



**Order under Section 21.2
of the Statutory Powers Procedure Act and
Sections 31 and 135 Residential Tenancies Act, 2006**

Citation: Millington v Robertan, 2026 ONLTB 9132

Date: 2026-03-04

File Number: LTB-T-022775-25
and LTB-T-033888-24-BIR

In the matter of: 606, 9700 NINTH LINE
MARKHAM ON L6B1R7

Between: Sherie Millington Tenant

and

Xianghai Chen, Dr. Frank F.L. Kung Medicine Prof. Corp., Landlords
J.J.REMY INVESTMENT INC., Nancy-Sui-Ping Shem,
Amy Chow

and

Brayden Robertan Interested Party
(Former Landlord)

The Tenant applied for an order determining that Brayden Robertan (the 'Former Landlord') collected or retained money illegally (the 'T1 application').

The Tenant also applied for an order determining that the Former Landlord:

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household (the 'T2 Application').

The T2 Application was resolved by Order LTB-T-033888-24 issued on June 26, 2025.

The T1 Application was heard by videoconference on September 4, 2025, when only the Tenant was in attendance. It was adjourned on terms set out in Interim Order LTB-T-022775-25-IN and LTB-T-033888-24-BIR-IN issued on October 10, 2025, to address whether the Mortgagees - Xianghai Chen, Dr. Frank F.L. Kung Medicine Prof. Corp., J.J.REMY INVESTMENT INC., Nancy-Sui-Ping Shem, and Amy Chow – may have gone into possession and been deemed the landlord.

As the period in the T2 Application included time after which the Mortgagees may have been deemed the Landlord, a Board Initiated Review of the T2 Application was initiated and directed to

be heard with the T1 Application. The Mortgagees were added as potential parties to both applications.

The T1 Application and the Board Initiated Review of the T2 Application were heard together by videoconference on December 17, 2025.

The Tenant, Sherie Millington, and the Mortgagees' Legal Representative, Jason Leung, attended the hearing.

The Former Landlord was not present or represented at the hearing. I was satisfied the Tenant had properly given the Former Landlord the materials required under the Interim Order and that the LTB sent him the Notice of Hearing. There was no request to adjourn the hearing and so the hearing proceeded in his absence.

Determinations:

Summary

1. The Former Landlord was under financial strain and trying to find solutions to avoid defaulting on his mortgage that included having the property assessed for potential sale or refinancing. Ultimately, he was unsuccessful.
2. The Mortgagees took steps to try and recoup their investment while simultaneously trying to limit their exposure.
3. The Tenant was living in the rental unit. She claims the actions of both the Former Landlord and Mortgagees substantially interfered with her reasonable enjoyment of the rental unit and amounted to harassment such that she was forced to terminate her tenancy early. She also seeks the return of her last month's rent deposit and key deposit.
4. For the reasons set out below, I find the Mortgagees went into possession, were deemed the Landlords as of April 23, 2024, and that this status continued until the tenancy terminated in July 2024.
5. As a result, the Board Initiated Review of the T2 Application was granted and the T1 and T2 Applications were amended to identify the Mortgagees as the Landlords and Brayden Robertan as the Former Landlord and interested party.
6. I find the Tenant paid a last month's rent and refundable key deposit in the amount of \$3,000.00 and that these have been illegally retained.
7. I also find the Tenant has demonstrated that the Former Landlord substantially interfered with her reasonable enjoyment of the rental unit with respect to the time after February 22, 2024, until the Mortgagees when into possession, and have awarded the Tenant \$1,750.00 as abatement.
8. I further find the Mortgagees substantially interfered with the Tenant's reasonable enjoyment when they refused to repair her dryer despite being her landlord and have awarded the Tenant \$795.00 as abatement.
9. The remainder of the Tenant's claims are dismissed.

10. With respect to who should pay, I find the Mortgagees are the proper respondent and that any issues regarding apportionment of liability between the Mortgagees and Former Landlord should be resolved in a different forum.
11. As a result, the Mortgagees are ordered to pay the Tenant \$5,641.00 for the return of her last month's rent and key deposits, abatement awarded, and the costs of filing her applications.
12. While I have considered all evidence and submissions, these reasons focus on those most relevant to the matters in issue.

