



Order under Sections 31, 57, 135 Residential Tenancies Act, 2006

Citation: Robertson v Brezner, 2026 ONLTB 3544

Date: 2026-01-15

File Number: LTB-T-010628-23

In the matter of: 7 Millhouse Court
Maple ON L6A4J4

Between: Tybie Robertson Tenant
Chris Robertson

And

Yakov Brezner Landlord

Tybie Robertson and Chris Robertson (the 'Tenant') applied for an order determining that Yakov Brezner (the 'Landlord'):

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.
- harassed, obstructed, coerced, threatened or interfered with the Tenant.

The Tenants also applied for an order determining that the Landlord gave them a notice of termination in bad faith.

The Tenants also applied for an order determining that the Landlord collected or retained money illegally.

This application was heard by videoconference on September 17, 2025.

The Landlord, the Landlord's legal representative, E. Vasilieva, the Tenant, T. Robertson, and the Tenants' legal representative, M. Mont, attended the hearing. The Landlord's son, T. Brezner, also attended as a witness for the Landlord.

Determinations:

1. As explained below, the Tenant proved some of the allegations contained in the applications on a balance of probabilities.
2. The rental unit is a 3 bedroom townhouse in Vaughan. The Tenants moved in to the rental unit in 2015, and they moved out on August 4, 2021, after being served an N12 notice of

termination for landlord's own use. They filed their application on July 31, 2022. The monthly rent when they moved in was \$2,250.00, and when they moved out the monthly rent was \$2,487.00, due on the first day of the month.

3. The Tenants filed T1, T2 and T5 applications alleging that they were served an N12 notice of termination in bad faith, and that the Landlord failed to give them one month's rent compensation as he was obliged to do pursuant to section 48.1 of the *Residential Tenancies Act, 2006* (the 'Act'). They also allege that the Landlord failed to give them interest on their last month's rent deposit. The Tenants' T2 application alleges that the Landlord harassed them, and that he substantially interfered with their reasonable enjoyment of the rental unit.
4. It is undisputed that the Tenants were served with an N12 notice of termination because the Landlord's son was to move into the unit, that they moved out pursuant to the N12 notice of termination on August 4, 2021. It is also undisputed that the Landlord re-rented the unit to new tenants within eight months of the Tenants moving out of the unit.
5. Subsection 57(5) of the Act provides the criteria for a rebuttable presumption of bad faith. That is, that in the normal course, it is for the Tenants to prove, on a balance of probabilities, that the Landlord gave the N12 notice in bad faith. However, if the conditions of subsection 57(5) and 57(6) are met, the onus is reversed and it becomes a rebuttable presumption of bad faith. The onus is reversed to the Landlord to prove that the N12 notice was not served in bad faith.
6. The above-mentioned provisions of Act state, "...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,
 - (a) advertises the rental unit for rent;
 - (b) enters into a tenancy agreement in respect of the rental unit with someone other than the former tenant;
7. Subsection 57(6) provides that this period is one year from the date of the termination.
8. In this case it is undisputed that the Landlord entered into a tenancy agreement in respect of the rental unit with someone other than the Tenants less than one year from the date of termination.
9. Therefore, the onus is on the Landlord to prove, on a balance of probabilities, that he did not serve the Tenants with an N12 notice in bad faith.

T2 Application:

10. The Tenants filed their application almost a year after they moved out of the rental unit. Their T2 application contains allegations that all relate to months during the tenancy.

11. Pursuant to subsection 29(2) of the Act, which limits an application to the one year period prior to filing the application, the Tenants' T2 allegations would be time-barred.
12. Consequently, the Tenants' T2 application will be dismissed.
13. I determined that since the Tenants' T1 and T5 applications related to the end of their tenancy and to the notice of termination and termination date, we were able to proceed on both of those applications.

