Order under Sections 31, 57, 87, 88.1 and 89
Residential Tenancies Act, 2006

File Numbers: LTB-T-050332-22
LTB-T-021707-22
LTB-L-005118-23

In the matter of: 56 DEWELL CRES
COURTICE ON L1E0B7

Between: Shauna Lacombe — Tenant

And

Marilyn Monteiro — Landlord

And

Robert Klein — Interested Party

Shauna Lacombe (the 'Tenant') applied for an order determining that Marilyn Monteiro (the 'Landlord'):

- gave a notice of termination in bad faith (LTB-T-050332-22; hereafter referred to as the 'T5 Application'),
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household and harassed, obstructed, coerced, threatened or interfered with the Tenant (LTB-T-021707-22; hereafter referred to as the 'T2 Application').

The Landlord also applied for an order requiring the Tenant to pay:

- the rent and daily compensation that the Tenant owes,
- the Landlord's reasonable out-of-pocket costs that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest,
- the Landlord's reasonable out-of-pocket costs that the Landlord incurred or will incur to repair or replace undue damage to property. The damage was caused willfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex (LTB-L-005118-23; hereafter referred to as the 'L10 Application').

These applications were heard by videoconference on August 7, 2024, May 22, 2025, and June 27, 2025.

The Tenant, the Tenant's Legal Representative, Shahen Alexanian, Tenant's Witnesses, Ryan Hawes, Craig Sevik, and Karen Smythe, the Interested Party, Robert Klein, the Landlord and the Landlord's Witness, Janel Walters attended the hearing on August 7, 2024.

The Tenant, the Tenant's Witness, Ryan Hawes, the Interested Party, Robert Klein, the Landlord and the Landlord's Witness, Janel Walters attended the hearing on May 22, 2025. The Tenant confirmed that their legal representative, Shahen Alexanian, was no longer retained and that they would continue the proceedings as a self-represented party.

The Tenant, the Tenant's Witness, Ryan Hawes, and the Landlord attended the hearing on June 27, 2025.

The parties were also directed to submit their closing submissions in writing, in accordance with the following deadlines:

- On or before July 15, 2025, the Tenant was to provide the Landlord and file with the LTB a copy of their written closing submissions.
- On or before August 8, 2025, the Landlord was to provide the Tenant and file with the LTB a copy of their written closing submissions.
- On or before August 15, 2025, the Tenant was to provide the Landlord and file with the LTB a copy of any additional written closing submissions to respond to the Landlord's materials.

Determinations:

I. Request for Closed Hearing and Confidentiality Orders

1. The Landlord requested that the hearing be closed to the public and that the order and corresponding adjudicative records, be confidential as they alleged concerns regarding their safety and a desire to restrict the divulgation of intimate financial details.

2. The Tenant was opposed to the Landlord's request, on the basis that the Board's proceedings are intended to be public in nature.

3. Hearings before the Board are generally open to the public, in accordance with section 9 of the *Statutory Powers Procedure Act* (hereafter referred to as the 'SPPA') and the open court principle.[1]

4. As open hearings are protected by section 2(b) of the *Charter of Rights and Freedoms*, excluding the public from a hearing will be exceptional. The Board may hold the hearing in the absence of the public only in very limited circumstances set out in subsection 9(1) of the SPPA, where the Board is of the opinion that
   (a) matters involving public security may be disclosed; or
   (b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.

[1] *Toronto Star v. AG Ontario*, 2018 ONSC 2586

5. Rule 7.7 of the Board's Rules of Procedure reflects subsection 9(1) of the SPPA and permits the Board to restrict public access to the hearing on the same grounds.

6. The test established by the Supreme Court of Canada in *Sherman Estate v. Donovan*,[2] for discretionary limits on court openness provides further guidance when considering whether to override the principle that tribunal hearings should be open to the public. In order to succeed, the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:

    (1) court openness poses a serious risk to an important public interest;
    (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
    (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.

7. The person seeking to restrict access therefore has the onus to displace the general rule of openness. The open court principle takes primacy over privacy interests; exceptions to openness must be proven on a case-by-case basis.

8. While I can appreciate the Landlord's desire to protect their privacy, I do not find that the threshold for a closed hearing was met. Indeed, the Landlord referenced vague and uncorroborated security concerns through which they claimed that individuals looking for the Tenant were knocking on the Landlord's door. The Landlord did not provide any evidence or particulars to support their claim limited their submissions to general statements that were not substantiated by any supporting evidence or details.

9. I find that the Landlord failed to meet the burden of proof to establish their claim and therefore find, on a balance of probabilities, that a closed hearing is not required under the circumstances.

10. Similarly, I am not satisfied that the public nature of the order would lead to the dissemination of highly sensitive and personal information. Although the evidence adduced throughout the proceedings may cause the Landlord a certain level of discomfort or embarrassment, I am not satisfied that the failure to grant the Landlord's request would pose an affront to their privacy or dignity.

11. The Landlord's request seemed for attuned to a desire to avoid public opprobrium in light of the fact that they are a member of the *Law Society of Ontario*. Under the circumstances, the Landlord chosen field of employment, which is not relevant to the facts of these proceedings, does not justify shielding them from the open court principal.

12. The Landlord's request was therefore also denied.

[2] *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII)

II. Board' Jurisdiction

13. Section 1 of the *Residential Tenancies Act* (hereafter referred to as the 'Act') reads as follows:

> **1** The purposes of this Act are to provide protection for residential tenants from unlawful rent increases and unlawful evictions, to establish a framework for the regulation of residential rents, to balance the rights and responsibilities of residential landlords and tenants and to provide for the adjudication of disputes and for other processes to informally resolve disputes. [Emphasis Added]

14. The parties were therefore reminded that their applications and corresponding submissions had to be related to their actual landlord and tenant relationship and that disputes that occurred beyond the scope of such a relationship would not necessarily be relevant or pertinent for the purposes of these proceedings.