Background facts

13. The rental unit is a condominium.
14. On January 16, 2023, the Former Landlord assigned all rent and income from the property to the Mortgagees as security for a first charge/mortgage against the property.
15. The mortgage was to come due on February 16, 2024.
16. The tenancy began on January 14, 2024.
17. The Former Landlord defaulted on his mortgage and, after a few months, on April 19, 2024, the Tenant was advised by her realtor that the rental unit was subject to power of sale and to contact the agent of the Mortgagees' realtor with respect to the payment of rent.
18. On April 21, 2024, the Mortgagees' realtor asked the Tenant to permit access so that they could show the rental unit to potential buyers. The Tenant refused and asked for written notice of the Mortgagees' authority.
19. On April 23, 2024, the Mortgagees served the Tenant with a notice of assignment and direction for her to pay them rent [Exhibit 6 – Tab 3 of EVID 6955103]. The notice letter identified the Mortgagees and stated they required the Tenant to pay them any and all rent now owing or that would come due. Included with the letter was a document signed by the Former Landlord that assigned all rents to the Mortgagees and directed the Tenant to pay rent to the Mortgagees.
20. The Tenant paid rent to the Mortgagees for the rental periods commencing May 14 and June 14, 2024.
21. The Tenant asked the Mortgagees to conduct repairs at the rental unit and they took the position they were not her landlord.
22. The Mortgagees continued to seek the Tenant's co-operation in showing the property.
23. The Tenant questioned why she would permit showings if the Mortgagees were not her landlord.
24. When the Mortgagees commenced a claim for vacant possession of the property, as an occupant of the property the Tenant was entitled to be a party to their application and she entered into negotiations with the Mortgagees.

25. The Former Landlord did not defend the Mortgagees' claim and the Mortgagees brought a motion for default judgment that was heard on June 25, 2024.
26. On July 2, 2024, the Tenant served the Mortgagees as landlords with a N9 Tenant's Notice to End the Tenancy that had a termination date of July 15, 2024 [Exhibit 7 – Tab 6 of EVID 6955103]. Despite the short notice, the Mortgagees accepted the Tenant's N9 Notice and the tenancy subsequently terminated in accordance with it.
27. The Order for default judgment was signed on July 8, 2024, and is dated June 25, 2024 - the date the motion was heard [Exhibits 2 and 3 – Tab 5 of EVID 6955103]. The Order provides the Former Landlord shall give possession of the property to the Mortgagees, that the Mortgagees are entitled to obtain a writ of possession against the Tenant, and that the Tenant consented to the form of the Order.
28. On or about July 14, 2024, the Tenant moved out of the rental unit.

Who is properly named as the Landlord respondent?

29. Brayden Robertan was originally the landlord. The first question before me was whether, at any point in time, the Mortgagees became landlords by virtue of the *Mortgages Act*, RSO 1990 c. M.40.
30. The Mortgagees submitted they never had the full power or authority of a landlord, never went into possession, and so were never landlords and are not properly the respondent.
31. The Mortgagees also submitted they were not parties to the tenancy agreement and were not even aware there was a tenancy agreement until after the original landlord defaulted on his mortgage.
32. The Mortgagees relied on a provision in the General Assignment of Rent signed between the Former Landlord and the Mortgagees [Exhibit 1 – Tab 4 of EVID 6955103] where they agreed that regardless of any statute or term, they would not be obligated to nor would they become responsible for any obligations under a tenancy, that they would not become mortgagees in possession through the receipt of rent, and that they would only be liable for monies that actually come into their hands, less all costs and expenses and other deductions.
33. They further submitted they did not have copies of the keys or FOBs to the rental unit and were not on title.
34. An owner on title is a landlord under the *Residential Tenancies Act, 2006* (the 'RTA'). However, under section 2(1) of the RTA other individuals and entities not on title may also qualify as landlords as the definition of landlord includes:

(a) the owner of a rental unit or any other person who permits occupancy of a rental unit, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit,

(b) the heirs, assigns, personal representatives and successors in title of a person referred to in clause (a), and

(c) a person, other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent;

[Underlining added]

35. Subsection 46(2) and section 47 of the Mortgages Act also provide that Mortgagees who go into possession may be deemed landlords regardless of any agreement and that this status cannot be contracted out of:

46 (2) This Part [Part V – Mortgagees in Possession of Rental Residential Premises] applies despite any agreement to the contrary

47 (1) A person who becomes the mortgagee in possession of a mortgaged residential complex which is the subject of a tenancy agreement between the mortgagor and a tenant or who obtains title to the residential complex by foreclosure or power of sale shall be deemed to be the landlord under the tenancy agreement.