T1 Application:

14. The Tenants allege that the Landlord did not give them the one month's compensation due to them, pursuant to section 48.1 of the Act, nor did he give them interest on their last month's rent deposit.
15. The Tenants said that they did not pay rent for July 2021 because they assumed that their last month's rent deposit would be applied to that last month of their tenancy.
16. The Tenants submitted into evidence an email dated July 5, 2021, in which they requested both of the above. They submitted into evidence an email from the Landlord dated June 19, 2021, in which he promised to give them their last month's rent deposit "that you have already paid".
17. The Tenants said that after they requested it on July 5, 2021, the Landlord refused to give them the interest on their last month's rent deposit because he said that their last month's rent deposit had been used many years prior to that.
18. The Landlord alleges that the Tenants used up their last month's rent deposit in 2017, and that he paid the one month's rent compensation due pursuant to section 48.1 of the Act by waiving the rent for the month of July 2021.
19. The Landlord said that the Tenants initially signed a two year lease commencing September 2015. He said that the Tenants did not pay rent in August 2017, the last month of the initial two year lease. He submitted into evidence a bank statement, edited by himself, which displays anonymous deposits for the amount of rent that was payable in that period, for June 5, July 4, August 31, and October 3, 2017. The payments comprise a mix of cheque deposits, interac e-transfers and ATM deposits. He alleges that the August 31 payment was for the September rent, and therefore there is a missing payment for August 2017.
20. The Landlord said that he wrote in June 2021, that he would return the last month's rent deposit, because he was confused, and he suffers from memory loss.
21. I find on a balance of probabilities, based on the above evidence, that the Landlord owes the Tenants interest on their last month's rent deposit of \$2,250.00, collected on September 4, 2015, and he owes \$2,487.00 as one month's rent compensation due pursuant to section 58.1 of the Act for the reasons that follow.

22. There is no dispute that the Tenants paid \$2,250.00 rent deposit at the commencement of the tenancy. There is no evidence, besides the Landlord's self-edited bank statement, that the Tenants failed to pay the rent in August 2017. There was no evidence that the Landlord ever served an N4 notice of termination, nor that there was any mutual understanding that the Tenants did not have to pay rent in August 2017, nor that the Landlord asked for the rent for August 2017. On the other hand there is the Landlord's response in June 2021, acknowledging that he holds a last month's rent deposit for the Tenants. The only explanation the Landlord provided for writing the message of June 2021 was that he had "memory loss". He may have had memory loss, but that does not counteract the totality of the evidence which fails to establish that the Tenants did not pay the rent in August 2017, and therefore fails to prove that the Tenants' last month's rent deposit was used up before July 2021.
23. With respect to the one month's compensation for the N12, no one disputes that the Landlord never actually made a payment to the Tenants. The Landlord alleges that the one month's compensation was paid by way of a waiver of the rent for July 2021. This is nowhere in writing. While the Board will sometimes consider a waiver of rent for a period prior to the date of termination in an N12 notice to be equivalent to compensation pursuant to section 48.1, the waiver has to, at the very least, be mutually understood between the parties, and it has to be in writing.
24. The Tenants considered that the month of July 2021 was paid by way of their last month's rent deposit. I have found, above, that there was a last month's rent deposit that remained within the Landlord's control until the end of the tenancy. Therefore, the rent for July 2021 was paid by way of applying the last month's rent deposit.
25. Consequently, the Landlord owes \$2,487.00 compensation to the Tenants pursuant to section 48.1 of the Act. He also owes interest on the \$2,250.00 last month's rent deposit for the period September 4, 2015 to June 30, 2021, or \$209.25.
26. The Tenants did not pay rent in July 2021, and the difference between the rent for that month, \$2,487.00, and the deposit of \$2,250.00 is approximately equivalent to the amount of interest owed by the Landlord on the last month's rent deposit. Therefore, I find that the interest owed by the Landlord was used up by the amount of rent the Tenants underpaid in July 2021, and he will not be ordered to pay the interest.

T5 Application:

27. Above in paragraphs 4-9, I find that there is a reverse onus on the Landlord to prove, on a balance of probabilities, that he did not serve the N12 notice of termination in bad faith.
28. The Landlord served the N12 notice of termination on the Tenants alleging that his son was moving into the rental unit. Both the Landlord and his son, T. Brezner (TB) testified that TB was moving into the rental unit because he had a serious relationship with his girlfriend, and they were going to test living together before they took any further steps. TB's girlfriend did not attend the hearing to testify.

