Order under Section 57
Residential Tenancies Act, 2006

Citation: Lewandowski v Capital 3 Inc, 2026 ONLTB 1639
Date: 2026-01-07
File Number: LTB-T-014625-23

In the matter of: 1, 310 MITTON STREET SOUTH
SARNIA ON N7T 3E6

Between: Mike Lewandowski — Tenant

and

Fraser Pollock — Landlord

and

Capital 3 Inc. — Former Landlord

Mike Lewandowski (the 'Tenant') applied for an order determining that Capital 3 Inc and Fraser Pollock (the 'Landlord') and Capital 3 Inc. (the 'Former Landlord') gave a notice of termination in bad faith.

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 who called Brenda Lewandowski as a witness. 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-059581-22, LTB-T-061470-22, LTB-T-000213-23, and LTB-T-059493-22 were scheduled together. 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.

Position of the Parties

4. The Former Landlord sold the residential complex to the Landlord. Before closing, the Former Landlord gave the Tenant two N12 notices of termination under section 49 of the *Residential Tenancies Act, 2006* (the 'Act') requiring him to vacate the rental unit claiming a purchaser in good faith requires possession of the unit for residential occupation.

5. The Tenant applies under section 57(1)(b) of the Act for a determination that the Former Landlord and the Landlord acted in bad faith.

6. The Landlord agrees that he did not take possession of the rental unit for residential occupation. He says he never had any such intention and, more to the point, he never communicated any such intention to the Former Landlord or to the Tenant. He therefore disavows any knowledge of or involvement in the Former Landlord's decision to serve the N12 notices. He took the position that all he did was bargain for vacant possession in the agreement of purchase and sale ('APS). How the vendor secured vacant possession was not his concern.

Law

7. Subsection 57(1)(b) of the Act requires the Tenant to prove each of the following on a balance of probabilities:

   - The Former Landlord gave the Tenant an N12 notice of termination under section 49 of the Act;
   - 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 Act occupied the rental unit within a reasonable time after the Tenant vacated; and
   - The Former Landlord served the N12 notice of termination in bad faith and/or the Landlord acted in bad faith.

Findings

8. The parties agree that the Former Landlord gave the Tenant two N12 notices of termination declaring the Landlord intended to move into the rental unit. Both N12 notices purport to be signed by Phil Pacheco on behalf of the Former Landlord. The first was dated December 16, 2021, appointed March 1, 2022 as the date of termination and has

marked Reason 2, stating the Former Landlord has entered into an agreement to sell the unit but without identifying the intended occupant of the unit. The other N12 notice was dated January 26, 2022, appointed March 31, 2022 as the date of termination and has also marked Reason 2, this time declaring that the purchaser of the rental unit requires it for residential occupation. The Tenant testified that Phil Pacheco gave it to him some time in February 2022 and told him a purchaser would be moving in.

9. The parties also agreed that the Tenant vacated the rental unit on March 31, 2022. I accept the Tenant's unchallenged testimony that he would not have vacated were it not for the N12 notices. He didn't know he had a choice. I find the Tenant has proven on a balance of probabilities that he vacated the unit on March 31, 2022 as a result of the N12 notice.

The Former Landlord acted in bad faith

10. The only disputed issues are whether the Former Landlord gave the N12 notices in bad faith and whether the Landlord has any responsibility. In cases of this sort, the Board is faced with two related issues: (1) did the Landlord in good faith require possession of the rental unit for residential occupation? And (2) did the Former Landlord give the N12 notice in bad faith?

11. In *Elkins v. Van Wissen* (2023), the Court of Appeal for Ontario observed that an agreement of purchase and sale involves two parties. The legislation expressly links the conduct of the vendor and purchaser. The purpose of clause 57(1)(b) of the Act is to ensure that the sale of a rental unit cannot be used to unlawfully evict a tenant. So in deciding such an application, the Board must consider both the landlord's and the purchaser's good faith.[1]

12. On considering the totality of the evidence and guided by section 202 of the Act, I find the Tenant has proven on a balance of probabilities that the Former Landlord acted in bad faith because he delivered two N12 notices under section 49 falsely declaring that a purchaser wished to move in when the evidence shows there was no such purchaser. I can infer also bad faith from the fact that the Former Landlord had a self-interest in perpetrating this ruse: he was at risk of breaching the APS if he did not deliver vacant possession on closing. But I cannot find that the Landlord acted in bad faith or was otherwise complicit in the Former Landlord's bad faith.