(2) A person who is the landlord under the tenancy agreement ceases to be the landlord while another person is deemed to be a landlord under subsection (1).

(3) A person who is deemed to be a landlord is subject to the tenancy agreement and to the provisions of the *Residential Tenancies Act, 2006* which apply to residential complex.

(4) A person shall no longer be deemed to be the landlord under the tenancy agreement when the person ceases to be a mortgagee in possession.

(5) Despite subsection (4), a person who is deemed to be a landlord under subsection (1) continues to be liable for the obligations of a landlord that were incurred while the person was deemed to be a landlord.

(6) A person who is deemed to be a landlord shall serve notice to all tenants of the change in landlord.

(7) The notice shall be in writing and shall provide the person's name and address.

(8) The notice may be in the form prescribed by the regulations made under this Act.

[Underlining added]

36. Similarly, subsections 3(1) and 4(1) of the RTA provide it is not possible to contract out of the RTA:

3 (1) This Act, except Part V.1 [Termination of Occupancy-Non-Profit Housing Co-operatives], applies with respect to rental units in residential complexes, despite any other Act and despite any agreement or waiver to the contrary.

4 (1) Subject to subsection 12.1 (11) [Failure to comply with prescribed form and lease requirements] and section 194 [LTB mediated settlement agreement], a provision in a tenancy agreement that is inconsistent with this Act or the regulations is void.

37. Given it is not possible to contract out of being deemed a landlord under s. 47 of the Mortgages Act or to opt out of the RTA, and as the Tenant was not a party to the General Assignment of Rent that purported to prevent the Mortgagees from ever going into possession or becoming liable for the obligations of a landlord under the RTA, I do not find the Mortgagees' reliance on this agreement to be a viable defence.
38. I also did not find the case referenced and relied on by the Mortgagees' Representative, *Goodyear Canada Inc. v. Burnhamthorpe Square Inc.*, 1998 CanLII 6091 (ONCA) applicable to the situation before me as it involved a commercial tenancy.
39. That mortgagees are not parties to a tenancy agreement was contemplated by the legislature when it amended the Mortgages Act to nonetheless deem mortgagees in possession landlords.
40. In *Pieckenhagen v. 1030553 Ontario Limited*, 2000 CanLII 17044 (ON CA), the Court of Appeal for Ontario discussed how s. 47 of the Mortgages Act was designed to protect a tenant's security of tenure due to changes in title or possession resulting from a mortgage default. At para. 14, the Court of Appeal specifically cited and discounted the argument that, because a mortgagee was not a party to a tenancy agreement they were not bound to the terms of a tenancy, were not a landlord, were not bound to follow the then relevant act, and could obtain vacant possession regardless of the landlord and tenant relationship between the mortgagor landlord and tenant.
41. I find the question to be determined is whether the Mortgagees went into possession.
42. The term "mortgagee in possession" is not defined in the Mortgages Act. In *Bank of Montreal v. Smith*, 2008 CanLII 28435 (ONSC), in the context of determining whether the Bank of Montreal was subject to a 10-year lease, the Court examined whether the Bank had gone into possession as a mortgagee and had therefore been deemed a landlord under s. 47 of the Mortgages Act.
43. The Court focused on whether the Bank had taken steps to deprive the mortgagor of control and management of the property and whether they had contemplated any advantage from the taking of possession. In particular, the Court noted at para. 39, "the mortgagee, "may if it is entitled to possession as between itself and the mortgagor take possession by requiring the tenant to pay the rents and profits to the mortgagee or its agent instead of paying them to the mortgagor.""
44. The Court found at paras. 38 and 39 that the Bank had not gone into possession because the locks were not changed, the mortgagor was still able to sell the property, and the Bank had not requested that rent be paid to them. Further, at para. 41 the Court held the mortgagee, "has neither entered into actual occupation nor obtained the receipt of the rent of the mortgaged premises." [Emphasis added]
45. To me this suggests that receipt of rent is sufficient for a mortgagee to be found to have gone into possession.
46. I find this issue similar to the issue of a tenant's security of tenure discussed by the Court of Appeal in *Pieckenhagen* and which the addition of s. 47 to the Mortgages Act was intended to address. I do not accept that Mortgagees can seek out and receive the benefits of being a landlord by demanding that rent be paid to them but avoid the