III. L10 Application: LTB-L-005118-23

15. As explained below, the Landlord did not prove the allegations contained in the L10 Application on a balance of probabilities. Therefore, the L10 Application is dismissed

A. L10 Application Amendment – Named Respondents and Remedies

16. The parties agreed to amend the L10 Application in order to remove Robert Klein as a named respondent and therefore only include Shauna Lacombe as the Tenant and named respondent.

17. The Landlord also sought to amend their L10 Application in order to reduce the amount of the reasonable out-of-pocket expenses they alleged to have incurred to $2,250.00 due to their claim that the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex substantially interfered with the reasonable enjoyment of the residential complex by the Landlord or another lawful right, privilege or interest of the Landlord.

18. The Tenant was not opposed to the Landlord's amendment request.

19. On the basis of the agreement between the parties, and pursuant to subsection 200(1) of the Act and Rule 15 of the Board's *Rules of Procedure*, I granted the amendment request. The style-of-cause was also amended accordingly.

20. For greater clarity, as the L10 Application was heard alongside the T2 Application and the T5 Application, Shauna Lacombe shall continue to be identified as the "Tenant" rather than a "Former Tenant" throughout this order.

B. Service of the L10 Application and Notice of Hearing

21. It is not in dispute that the Landlord served the Tenant with the application and Notice of Hearing at least thirty (30) days before the hearing in accordance with Rule 3.3 of the LTB's Rules of Procedure.

22. It is not in dispute that the Landlord served the Tenant with the application and Notice of Hearing using a method permitted in subsection 191(1.0.1) of the Act and Rule 3.3 of the LTB's Rules of Procedure.

23. The Tenant vacated the rental unit on December 14, 2021.

24. The application was filed within one year after the Tenant ceased to be in possession of the rental unit.

C. *Rent and daily compensation owing*

25. The parties agree that the lawful rent was $1,900.00. It was due on the first (1st) day of each month.

26. Based on the monthly rent, the daily rent/compensation is $62.47. This amount is calculated as follows: $1,900.00 x 12, divided by 365 days.

27. The Landlord claims that the Tenant failed to pay the rent for the rental period starting November 1, 2021, and ending November 30, 2021. They are therefore of the position that the Tenant owes the total amount of $1,900.00.

28. The Tenant disagreed that they owed the rent for the rental period starting November 1, 2021, and ending November 30, 2021, as the Landlord served them with N12 Notice of Termination (hereafter referred to as the 'N12 Notice'), with a termination date of December 31, 2021, and waived the rent for this rental period, in lieu of paying compensation to the Tenant, as required under sections 48.1 and 55.1 of the Act, as it appears from a copy of the email correspondences exchanged between the parties between October 12, 2021, and October 13, 2021 (DOC-1853502; Exhibit 1).

29. The Landlord did not dispute that they had served the N12 Notice. They stated that they then proceeded to withdraw their N12 Notice, as it appears from a copy of the letter dated November 11, 2021 (DOC-2893903, page 45 of 111; Exhibit 2), and therefore that the compensation paid to the Tenant ought to be returned to the Landlord.

30. The Tenant indicated that they were never served with the letter dated November 11, 2021 (Exhibit 2) and that they had already advised the Landlord on October 27, 2021, that they would be moving out of the rental unit in accordance with the N12 Notice, as they had secured alternate housing accommodations, as it appears from a copy of the email correspondences exchanged between the parties on October 27, 2021 (DOC-1853534; Exhibit 3, *in bundle*).

31. On the basis of the evidence and submissions before me, I find that the Tenant does not owe the Landlord the amount of $1,900.00 for the rental period starting November 1, 2021, and ending November 30, 2021.

32. Indeed, irregardless of the validity of the service of the letter dated November 11, 2021 (Exhibit 2), the Tenant clearly and unequivocally advised the Landlord on October 27, 2021, that they would be vacating the rental unit as a result of the N12 Notice (Exhibit 3). To allow the Landlord to change their mind after receiving such a confirmation would essentially enable the Landlord to *game the system* by obtaining vacant possession of the rental unit

on the basis of a notice of termination that they served themselves and stripping away the Tenant's rights, which would be contrary to the purpose of the Act.[3]

33. I am therefore satisfied that the tenancy ended on December 14, 2021, as a result of the Tenant moving out in accordance with a notice of termination[4]. Therefore, the Tenant's obligation to pay rent ended on that date.

34. By serving the Tenant with a notice of termination under section 48 of the Act, the Landlord had an obligation to compensate the Tenant an "amount equal to one month's rent"[5] "no later than on the termination date specified in the notice of termination."[6]

35. As indicated in *Marineland of Canada Inc. v. Olsen,* 2011 ONSC 6522 (CanLII), the obligation by the landlord to compensate the tenant is "immediate" and created "once the landlord has given the notice."

36. It is not an uncommon practice for landlords to elect to waive rent for a designated rental period in lieu of paying the required compensation to tenants *out of pocket*. In this case, I am satisfied that the parties agreed that the required compensation would be paid to the Tenant by way of waiving the rental for the rental period starting November 1, 2021, and ending November 30, 2021 (Exhibit 1).

37. Accordingly, the Landlord's request for an order requiring the Tenant to pay the rent and daily compensation that the Tenant owes is denied.

