covenants running with the land include any implied terms of the tenancy. In the absence of any evidence to the contrary, I am prepared to accept the Tenant's position his historic use of the parking space to store his equipment was a feature of his tenancy agreement and he has suffered a loss by the discontinuation.
45. The Tenant was told to remove his lawn furniture and stop using the backyard that he had enjoyed during his seven-year tenure. Without use of the backyard, his ability to socialize with his family and neighbours was diminished with detriment to his mental health.
46. But the tenant has not mentioned these things in his application. Nowhere in the 24 pages of pleadings read as generously as possible can one discern anything sounding as a claim under section 130 of the Act. He does not seek a reduction in rent into the future nor any special damages to do with cost of storing his equipment. I must surmise that this

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<sup>2</sup> *Mejia v. Cargini*, 2007 CanLII 2801 at para. 18 (Ont. Div. Ct.); *Taft v. Whitesands Apartments* [2009] O.J. No. 3198 at para. 27 (Div. Ct.).

evidence was presented as an expression of the interference the Tenant has experienced and I am prepared to accept it as such.

47. The Tenant also testified to having lost some of his possessions. His application does not seek compensation for personalty. I understood him to mean that he had to give up his lawn furniture and his recreational watercraft which he mentioned in the context of the other deprivations he has been subjected to and I have considered it in that respect.
48. The Tenant also made passing reference to his doctor's opinion that stress aggravated by fear of eviction caused his seizure and a heart attack. Ms. Debonis repeated this hearsay opinion evidence of the unnamed doctor. This subject was not pursued by the Tenant's representative and there was insufficient evidence to link the Tenant's health challenges to any wrongdoing on the part of the respondents.
49. But I accept the Tenant's evidence that the construction caused him stress. This evidence was unchallenged by the Landlord and confirmed by Ms. Debonis who is the Tenant's companion of 20 years. She observed the Tenant change drastically throughout his ordeal. He became unhappy and his health deteriorated.
50. I have made the necessary allowance for the manner of the Tenant's presentation for reasons already discussed. I have determined that what may have sounded like exaggerations are more likely attributable to the Tenant's understandable desire to advocate for his cause and not an attempt to mislead. And I am prepared to accept that the breaches caused fear, anxiety and stress. They aggravated the Tenant's already fragile psyche which is a compensable loss.<sup>3</sup>
51. On considering the totality of the evidence presented about the nature, extent, and impact of the breach, and my knowledge of similar cases decided by the Board, I find \$5,000.00 to be a fair and reasonable award for general compensation.

### *Abatement*

52. The Tenant seeks a 50% abatement of the rent paid for the period from December 2021 to May 2022 from the Former Landlord and a 50% abatement of the rent paid from June to July 2022 from the Landlord. It's unclear from the evidence presented why the Tenant has chosen December 2021 as the starting point for his claim. The only dates I can fix with any certainty are that the offending N13 notice was given to him in April 2022 by the Former Landlord and that the Landlord took title on April 27, 2022. I don't know when the bothersome construction began or ended but I know it lasted five to six months.
53. Abatement of the rent is intended to refund tenants that portion of the rent they have paid in exchange for a package of goods and services that they have not received. The package of goods and services includes the right to quiet enjoyment free from substantial interference.
54. I don't accept that a 50% abatement of rent is warranted. Abatements of that magnitude are normally awarded in cases where a significant portion of the rental unit is unusable for

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<sup>3</sup> *Taft v. Whitesands Apartments*, [2009] O.J. No. 3198 at para. 28 (Div. Ct.).

extended periods or a landlord has regularly harassed their tenant. That has not been proven in this case.

55. Given the difficulties with the evidence, I have determined that a lump-sum abatement is the most suitable remedy.<sup>4</sup> Having regard to the evidence of impact already detailed, and my knowledge of similar cases decided by the Board, I find an abatement of \$2,000.00 to be fair and reasonable. In arriving at this award, I have taken care not to duplicate aspects of the general compensation already awarded.

### *Order to Stop*

56. The application seeks an order requiring the respondents to stop their offending conduct. The Tenant did not pursue this remedy at the hearing which is understandable given that there is no evidence the bothersome construction continues or that the respondents have resumed their efforts to dispossess the Tenant.

### *Administrative Fine*

57. 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.
58. This remedy is not normally granted 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.
59. 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 respondents in this and the companion cases are sufficient to make clear to these respondents to landlords generally that subjugating tenants' right to their own interests carries severe consequences.

### Miscellaneous

60. I decline to apportion liability between the respondents. As a successor landlord, the Landlord took both the benefit benefits and the liabilities when he purchased the rental unit including obligations imposed by the *Residential Tenancies Act, 2006*. Distribution of benefits and liabilities between vendors and purchasers of realty is normally a matter of contract between themselves.<sup>5</sup> The Board is concerned with resolving disputes between landlords and tenants not hypothetical disputes among defendants.

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<sup>4</sup> *West End Development Corp. v. Bates*, [1994] O.J. No. 30 at para. 72 (Ont. Ct. Just. (Gen. Div.)).

<sup>5</sup> *Akbari v. Blenkinsop*, 2024 ONSC 1184 at paras. 36-37 (Div. Ct.).

61. Where the evidentiary record is sufficient, the Board may apportion liability between respondents<sup>6</sup> but the Board has no obligation to undertake this enquiry because it has neither the mandate nor the expertise.<sup>7</sup> In the circumstances of this case, I have an insufficient evidentiary record to make the necessary findings. The APS was not produced and the Former Landlord did not appear to present a defence. As mentioned already, the timing of the breaches was not established with any certainty allowing me to know who was at fault and when.
62. This order will issue against both the Landlord and the Former Landlord.
63. The Tenant did not renew his request for costs originally made at the first appearance on May 7, 2024.
64. The Tenant did not incur a fee for bringing the application.

**It is ordered that:**

1. The total amount the Landlord and the Former Landlord shall pay the Tenant is \$7,000.00. This amount represents:
  - \$5,000.00 for general compensation; and
  - \$2,000.00 for a rent abatement.
2. The Landlord and the Former Landlord shall pay the Tenant the full amount owing by January 20, 2026.
3. If the Landlord and the Former Landlord do not pay the Tenant the full amount owing by January 20, 2026, the Landlord and the Former Landlord will owe interest. This will be simple interest calculated from January 21, 2026 at 4.00% annually on the balance outstanding.
4. If the Landlord and the Former Landlord do not pay the Tenant the full amount owing by January 21, 2026, the Tenant may recover any outstanding balance by deducting the full amount of the lawful monthly rent starting February 1, 2026 and every month thereafter until the monies owing under this order are recovered in full.
5. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

**January 9, 2026**  
**Date Issued**

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**Nersi Makki**  
Member, Landlord and Tenant Board

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<sup>6</sup> e.g. *Motta v. Patel*, 2025 ONLTB 51628 at para. 26; *Wojcik v. Pinpoint Properties Ltd.*, 2016 ONSC 3116 at para. 5 (Div. Ct.).

<sup>7</sup> *Akbari v. Blenkinsop*, 2024 ONSC 1184 at paras. 33-39 (Div. Ct.)

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