responsibilities and obligations of a landlord. Otherwise, tenants would have to pay rent to someone who took no responsibility for ensuring their statutory entitlements are met including that a rental unit is in a good state of repair, fit for habitation, and complies with all health, safety, housing and maintenance standards.

47. Even if the Mortgagees' position were correct, the evidence before me was that after April 19, 2024, the Mortgagees also were the ones who were communicating with the Tenant to arrange viewings of the rental unit, who negotiated to terminate her tenancy, who obtained an order for vacant possession of the rental unit, and accepted the return of the keys to the rental unit from the Tenant.
48. Further, the Tenant was advised the Mortgagees would commence LTB proceedings if rent was not paid; although, ultimately no notice of termination was served nor were any proceedings commenced. Additionally, when the Tenant was moving out the condominium corporation communicated their concerns that the Tenant was in breach of the rules/by-laws to the Mortgagees – a fact that I find supports finding the Mortgagees had placed themselves in a such a position that were also perceived to be the landlord by a third party.
49. I find the totality of the actions of the Mortgagees, particularly the demand for rent, threatened consequences for failure to pay, negotiating the end of the tenancy, and accepting the keys at the end of the tenancy, establish it is more likely than not that the Mortgagees had taken over the control and management of the rental unit from the Former Landlord, were acting as if they were the landlord, and so were deemed to be landlords under s. 47(1) of the Mortgages Act.
50. I further find the Mortgagees went into possession on the date that they served the Tenant with the Notice of Assignment and Direction on April 23, 2024, in response to the Tenant's objection that she had no written authority of their ability to schedule showings. I do not find the fact that the Mortgagees did not have a key to the rental unit or continued to ask the Tenant to permit showings changes this.
51. As a result, I find the Mortgagees were deemed landlords under subsection 47(1) of the Mortgages Act as of April 23, 2024.
52. Once the Mortgagees were deemed landlords under subsection 47(2) of the Mortgages Act the original landlord was no longer a landlord so long as the Mortgagees remained in possession.
53. As the tenancy terminated while the Mortgagees were still the deemed landlords, I find that the original landlord - now the Former Landlord - never reverted to being the landlord and that it is the Mortgagees who are properly named as the respondent Landlords on these applications and the applications are so amended. The applications are further amended to name the original landlord as an Interested Party as the Former Landlord.
54. I also note that even if I am incorrect about the Mortgagees having gone into possession, I would still find the Mortgagees to be a proper respondent to this application as they meet the definition of landlord under the RTA whether as an assign of the Former Landlord and/or because they collected rent, entered into an agreement to terminate the tenancy, and obtained an Order for Vacant Possession with the Court's knowledge there was a

tenant which order deprived the Former Landlord of possession prior to the end of the tenancy.

55. The T2 Application addresses events both before and after the date I have found the Mortgagees were deemed landlords under the Mortgages Act. In the above circumstances, I find the LTB was without jurisdiction both to hold a hearing without also naming and providing notice to the Mortgagees of that proceeding and to issue an Order against the Former Landlord. As a result, I find that there is a serious error in Order LTB-T-033888-24 issued on June 26, 2025.
56. The Board Initiated Review of the T2 Application was granted, Order LTB-T-033888-24 issued on June 26, 2025, cancelled and a new hearing of the T2 Application proceeded.