D. <u>Compensation for damage</u>

38. The Landlord brought forward this component of the L10 Application pursuant to subsection 89(1) of the Act, which reads as follows:

> **89** (1) A landlord may apply to the Board for an order requiring a tenant or former tenant to <u>pay reasonable costs</u> that the landlord has incurred or will incur <u>for the repair</u> of or, where repairing is not reasonable, the <u>replacement of damaged</u> property if,
>
> (a) while the tenant or former tenant is or was in possession of the rental unit, the tenant or former tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant or former tenant <u>willfully or negligently</u> causes or <u>caused undue damage to the rental unit or the residential complex</u> […] (Emphasis added).

39. The Landlord must prove, on a balance of probabilities, that the Tenant caused undue damage to the rental unit. While the Act does not define "undue damage" it is interpreted as damage that is beyond what is reasonably expected normal wear and tear. Undue damage is therefore physical damage to a unit that is excessive or unnecessary.

[3] Section 1 of the *Residential Tenancies Act, 2006.*
[4] Subsection 48(3) of the *Residential Tenancies Act, 2006.*
[5] Section 48.1 of the *Residential Tenancies Act, 2006.*
[6] Section 55.1 of the *Residential Tenancies Act, 2006.*

a) *Backyard Deck*

i. Landlord's Evidence

40. The Landlord testified that in the course of their move out, the Tenant proceeded to remove the wooden deck located in the backyard, despite being provided instructions not to do so, as it appears from copies of the pictures of the backyard taken by the Landlord during the months of October 2021 and December 2021 (DOC-2893903; pages 6 to 13 of 111; Exhibit 4, *in bundle*)

41. The Landlord indicated that they therefore had to commission the reinstallation of another deck which also served an additional purpose of covering damage caused to the grass.

42. The Landlord stated that the installation of the new deck, which was 20 feet wide and 20 feet in length, cost $10,500.00. They had previously been quoted the amount of $6,480.00 for a deck for which the size would have been twenty (20) feet wide and twelve (12) feet in length, as it appears from a copy of the text messages correspondences between the Landlord and their contractor Kaalie between April 14, 2022, and May 30, 2022 (DOC-5654103, pages 6 to 9 of 23; Exhibit 5, *in bundle*).

43. The Landlord indicated that they proceeded to pay their contractor in multiple instalments between March 17, 2022, and June 23, 2022, as it appears from a copy of the Landlord redacted bank statement and e-transfer confirmations (DOC-5654103, pages 10 to 14 of 23; Exhibit 6, *in bundle*).

44. Under cross-examination, the Landlord agreed that they did not submit itemized invoices or receipts pertaining to the installation of the new deck.

i. Tenant's Evidence

45. The Tenant testified that there was no deck located in the backyard of the rental unit at the start of the tenancy and that the Tenant had, with the Landlord's consent, proceeded to have the deck installed at their own cost, as it appears from a copy of the text message correspondences exchanged between the Tenant and the Landlord between March 7, 2019, and May 1, 2019 (DOC-1853507; Exhibit 7, *in bundle*).

46. The Tenant stated that they only proceeded to remove the deck based on the Landlord's repeated requests for the Tenant to do so, as it appears from copies of the text message sent by the Landlord to the Tenant on January 1, 2021, at 10:48am of the email sent by the Landlord to the Tenant on February 9, 2021 (DOC-1853511, page 2 of 30, DOC-1853517; Exhibit 8, *in bundle* and Exhibit 3).

47. The Tenant indicated that the Landlord only expressed an interest in having the deck remain after it had been already removed, as it appears from a copy of the email sent by the Landlord to the Tenant on November 1, 2021 (DOC-1853544; Exhibit 9).

ii. Analysis

48. On the basis of the evidence and submissions before me, I am not satisfied that the Tenant another occupant of the rental unit or a person whom the Tenant permitted in the residential complex willfully or negligently caused undue damage to the deck located in the backyard by having it removed.

49. Indeed, the deck was not a feature of the rental unit provided to the Tenant by the Landlord. While the Tenant had inquired as to whether or not the Landlord sought to invest in the project related to the deck, the Landlord elected to permit the Tenant to install the deck at their own cost, and for their own benefit and use throughout the course of their tenancy (Exhibit 7).

50. Although the Landlord's opinion with respect to the deck may have varied following its installation (Exhibits 8 and 9) they were never entitled to have this installation remain in the rental unit following the Tenant's departure.

51. While the removal of the deck may have caused some damage to the backyard (Exhibit 4), the basis of the Landlord's claim was anchored in the costs they claim to have incurred for the installation of a new deck. As such, the alleged damage to the grass is not relevant for the purposes of the Landlord's L10 Application[7].

52. As the installation of a new (and larger) deck (Exhibit 5) equates to the Landlord electing to add improvements or additional features to the rental unit, rather than repairing physical damage that was excessive or unnecessary, the Landlord's claim is dismissed.

b) Tiles, Carpet and Overall Cleanliness

i. Landlord's Evidence

53. The Landlord testified that they discovered that the Tenant was operating a refurbishment business from within the rental unit, and more specifically the garage, the basement, and the kitchen, as it appears from the Tenant's Facebook post dated July 19, 2020, and pictured of the garage, basement and kitchen (DOC-2893903; pages 14 to 35 and 111 of 111; Exhibit 10, *in bundle*).

54. The Landlord stated that by operating their "labour-intensive" refurbishment business within the multiple levels of the rental unit, the Tenant damaged the tiles and carpet located throughout the rental unit, as it appears from the pictures taken by the Landlord at the entrance and throughout the rental unit (DOC-2893903, pages 61 to 98; Exhibit 11, *in bundle*).