29. The Tenant, T. Robertson (TR) said that the Landlord told the Tenants on August 5, 2021, that TB was not going to move in right away because of the “bad condition of the house”. She said that the neighbours told her that there was no one living in the house. TR said that she went by the house and knocked on the door, and a worker who was undertaking renovations opened the door. She also said that she hired a private investigator. TR said that her understanding of the investigator’s report is that TB never moved into the rental unit. She said that TB was living at his parent’s house throughout this period. It is located on a street nearby, less than 1 km away from the rental unit.
30. TR said that she saw an ad for the rental unit by mid-December 2021 in which the requested rent was \$3,900.00. She said that as the ad aged, the rent kept going down. She said that it was leased for \$3,475.00 on April 1, 2022. This latter fact is not disputed.
31. The Landlord alleges that his son moved into the rental unit after the damages were repaired. However, the circumstances changed in late 2021, and TB had to move back to his parents’ home in order to permit them to rent the rental unit.
32. Both the Landlord and TB testified that the property had extensive damage, and TB was not able to move into the rental unit immediately after the Tenants vacated. The Landlord provided very vague testimony about whether TB’s girlfriend ever lived in the rental unit, despite saying that he visited his son, and despite the fact that he, himself, lived within 1 km of the rental unit. He said that he never saw TB’s girlfriend when he visited.
33. TB testified that his girlfriend never moved in with him. He said that because of the delay with repairing the rental unit, his girlfriend decided to stay in Kingston where she was attending university, even though she was attending remotely. TB, who was studying to be a software engineer, said that he worked at remote (coop programme at University of Waterloo) job from May to August 2021. Since he could not move in at the beginning of August 2021, he said that he stayed in an Airbnb until he could move into the rental unit.
34. TB said that he moved into the rental unit in September 2021, and he stayed there until January 2022. He said that he was still studying at University of Waterloo, but classes were remote. He submitted into evidence bills for home internet as well as a few Amazon orders that were delivered to the rental unit address during this period. He also submitted into evidence a tax assessment that had the rental unit as the mailing address for 2022.
35. Both TB and the Landlord testified that there was an unexpected development in October 2021, when the Landlord’s wife, J. Brezner (JB), was assigned to a large project that required her to move to the U.S. They said that it was a difficult, complicated and expensive move for them. The Landlord said that he was unable to continue working while he moved to the U.S. to support his wife. They said that the relocation took place in November 2021.
36. Both TB and the Landlord said that it was too difficult to support the expense of their own home in Canada, the rental unit, as well as the new place in the U.S., so they all decided that TB would move back to the family home and they would rent out the rental unit. They said that discussions took place during a trip he took to visit them in Florida that was

largely financed by his parents. He said that he moved back to the family home around the beginning of January 2022. They said that they signed a new lease for the rental unit for April 1, 2022, for a monthly rent of \$3,475.00.

Reasons and Analysis:

37. I find that the Landlord failed to prove, on a balance of probabilities, that they did not serve the N12 notice of termination in bad faith for the following reasons.
38. I do not find that the evidence establishes that TB ever moved into the rental unit.
39. For one, there was little credibility in the Landlord's evidence that supported his alleged original reason for serving the N12 notice. Both the Landlord and TB said that TB had a very serious relationship with a girlfriend and he needed the rental unit to test out the relationship. The girlfriend's name was never, to my recollection, mentioned. However, the Landlord did not seem to know anything about TB's girlfriend. The Landlord did not know if she ever moved into the rental unit, he did not speak about her by name, he never saw her at the unit when he visited, and he did not know if she was a student or whether she worked. The girlfriend was never asked to attend the hearing as a witness. TB's testimony about why his girlfriend never moved into the rental unit was not credible either. He said that because of the delay required to repair the rental unit, his girlfriend had to urgently decide where she was going to live, and she decided to stay in Kingston, even though classes were remote. Further, although both the Landlord and TB said that the rental unit was severely damaged, none of the extensive photos submitted into evidence by both parties showed much more than normal wear and tear after a six year tenancy.
40. TB received Fido bills to the rental unit mailing address, Amazon packages delivered to the rental unit, and a tax bill that provided the rental unit address for 2022. However, the bills do not make clear if the internet service was provided to that address, or whether it was just the address for billing. The Amazon packages were mostly for minor things like personal toiletry items, or easily transportable things like a vacuum, that could be delivered to one place and either used there or used at TB's family home which was very close by. The tax bill gave the rental unit as a mailing address, but there was evidence that TB was receiving correspondence from his accountant at the rental unit address even up to March 2023, when it is not disputed that TB was not living there. In other words, TB's documents prove only that he received correspondence at the rental unit, but they do not provide convincing evidence that he lived there like photos of his life and personal belongings in the rental unit might have. The evidence shows that he received correspondence at the rental unit until long after even he alleges that he was living there. The rental unit is close to his family home, so it is not inconvenient to him to receive correspondence at the rental unit.
41. Finally, both the Landlord and TB's evidence for why TB had to move back to the family home had little credibility. They said that it was too expensive to maintain TB in the rental unit because of the Landlord's obligation to accompany and maintain his wife in her new job in the U.S. Yet, the Landlord had sufficient funds to fly TB down to Florida for an expensive family vacation to discuss TB moving back to the family home to save expenses. The Landlord was never clear about how he maintains himself. He said that he

had a business, and he said that he was unemployed, and he said that he was a driving instructor, but mostly in the summer. Nevertheless, he was also able to relocate to the U.S. and still maintain at least two valuable properties in Vaughan.