The Landlord did not act in bad faith

13. As explained in *Elkins v. Van Wissen* (2023), whether the vendor and purchaser colluded or independently acted in bad faith turns on the facts of each particular case.[2] The bad faith of one cannot be imputed to the other without evidence. In this case, I find there is insufficient evidence that would allow a finding of bad faith on the part of the Landlord.

14. There can be no question that the Landlord did not in good faith require the unit for his own use. And I accept his testimony that he did not declare any such intention. He testified

[1] *Elkins v. Van Wissen*, 2023 ONCA 789 at paras. 42-43, 56-57.
[2] *Elkins v. Van Wissen*, 2023 ONCA 789 at para. 55.

that he never told anyone that he required the unit for his own use and he did not deliver the affidavit contemplated by subsection 71.1(1) of the Act. I have accept the Landlord's testimony because I have no reason to disbelieve it. The Tennant led no evidence, and elicited no concessions in cross-examination, that could cast doubt on it.

15. The Tenant was able to demonstrate that the Landlord is a sophisticated investor who has access to professional advisors. He signed the APS knowing the unit was tenanted. The Tenant also demonstrated that the Landlord had a profit motive in buying this residential complex and that he stood to gain by taking vacant possession because that would allow him to renovate and re-rent to someone new at a higher price. In fact, that was his intention all along. I find this circumstantial evidence insufficient to connect the actions of the Former Landlord to the Landlord. It does not allow the inference that the Landlord knew, or even had reason to suspect, that the Former Landlord would unlawfully evict the Tenant. It certainly does not prove that they colluded.

16. Considering the totality of the evidentiary record, I can't find any circumstances that would allow an inference that the Landlord independently acted in bad faith or was in anyway complicit in Former Landlord's abuse of the N12 notices.

17. Guided by section 202 of the Act that requires me to ascertain the real substance of all transactions and activities relating to the rental unit and the good faith of the parties, and considering the totality of the evidence presented, I find the Tenant has not proven on a balance of probabilities that the Landlord acted in bad faith.

Remedies

18. Having established the grounds of his application, the Tenant is entitled to those remedies enumerated in subsection 57(3) of the Act that he can prove on a balance of probabilities.

19. The Tenant seeks general compensation in the amount of $20,000.00 and $8,400.00 as other remedies described as "damages for breach of contract." The Board routinely awards general compensation by authority of paragraph 1.1 of subsection 57(3) of the Act for emotional distress, inconvenience, and the like. These are general damages intended to compensate tenants for their non-pecuniary losses occasioned by being unlawfully evicted.[3]

20. The Tenant described the impact of this unlawful eviction which I accept as truthful because it was unchallenged, confirmed by the testimony of his mother, and because there is no evidence that would cause me to doubt its reliability.

21. The Tenant has a diagnosed mental health condition that is managed by medication. He relies on ODSP as his only source of income. The rental unit that he was evicted from was the only form of stable housing realistically available to him. Waitlists for subsidized housing are very long and the Tenant cannot afford to rent another place at market prices given his inability to participate in the workforce. Since losing his home, he has been forced to live in his parent's spare room in their retirement community which is far. The

[3] See for example *Kara-Bibar v. Al-Dulaimi*, 2022 CanLII 86555 (ON LTB) at para. 37; *Sanchez v. Xu*, 2024 ONLTB 50494 at para. 39; *TST-10645-19 (Re)*, 2020 CanLII 31285 (ON LTB) at para 8.

Tenant does not drive. He has lost his independence and his ability to socialize with detrimental impact on his already fragile mental health.