55. The Landlord explained that they (unsuccessfully) attempted to have the carpet cleaned, which led to them incurring costs of $452.00, as it appears from a copy of the invoice #1082 from K&R Cleaning Services GTA (DOC-5654103, page 23 of 23; Exhibit 12).

56. The Landlord indicated that they were unable to clean the stains on the carpet, which led to a need for the carpet to be replaced. The replacement costs of the carpet amounted to

[7] *Beauge v. Metcap Living Management Inc*., 2012 ONSC 1160.

$4,400.00, as it appears from the e-transfer payment sent to the Landlord's contractor Marco, between April 19, 2022, and April 27, 2022 (DOC-5654103, page 4 of 23; Exhibit 13).

57. The Landlord stated that the tiles located at the entrance of the rental unit, and the kitchen area leading to the backyard also could not be cleaned, which led to a need to replace them. The replacement costs associated to the tiles amounted to $5,000.00 (Exhibit 5).

58. The Landlord stated that the entire top floor of the living room, in addition to the living room area and the area surrounding the staircase had to be repainted. The costs associated to the repainting of the rental unit amounted to the amount of $3,400.00, as it appears from a copy of the Invoice #94 from *Orbit Painting* (DOC-5654103, page 16 of 23; Exhibit 14).

59. The Landlord testified that the rental unit was further left unclean due to the fact that what appeared to be raw eggs and urine were splattered on the walls, as it appears from a picture of the baseboard (DOC-2893903, page 55 of 111; Exhibit 15).

60. Under cross-examination, the Landlord agreed that they did not submit itemized invoices or receipts pertaining to the replacement costs associated to the carpet and the tiles.

ii. <u>Tenant's Evidence</u>

61. The Tenant submits that it is reasonable to expect that a landlord would be required to clean a carpet upon the move out of a tenant and that reasonable wear and tear is to be expected, especially when considering the carpet was originally installed in 2012.

62. The Tenant indicated that the Landlord had advertised the rental unit for sale during the month of January 2022, and that the pictures depict that the space was clean and not unduly damaged, as it appears from a copy of the MLS listing from January 2022 (DOC-1890691; Exhibit 16).

63. The Tenant stated that prior to moving out and returning vacant possession of the rental unit to the Landlord they had taken reasonable steps to clean the rental unit with the assistance of a neighbour, as they were still in the early process of their recovery to their ankle injury.

64. The Tenant recognized that there were minimal scuff marks on some walls, but that there were no holes on the walls and that the carpet was clean and undamaged, as it appears from the pictures of the rental unit taken by the Tenant on December 13, 2021 (DOC-1853548; Exhibit 17, *in bundle*).

65. The Tenant categorically denied the Landlord's claims and stated that the substance visible on the wall equated to a residue of a spill of wax from a wall-mounted *Scentsy* warmer, as it appears from a picture of a *Scentsy* warmer installed in the Tenant current housing accommodations (DOC-3862922; Exhibit 18).

66. Under cross-examination, the Tenant agreed that they refurbished furniture items within the rental unit, as they picked up a hobby during the pandemic.

iii. Analysis

67. On the basis of the evidence and submissions before me, I am not satisfied that the Tenant another occupant of the rental unit or a person whom the Tenant permitted in the residential complex willfully or negligently caused undue damage to the tiles and carpet, regardless as to whether the Tenant was operating a “refurbishment business” or practising a hobby (Exhibit 10).

68. Indeed, the undated pictures submitted by the Landlord (Exhibit 11) do not depict physical damage to the unit and do not appear to be contemporaneous to the date or period the Tenant vacated the rental unit. The surrounding weather visible in the picture appears to be more concomitant to one of the previous inspections[8] of the rental unit, more likely conducted during the Fall.

69. The pictures submitted by the Tenant (Exhibit 17) show the state of the rental unit upon the Tenant having removed their personal belongings on December 13, 2021. I found these pictures to be more contemporaneous to the Tenant’s departure and therefore more reliable. Although miscellaneous scuff mark or paint residue can be seldom seen, I do not find them to meet the definition of "undue damage" under section 89 of the Act, as they do not relate to physical damage to the unit.

70. Subsidiarily, I would not find it reasonable to find the Tenant liable for the replacement of the entirety of the tiles and carpet, when only limited areas may have needed replacement. The extent of the project undertaken by the Landlord is again akin to improvements to the rental unit, for which the Tenant ought not be responsible for.

71. While I am also not satisfied that urine or eggs were left behind by the Tenant (Exhibits 15 and 18), such claims are far more meeting the definition of "undue damage" under section 89 of the Act, as they do not relate to physical damage to the unit.

72. While some of the expenses claimed by the Landlord (Exhibits 12 and 13) may qualify as reasonable out-of-pocket costs arising from substantial interference with the Landlord’s rights[9], the Landlord did not present them as such through their L10 Application. As the Landlord can only be awarded remedies sought in their application, I find these claims to be moot under circumstances[10].

73. Therefore, all claims pertaining to the state of cleanliness of the rental unit, and their corresponding costs are also dismissed.

E. Compensation for substantial interference

74. The Landlord alleged that due to the exhaustive damage caused to the rental unit by the Tenant, they were required to delay their move to the rental unit and therefore had to continue using their other rental accommodations at 3237 Bayview to store their belongings.

[8] Order LTB-T-050332-22/LTB-T-021707-22/LTB-L-005118-23, issued on January 6, 2026, paragraph 92.
[9] Section 88.1 of the *Residential Tenancies Act, 2006*.
[10] *Beauge v. Metcap Living Management Inc*., 2012 ONSC 1160.

75. The Landlord therefore sought for the Tenant to pay the Landlord the amount of $2,250.00, which equated to the Landlord's own rent for 3237 Bayview for the period starting January 1, 2022, and ending January 31, 2022.