42. I find that the totality of the above evidence proves, on a balance of probabilities, that TB never had a genuine intention of moving into the rental unit for at least one year, and therefore the N12 notice of termination was served on the Tenants in bad faith. Most of the Landlord's and TB's evidence lacked credibility.

Remedies:

43. The Tenants requested the rent differential of \$1,013.00 (for 12 months) between their new unit and the rental unit, their moving expenses of \$1,525.50, a Board fine, and general compensation of \$10,000.00 for the pain and suffering caused by the move. They did not have receipts or documents to support their moving expenses.
44. The Tenants said that they moved to a 3 bedroom townhouse close to their old unit for a rent of \$3,500.00. They said that the new unit had a smaller yard, and one parking space. Neither the old nor the new unit included utilities. The rent at the rental unit when they moved out was \$2,487.00, for a difference of \$1,013.00 per month.
45. I find that the Tenant's evidence proves, on a balance of probabilities, that the new and old rental units were of a similar size, in the same neighbourhood, and they were generally comparable. They submitted into evidence the lease they entered into on August 1, 2021. Therefore, the Tenant's have proved that they are entitled to the rent differential of \$1,013.00 for 12 months, or \$12,156.00.
46. The Tenants had a receipt for moving on August 1, 2021 from A.T. Delivery in the amount of \$1,525.50 including HST. Therefore, I find that the Tenants have proved that they are entitled to \$1,525.50 moving costs.
47. The Tenants said that they are entitled to general compensation because they suffered a loss of TR's father's babysitting services, and had to incur extra expenses for day care. They said that they also had to pay more for internet set up. TR said that they were harassed by the Landlord with repeated queries about when they were moving out. She also said that it caused the Tenants a lot of anxiety to quickly find an alternative place to live in the same school area. She submitted into evidence a doctor's note that stated they had treated TR for anxiety and depression since 2012.
48. I do not find that the Tenants have proved, on a balance of probabilities, that they suffered particular extra pain and suffering as a result of the forced move from their former rental unit, than they would have had to undergo in any move after six years. They moved to a unit that was not more than 1 km away from the previous unit, and therefore it was not clear why TR's father could not provide babysitting services at the new place as he had at the rental unit. TR's testimony revealed that her father had access to a car on most days, and he could have used it to come to the new place even if it were slightly farther for him than the previous rental unit. Setting up internet in a new rental unit does not constitute pain and suffering. TR's own evidence is that she had anxiety and depression, for which

she was receiving treatment, at least nine years before the move in August 2021. There is nothing in her medical evidence that shows she had a relapse or greater anxiety than normal in August 2021.

49. The Tenants submitted into evidence a bill from Rogers which shows one time fees for setup to a total of \$168.37. I find that this amount is a justifiable and appropriate moving expense, since the Tenants would not have incurred this expense had they not been served a bad faith notice to terminate and moved out of the rental unit. It will be added to the moving expense rather than incorporated into the claim for general compensation.
50. The Tenants did not provide specific evidence about why a Board fine was appropriate, nor did they specify an appropriate sum, and therefore the Landlord did not provide specific submissions on this topic.

It is ordered that:

1. The Tenants' T2 application is dismissed.
2. The total amount the Landlord shall pay the Tenants is \$16,389.87. This amount represents:
 - \$2,487.00 for compensation pursuant to section 48.1 of the Act,
 - \$12,156.00 for increased rent the Tenants have incurred from the start of their new tenancy, for a period of 12 months,
 - \$1,693.87 (\$1,525.50 + \$168.37) for moving or other like expenses that the Tenants have incurred,
 - \$53.00 for the cost of filing the application.
3. The Landlord shall pay the Tenants the full amount owing by January 26, 2026.
4. If the Landlord does not pay the Tenants the full amount owing by January 26, 2026, the Landlord will owe interest. This will be simple interest calculated from January 27, 2026 at 4.00% annually on the balance outstanding.

January 15, 2026
Date Issued

Nancy Morris
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.