22. The Tenant's losses are substantial, and I find they have been proven on a balance of probabilities. He will be awarded $6,600.00 for general compensation which is the equivalent of the 12 months of the last rent charged to the Tenant. This is the maximum allowed under paragraph 1.1 of subsection 57(3) of the Act.

23. I cannot accept the Tenant's suggestion to recharacterize the Tenant's claim for non-pecuniary losses as "breach of contract damages" or anything else. What the Tenant describes are in substance general damages: he seeks to be compensated for intangible non-pecuniary losses.

24. I have searched for guidance on the expanse of the residual clause contained paragraph 1.4 of subsection 57(3) of the Act. I have found no authority for the Tenant's position that the residual discretion to make "any other order that the Board considers appropriate" can be used to circumvent the cap imposed by paragraph 1.1. Rather I find myself bound by the plain language of paragraph 1.1 and by the well-established principle of statutory interpretation that a specific provision on a given subject matter overrides a general one.

25. What few authorities I have located are not directly on point confirm me in my view.

26. In *MacKay v. Sanghera* (2001), the Divisional Court observed in *obiter* that the residual clause in the now repealed *Tenant Protection Act, 1997* could allow recovery for property loss as result of a landlord's failure to maintain the rental unit. This head of damages was described as damages for breach of the contractual promise to provide a well-maintained unit. At the time, the legislation did not specifically mention that category of special damages.[4]

27. In *Mejia v. Cargini* (2007), the court held that the residual clause found in what is now clause 31(1)(f) of the Act is authority to award general damages for breach of the implied covenant of quiet enjoyment.[5]

28. The decision in *Taft v. Whitesands Apartments* (2009) confirmed that pain and suffering damages are properly recoverable under the residual clause, even if the applicant characterizes them as "aggravated damages".[6]

29. The Court of Appeal's decision in *Elkins v. Van Wissen* (2023) explained that the residual clause in para. 1.4 allows the Board to order remedies against a purchaser who has acted in bad faith.[7] It makes no comment on the permissible quantum of general damages because that was not in issue.

30. Prior decisions of the LTB have found that the residual clause is not broad enough to encompass special damages that aren't already enumerated on the list in subsection 57(3), such as increased utility costs.[8] In *Re TST-90503-17* (2019), the Board determined

[4] [2001] O.J. No. 2600 at paras. 8-9 (Div. Ct.).
[5] 2007 CanLII 2801 (Ont. Div. Ct.).
[6] [2009] O.J. No. 3198 at para. 27 (Div. Ct.).
[7] 2023 ONCA 789 at para. 58.
[8] *TST-77144-16 (Re)*, 2016 CanLII 88292 at para. 26.

that the residual clause does not permit the Board to reinstate a tenancy because that subject has been specifically dealt with and circumscribed elsewhere in the legislation.[9]

31. While I have found no decision that addresses this point directly, what I take from the decisions reviewed is that the residual clause does not give the Board free hand to make any other order it pleases. The range of possible orders "the Board considers appropriate" are the ones contemplated by the Legislature. And the Legislature has made special provision for general compensation. The authorities are clear that the phrase "general compensation" as it appears in the Act means general damages in the sense known to common law.

32. The legislative history of the provision confirms me in my view. The *Protecting Tenants and Strengthening Community Housing Act, 2020* added paragraph 1.1 to subsection 57(3). Until that time, the legislation allowed successful tenants to recover several categories of special damages but not any non-pecuniary damages. The Legislature added general compensation to the list of enumerated remedies but imposed a cap expressed in unambiguous language. The Legislature would have no need to include the cap in paragraph 1.1 if it intended to empower the Board to grant general damages up to its monetary jurisdiction.

33. The Tenant's request for $28,600.00 is in substance a claim for general damages as borne out by the pleadings and evidence he presented in support of it. Those damages are specifically capped at the 12 months of the last rent charged. To re-label the claim as something else to circumvent the cap in paragraph 1.1 would be contrary to law.