76. Under cross-examination, the Landlord agreed that they previously testified on August 7, 2024, that they had taken possession of the rental unit during the month of January 2022.

77. Under cross-examination, the Landlord agreed that they continued to have possession of 3237 Bayview until June 30, 2022, as it appears from the Board Order LTB-L-003305-21/LTB-T-007499-22/HOT-10063-21/HOT-10065-21/TST-21807-21, issued on July 27, 2022 (DOC-2922659; Exhibit 19).

78. As explained herein, I am not satisfied that the Tenant caused undue damage to the rental unit. I am therefore not satisfied, on a balance of probabilities, that the state of the rental unit upon the Tenant returning vacant possession of the rental unit on December 14, 2021, unduly prevented the Landlord from taking possession or storing their belongings in the rental unit.

79. The Landlord's testimony was inconsistent in this regard. While they testified that they limited their time at 3237 Bayview due to an increasingly untenable situation with their own landlord (Exhibits 1 and 19), they also limited their time at the rental unit based on unsubstantiated fears of safety and ongoing renovations which they commissioned.

80. Accordingly, the Landlord has not proven that the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex substantially interfered with the reasonable enjoyment of the residential complex by the Landlord or another lawful right, privilege or interest of the Landlord.

81. Even if I am wrong, the Tenant's behaviour and conduct had no bearing on the Landlord's liability to pay their own rent to their own landlord (Exhibit 19). The amount ($2,250.00) therefore being claimed by the Landlord cannot be akin to reasonable out-of-pocket expenses incurred by the Landlord.

IV. T2 Application: LTB-T-021707-22

82. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenant the amount of $1,235.50, on or before January 31, 2026.

A. T2 Application Amendment

83. The Tenant sought the permission of the Board to amend the remedies claimed in their T2 Application. They indicated that they misunderstood the meaning behind the remedies reflected on the form of the T2 Application, and clarified that they were now only seeking a total rent abatement of $4,750.00, which represents:

- A 100% rent abatement for the month of October 2021.
- A 100% rent abatement for the month of November 2021.
- A 50% rent abatement for the month of December 2021.

84. The Tenant further stated that, while they had received assistance with the presentation of their T5 Application, they did not receive any such assistance with the filing of the T2 Application.

85. The Landlord was opposed to the Tenant's amendment request, stating that they were previously assisted by counsel and had made no attempts to amend the application prior to the hearing.

86. On the basis of the submissions before me, I granted the amendment request. Indeed, the Tenant, as a self-represented party is not sophisticated in the manner of a legal representative and did not understand how to properly complete a Board form. In my view, the Board must give a self-represented party the benefit of the doubt and permit reasonable amendments in order to give meaningful application of the Act's objectives of remedial legislation with a tenant protection focus. The amendment is not prejudicial to the Landlord, as the grounds of the T2 Application, which were well known to them, remained the same and the total quantum of the compensation sought by the Tenant, through the T2 Application, was also reduced.

B. *Substantial Interference and Harassment*

a) *Tenant's Evidence*

87. The Tenant testified that they felt "emotionally battered" as of the month of October 2021, until the end of their tenancy as a result of the Landlord's behaviour and conduct.

88. The Tenant stated that they had contacted the Landlord on October 7, 2021, to ask them if they would be able to pay their monthly rent in multiple instalments due to financial constraints. While the Landlord acquiesced to their request, they also notified the Tenant of their intent to increase the monthly rent to $2,250.00 as of March 1, 2022, which would represent a rent increase of more than 18%, despite the rental unit not meeting the exemptions set out in section 6.1 of the Act, as it appears from the email exchanges between the Tenant and the Landlord on October 7, 2021 **(**DOC-1853531; Exhibit 20, *in bundle*).

89. The Tenant indicated that the looming threat of such a rent increase compounded with the Landlord telling them that they "can terminate the tenancy" if they are unable to "pay the new rent amount" made them feel uncomfortable and fearful that they would lose their home if they did not agree to such an increase (Exhibit 20).

90. The Tenant stated that they suffered a serious ankle injury on October 23, 2021, while in the process of moving and removing the deck located in the backyard.

91. The Tenant indicated that the Landlord advised them of their intent to conduct an inspection of the rental unit on October 31, 2021. Based on their ankle injury, the Tenant requested that the inspection be delayed to a later date, which the Landlord categorically refused, as it appears from a copy of the email correspondences between the Tenant and Landlord on October 27, 2021 (Exhibit 3).

92. The Tenant clarified that the Landlord proceeded to conduct the inspection of the rental unit on October 29, 2021, after providing them with a duly completed notice of entry, as it appears from a copy of the text messages correspondences between the Tenant and the Landlord between 9:56am on October 28, 2021, and 11:29am on October 29, 2021 (DOC-1853543, pages 1 to 3 of 9; Exhibit 22, *in bundle*).

93. Following the October 29, 2021, inspection, the Tenant indicated that the Landlord served them with an N5 Notice of Termination on November 1, 2021, with a termination date of November 27, 2021 (hereafter referred to as the 'N5 notice'), as the Landlord alleged that the Tenant substantially interfered with the Landlord's reasonable enjoyment of the residential complex, and lawful rights, privileges and interests, in addition to causing wilful or negligent damage to the rental unit, as it appears from a copy of the email sent by the Landlord to the Tenant on November 1, 2021, and the N5 Notice and its corresponding addenda (DOC-1853544; Exhibit 9).

94. The Tenant is of the position that the N5 Notice was frivolous in nature, and that despite knowing that the Tenant was in the process of vacating the rental unit and recently injured themselves, the Landlord proceeded to threaten to evict them on a more expedited basis.

95. The Tenant stated that the multiplicity of the notices of termination they received from the Landlord (*i.e* the N5 Notice and the N12 Notice) created a sense of confusion, panic, anxiety and uncertainty; which they feel were exacerbated by the fact that the Landlord is also a member of the Law Society of Ontario. The Tenant felt that their tenancy was consistently jeopardized throughout 2021.

96. The Tenant advised the Landlord that they had vacated the rental unit on December 14, 2021, and felt that they were met with additional threats of litigation, as it appears from a copy of the email correspondences exchanged between the parties on December 14, 2021 (DOC-1853562; Exhibit 23).

97. The Tenant also felt that the Landlord was exacerbating undue pressure on them by electing to contact the Tenant's new landlord, as it appears from a copy of the email correspondences dated December 20, 2021 (DOC-1853564; Exhibit 24).

98. Under cross-examination, the Tenant indicated that they had agreed to remove the deck located in the backyard, at the Landlord's behest.

99. Under cross-examination, the Tenant agreed that the Landlord had not asked them to repair the grading issue.

100. Under cross-examination, the Tenant agreed that there were circumstances in which they had expressed reservations I having contractors attend the rental unit at the behest of the Landlord to address nonemergency situations, in light of the recommendations provincial restrictions imposed during the pandemic, as it appears from a copy of the email correspondences exchanged between the Landlord and the Tenant between January 18, 2021, and January 19, 2021 (DOC-1853513; Exhibit 25).

101. Under cross-examination, the Tenant agreed that they were not served with an N1 Notice of Rent increase. The Tenant highlighted, however, that they were served with the N12 Notice after contesting an 18% rent increase.

102. Under cross-examination, the Tenant agreed that they stopped communicating with the Landlord after being served with the N5 Notice.

b) Landlord's Evidence

103. The Landlord testified that they were trying to act diligently with respect to concerns pertaining to the rental unit, and more specifically the backyard and their understanding of flood s r risks of floods in the basement, as it appears from the email correspondences between the Landlord and the municipal senior construction inspector, Colin Davidson (DOC-5637616, pages 35 to 36 of 75; Exhibit 26).

104. The Landlord stated that they had sought advice and came to the understanding that they would be able to increase the lawful rent by 18% and that their emails to the Tenant in this regard equated to an invitation to negotiate a new agreement (Exhibit 20).

105. The Tenant indicated that their communications with the Tenant soured, as they felt frustrated in the ability to conduct repairs in the rental unit, and they felt "bullied by the Tenant."

c) Analysis

106. Sections 22 and 23 of the Act read as follows:

> **22** A landlord shall not at any time during a tenant's occupancy of a rental unit and before the day on which an order evicting the tenant is executed substantially interfere with the reasonable enjoyment of the rental unit or the residential complex in which it is located for all usual purposes by a tenant or members of his or her household. [Emphasis Added]
>
> **23** A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant. [Emphasis Added]

107. Although the term "harassment" is not defined anywhere in the Act or its Regulations, the Board generally adopts the definition from the *Human Rights Code, 1990* that defines harassment as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome."[11]

108. In this matter, I find that the Landlord has embarked in a campaign through which they repeatedly threatened the Tenant's tenancy and security of tenure by seeking to impose upon them rent increases that were far beyond the prescribed yearly guideline[12]. While I did not find it credible that the Landlord had sought advice from Board staff and were advised that they could increase the rent by 18%, I also note that the Landlord is a member of the *Law Society of Ontario* and is learned in the Act and the Board's practices, having repeatedly acted on behalf of parties before the Board. They ought to have known that such an increase was prohibited and that threatening the termination of the tenancy based on the Tenant's refusal to abide by such an increase would be tantamount to harassment as the comments were deliberately made to force the Tenant to comply with the Landlord's attempt to circumvent the Act.

109. Moreover, I disagree that the Landlord's overtures with respect to the rent increases equated to an invitation for the Tenant to negotiate with them. The Landlord was adamant in their written correspondences that the rent would be "increasing […] effective March 1, 2022, to $2,250.00 per month" and that they would take steps to terminate the tenancy if the Tenant failed to pay the new rent amount (Exhibit 20). While certain provisions of a new tenancy negotiated under this basis would have likely conflicted with the Act[13], the communications from the Landlord were concise and left no room for negotiation or interpretation. The Tenant was to pay the unilaterally revised rent amount (which was contrary to the Act) or move out of the rental unit.

110. The exchanges between the parties pertaining to the unlawful rent increase were preceded and proceeded by multiple exchanges through which the Tenant was frivolously blamed for alleged undue damage to the backyard and rental unit and for which the Landlord repeatedly threatened to take legal action and seek the termination of the tenancy.

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[11] Subsection 10(1) of the *Human Rights Code, 1990*.
[12] Section 120 of the *Residential Tenancies Act, 2006*.
[13] Section 4 of the *Residential Tenancies Act, 2006*.

111. Accordingly, I am satisfied, on a balance of probabilities that the Landlord harassed and threatened the Tenant and substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant, in contravention of sections 22 and 23 of the Act.

112. Although I am satisfied that the Landlord harassed and threatened the Tenant, I do not find it appropriate to award the Tenant a rent abatement of $4,750.00[14], as the Tenant was able to continue to use the entirety of the rental unit throughout the course of their tenancy.

113. With that said, I agree with the Tenant that the conduct they faced from the Landlord created a toxic environment which impeded their ability to fully benefit from the rental unit.

114. A rent abatement is intended to compensate a tenant for a contravention of a tenant's rights or a breach of the landlord's obligations[15]. I therefore find that the Tenant is entitled to a twenty-five percent (25%) rent abatement, which equates to $1,187.50.