34. The Tenant will be awarded $6,600.00 as general compensation.

Storage costs

35. The Tenant will be awarded the $1,793.64 out-of-pocket storage expenses he has incurred since being evicted because I find the testimony of the Tenant's witness corroborated by invoices proved the claim on a balance of probabilities. The Tenant put his belongings in rented storage space when he started living in his parent's place because there was no space for them there.

36. The application says storage costs are $40.56 a month and claims $486.72 being the equivalent of 12 months. It also says "The tenant will continue to incur cost in storing his items and requests this amount increase by the monthly rate from the current total until the matter is completed."

37. The Landlord opposed the claim taking the position that the application would need to be amended and that amending the claim upwards by some $1,400 at this late stage would be unfair. He submitted that if he known the magnitude of the claim, he would have prepared and presented his defence differently. He did not say how.

38. I am not persuaded that an amendment is strictly needed because the application does say the Tenant intends to seek the storage costs he's been incurring up to the date of the

[9] 2019 CanLII 87012 at para. 62 (Ont. L.T.B.).

hearing. But in case of error, on a review of the factors identified in Rule 15 of the Board's *Rules of Procedure* and other relevant considerations, I grant the requested amendment. The Landlord could not have been surprised or otherwise prejudiced by the amendment. The nature of the claim was disclosed in the unamended application. The evidence in support of it had been disclosed for months and well in advance of the case management conference. The Landlord had the opportunity to scrutinize the Tenant's evidence, to cross-examine his witness and to present his own evidence in response

39. The Tenant limited his claim for storage costs to 12 months. The amount claimed will be granted because I find the Tenant has proven the claim on a balance of probabilities and I find the quantum claimed to be fair and reasonable.

Abatement

40. The Tenant also seeks a rent abatement equal to 100% for the rent paid in the year 2022.

41. Abatement of the rent is intended to refund tenants that portion of the rent they have paid in exchange for the package of goods and services that they paid for but did not receive.

42. The Tenant says that the Former Landlord's conduct—giving him notices of termination—reduced his enjoyment of the rental unit. He acknowledged there is no evidence of actual interference with his right to reasonable enjoyment while he was in possession but submitted that because he did not incur a rent differential, and because he can't afford to rent another unit, it is only fair that the respondents refund him a year's worth of rent. He did not argue that his failure to suffer greater losses is a result of the respondents' breach.

43. I am prepared to accept that the spectre of being evicted from his home caused the Tenant fear and anxiety that interfered with his enjoyment of the unit from December 16, 2021, when he was given the first N12 notice to when he vacated on March 31, 2022. I find this claim sounds in general damages and I have accounted for it in the general compensation awarded. No claim for abatement of rent has been proven on a balance of probabilities.

Administrative Fine

44. 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 a binding statement of the law but I accept it as the correct interpretation of the discretion contained in paragraph 3 of subsection 57(3) of the Act.

45. 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.

46. 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 Former Landlord in this and the companion cases are

sufficient to make clear to the Former Landlord and to landlords generally that abusing tenants' rights for their own mercenary ends has severe consequences.

Miscellaneous

47. I have considered what order to make against each respondent and I have determined that the remedies granted shall be payable by the Former Landlord alone because the claim against the Landlord has not been proven on a balance of probabilities.

48. The Tenant did not renew his request for costs originally made at the first appearance on May 7, 2024.

49. The Tenant did not incur a fee for filing the application.

It is ordered that:

1. The application and style of cause are amended to include "South" in the address of the rental unit.
2. The application is amended to include a claim for reasonable storage expenses in the amount of $1,793.64.
3. The total amount the Former Landlord shall pay the Tenant is $8,393.64. This amount represents:
   - $6,600.00 for general compensation.
   - $1,793.64 for the reasonable storage expenses that the Tenant has incurred.
4. The Former Landlord shall pay the Tenant the full amount owing by January 18, 2026.
5. If the Former Landlord does not pay the Tenant the full amount owing by January 18, 2026, the Former Landlord will owe interest. This will be simple interest calculated from January 19, 2026 at 4.00% annually on the balance outstanding.

January 7, 2026
Date Issued

Nersi Makki
Member, Landlord and Tenant Board

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