115. The Tenant incurred costs of $48.00 for filing the T2 Application and is entitled to reimbursement of those costs.

[14] Order LTB-T-050332-22/LTB-T-021707-22/LTB-L-005118-23, issued on January 6, 2026, paragraph 83.
[15] Interpretation Guideline 16: *Administrative Fines*.

V. T5 Application: LTB-T-050332-22

A. Agreed Facts

116. The following facts are agreed upon by the parties:

- The Landlord served the Tenant with the N12 Notice with a termination date of December 31, 2021.
- The Tenant moved out of the rental unit by December 14, 2021 (Exhibit 23).
- The Landlord advertised the rental unit for sale within one year of the Tenant moving out of the rental unit Exhibit 16).

B. Legal Framework - Rebuttable Presumption of Bad Faith

117. As stated above, the Landlord is not disputing that they advertised the rental unit for sale within one year of the Tenant moving out as a result of being served an N12 Notice. The Landlord’s position, however, is that the N12 Notice was served in good faith to the Tenant and that they ultimately proceeded to move into the rental unit.

118. Subsection 57(1) (a) of the Act establishes a three-part test. In order 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 Landlords 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 or Board order based on the N12 Notice; and
  - Third, that the person named in the N12 Notice did not move into the rental unit within a reasonable time after the Tenant vacated.

119. On an application to the Board, the person who alleges a particular event occurred has the burden of proof to establish that it is more likely than not that their version of events is true. In this application, the burden typically falls on the Tenant to establish that the notice of termination was served in bad faith.

120. However, the fact that the rental unit was advertised for sale creates a rebuttable presumption[16] that the Landlord served the N12 Notice in bad faith.

[16] Subsection 57(5) of the *Residential Tenancies Act, 2006*.

121. Indeed, subsections 57(5) of the Act and 57(6) of the Act read as follows:

> For the purposes of an application under clause (1)(a), it is presumed, unless the contrary is proven on a balance of probabilities, that a landlord gave a notice of termination under section 48 in bad faith, if at any time during the period described in subsection (6) the landlord, […]
>
> (c) advertises the rental unit, or the building that contains the rental unit, for sale;
>
> […]
>
> The period referred to in subsection (5) is the period that,
>
> (a) begins on the day the landlord gives the notice of termination under section 48; and
>
> (b) ends one year after the former tenant vacates the rental unit.

122. In other words, in this case, the burden falls on the Landlord to establish whether or not the rebuttable presumption applies.

C. <u>Did the Landlord Serve the N12 Notice in Bad Faith?</u>

a) Landlord's Evidence

123. The Landlord testified that while they advertised the rental unit for sale, they did so for market evaluation purposes, following the pandemic, as it appears from a copy of the letter from realtor Joe Schuler, dated March 6, 2024 *(*DOC-2911045 page 42 of 42; Exhibit 27).

124. The Landlord indicated that they proceeded to take possession of the rental unit no later than January 14, 2022, as it appears from a copy of the Landlord's Enbridge Gas invoices dated May 18, 2022, and June 18, 2022, the 2022 Municipal School Board elections records, the Landlord's Bell invoice date September 11, 2022, the letter from the CRA dated March 30, 2022, the purchase #26242 from *Nutrivo Sales and Marketing* (DOC-2911045 pages 26 to 32 of 42; Exhibit 28, *in bundle*).

125. The Landlord stated that prior to moving into the rental unit, they were renting a condo. Their tenancy at the condo was considered to be on a month-to-month basis and they sought to vacate the condo as a result of ongoing issues they were experiencing with their own landlord, as it appears from a copy of the N4 Notice of Termination served to the Landlord and dated September 21, 2021, the letter from the *Rental Housing Enforcement Unit* dated October 18, 2021, and the email correspondences between the Landlord and the Tenant between October 12, 2021, and October 13, 2021 (DOC-2922666, pages 1 to 2 of 12 and DOC-2911045 pages 12 to 19 of 42; Exhibit 29, *in bundle*).

126. The Landlord indicated that their tenancy at the condo was terminated on June 30, 2022, as it appears from a copy of the Board order LTB-L-003305-21, LTB-T-007499-22, HOT-10063-21, HOT-10065-21, TST-21807-21, issued on July 27, 2022 (Exhibit 19).

127. The Landlord submitted that between the month of January 2022 and June 2022, they proceeded to conduct renovations in the backyard and the kitchen, which required them to continue to occupy the condo until June 30, 2022 (Exhibits 5, 12, and 14).

128. The Landlord stated that they therefore periodically stayed in the rental between the months of January 2022 and February 2022 (namely by placing a mattress in the upstairs bedroom) in order to also keep an eye on potential flooding issues that were brought to their attention by the Tenant.

129. The Landlord advised that they did not seek a second opinion in regard to the flooding issues, and instead "blindly" relied on the representation from the Tenant and the Tenant's contractor.

130. The Landlord indicated that upon obtaining vacant possession of the rental unit they contracted multiple contractors to complete interior renovations (Exhibits 12, 13, and 14).

131. The Landlord explained that the renovations and construction work started during the month of April 2022. They did not move all their belongings to the rental unit prior to the renovations being completed as they wanted to avoid having their belongings covered in dust stemming from the renovations, which could – in turn – exacerbate their allergies and asthma and that the pandemic led to additional delays pertaining to the planned renovations.

132. The Landlord also stated that they delayed their move to the rental unit due to security concerns, as individuals looking for the Tenant would knock on the door of the rental unit asking for them. The Landlord indicated that they stopped answering the front door around January 4, 2022, when individuals unbeknownst to them were present.

133. Reiterating that they did not sell the rental unit, the Landlord stated that they continue to occupy to the rental unit.

134. Under cross-examination, the Landlord agreed that the rental unit is heated by gas and that the *Enbridge Gas* invoices they submitted reflect inconsistent, limited or non-existent usage of the gas services between the months of January 2022 and June 2022 (Exhibit 28).

b) Tenant's Evidence

135. The Tenant's Witness, Craig Sevink (hereafter referred to as 'C.S'), testified that they are a general contractor that has been operating in the construction for eight (8) years. They indicated that they were familiar with the rental unit.

136. C.S explained that the backyard of the rental unit was experiencing an accumulation of water stemming from a grading issue, likely tying back to the original construction of the rental unit, and that the presence of the deck installed by the Tenant served as a canopy, as it appears from a copy of the email correspondences between C.S and the Landlord on March 26, 2021 (DOC-2910976, page 45 of 65; Exhibit 6).

137. C.S stated that as there were no foundation issues, there were no risks of flooding in the basement of the rental unit.

138. The Tenant testified that, prior to being served the N12 Notice, they had advised the Landlord that there were no floods in the basement, as it appears from a copy of the text message sent by the Tenant to the Landlord on January 14, 2021, at 8:52pm (DOC-3867710, page 104 of 133; Exhibit 7).

139. The Tenant indicated that the water consumption levels reflected in invoices provided by the Regional Municipality of Durham do not reflect that water leaks were ongoing based on the water consumption levels, as it appears from a copy of the Water and Sanitary Sewer Bill due January 10, 2022 (DOC-3867739, pages 70 and 71 of 126; Exhibit 8).

140. The Tenant stated that the Landlord's own communications reflect that their intent was to move in by July 1, 2022, as it appears from a copy of the text messages sent by the Landlord to their contractor Kaalie, on May 25, 2022 (Exhibit 5).

141. The Tenant testified that they filed their T5 Application, as they found the Landlord's delay to moving into the rental unit to be unreasonable.

c) *Analysis*

142. Although it is not in dispute that the Landlord advertised the rental unit for sale within one year of the Tenant vacating the rental unit (Exhibit 16) it also is not in dispute that the Landlord did not proceed in actually entering into an Agreement of Purchase and Sale or selling the rental unit.

143. While the relationship between the Landlord and the Tenant was clearly acrimonious[17], I do not find that the Landlord served the N12 Notice in bad faith. Indeed, the Landlord's housing situation and relationship with their own landlord were clearly untenable (Exhibits 1 and 19).

144. I am therefore satisfied that despite the tenuous relationship with the Tenant and the previous exchanges involving rent increases (Exhibit 20), the catalyst to serving the Tenant the N12 Notice and the Landlord expressed intent to moving into the rental unit was a direct correlation of the instability that they were facing with their own tenancy (Exhibit 1) and their need to secure alternate housing accommodations. Previous disagreements between the parties are not automatically synonymous with further actions being conducted in bad faith and preventing parties from exercising other rights under the Act.

145. As such the sole remaining question before me is whether or not the Landlord moved into the rental unit within a reasonable time for the date that the Tenant moved out.

146. While the Landlord stated that they took possession of the rental unit during the month of January 2022, their described occupation of the premises can only be characterized as being transient, "infrequent" or "occasional" in nature, until the end of the month of June 2022.[18] Their infrequent use of the heating during the winter months (Exhibit 28) and continued tenancy at their condo (Exhibit 19) supports such a conclusion.

147. Although I have found that the Tenant was not responsible for the damages claimed by the Landlord through their L10 Application, the Landlord remained entitled to proceed in

[17] Order LTB-T-050332-22/LTB-T-021707-22/LTB-L-005118-23, issued on January 6, 2026, paragraphs 82 to 114.
[18] *Kohen v. Warner, 2018 ONSC 3865.*

preparing the rental unit as they deemed fit for their impeding move and residential occupancy. I accept that the Landlord contracted workers to complete their desired renovations and upgrades (Exhibits 5, 12, and 14) and that some of these renovations were impacted by the weather (more specifically in relation to the backyard) and pandemic-related delays.

148. The Landlord’s testimony with respect to their medical concerns was also consistent and credible and further justifies their desire to delay their move until the completion of their desired renovations.

149. While I can appreciate that vacating the rental unit caused the Tenant stress and hardship I ultimately do not find - under the circumstances - that the Landlord’s delay to moving into the rental unit for their own residential occupancy, was unreasonable.

150. On the basis of the evidence and submissions before me, I am therefore satisfied that the Landlord has successfully rebutted the presumption under subsection 57(5) of the Act.

151. Accordingly, the Tenant’s request for an order determining that the Landlord gave a notice of termination in bad faith is dismissed.

It is ordered that:

1. The L10 Application, LTB-L-005118-23, is dismissed.

2. The T5 Application, LTB-T-050332-22, is dismissed.

3. Pursuant to the T2 Application, LTB-T-021707-22, the Landlord shall pay the Tenant the amount of $1,235.50, which represents:

    - $1,187.50 for the rent abatement related to the Landlord substantially interfering with the reasonable enjoyment of the rental unit or residential complex by the Tenant (or by a member of their household) and harassing, obstructing, coercing, threatening or interfering with the Tenant.
    - $48.00 for the cost of filing the T2 Application.

4. The Landlord shall pay the Tenant the full amount owing by January 31, 2026.

5. If the Landlord does not pay the Tenant the full amount owing by January 31, 2026, the Landlord will owe interest. This will be simple interest calculated from February 1, 2026, at 4.00% annually on the balance outstanding.

January 6, 2026
Date Issued

Alexandre Traboulsi
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.