T1 Application

57. Section 135(1) of the RTA provides:

135 (1) A tenant or former tenant of a rental unit may apply to the Board for an order that the landlord, superintendent or agent of the landlord pay to the tenant any money the person collected or retained in contravention of this Act or the *Tenant Protection Act, 1997*.

58. The Tenant sought the return of:

- her last month's rent deposit;
- a \$300.00 refundable key deposit; and,
- \$2,000.00 for legal costs.

59. I do not find the Tenant's legal costs expended in negotiations and interactions with the Mortgagees are recoverable under section 135 of the RTA as these funds were neither collected nor retained by the Mortgagees. This claim is dismissed.
60. The Tenant testified she paid the Former Landlord a last month's rent deposit in the amount of \$2,700.00 and a \$300.00 key deposit. The Mortgagees had no knowledge of these payments.
61. The Tenant's testimony accords with copies of her e-transfer for the key deposit accepted by the Former Landlord and a bank draft for first and last month's rent that was paid to the Former Landlord's realtor [Exhibit 10 – pp. 18 and 19 of EVID 6959420].
62. As a result, I find the Tenant paid the Former Landlord a last month's rent deposit in the amount of \$2,700.00 and a refundable key deposit in the amount of \$300.00.
63. The tenancy terminated on July 15, 2024.
64. The Tenant paid rent to the Mortgagees for the last month of the tenancy and returned the keys to the Mortgagees when she moved out of the rental unit.

65. Paragraph 3 of section 17 of Ontario Regulation 516/06 (the 'General Regulation') only permits a landlord to collect a refundable key deposit. This means that when keys are returned at the end of the tenancy the landlord must return the key deposit.
66. With respect to the last month's rent deposit, section 106(10) of the RTA provides a last month's rent deposit must be applied to the last month of the tenancy.
67. The Tenant has not yet received a refund of either her key deposit or her last month's rent deposit.
68. I find the Tenant is entitled to \$3,000.00 and the costs of filing her T1 Application.
69. The question as to who should pay this amount is addressed below along with who should pay the Tenant amounts awarded on her T2 Application.

T2 Application

T2 Application is amended

70. In October 2025, the Tenant delivered an amended version of her T2 Application.
71. As part of her amended application, the Tenant claimed the Former Landlord and Mortgagees had failed to repair her dryer. The Mortgagees' Representative objected to this claim as he submitted it would typically be pursued under section 20 of the RTA on a T6 Application, and the Tenant was now out of time to commence a new application.
72. It is possible to pursue a maintenance issue as a claim for substantial interference so long as the test for substantial interference is applied. Here, the Tenant agreed her claim about the dryer would go forward as an issue that contributed to the alleged substantial interference with her reasonable enjoyment of the rental unit
73. With respect to the limitation concern, section 29(2) of the RTA provides:
- 29** (2) No application may be made under subsection (1) more than one year after the day the alleged conduct giving rise to the application occurred.
74. I find the one-year limitation under section 29(2) is with respect to the filing of an application under a provision of the RTA – here section 22. Once an application is filed, I find the Tenant is not statute barred to pursue other events that give rise to the same ground for relief, the question is whether it is appropriate to amend the application.
75. Granting an amendment is discretionary. Under Rule 15.3 of the LTB's Rules, factors to consider include the timeliness of the amendment, prejudice, whether there will be unwarranted delay, and if the amendment is necessary and brought in good faith.
76. While the Tenant could have raised the issue of the dryer repair earlier, the parties had notice of her proposed amendments for approximately two months and there was no suggestion they were not ready to proceed on this issue or that an adjournment was

required. Further, given the Tenant was proceeding with her claim about the dryer as one of the series of events for which she claims substantial interference and harassment, I found the amendment was appropriate and that it was being pursued in good faith. As a result, the amendment was granted.

77. There were no other objections to the Tenant's additional proposed amendments so these were granted, and the hearing proceeded based on the Tenant's Amended T2 Application.
78. On consent, the Tenant's Amended T2 Application and attachment were admitted into evidence and served as her evidence in chief [Exhibit 11 – EVID 6541952 and 6541953]. The Tenant was also permitted to provide clarification, elaborate on her written evidence, and was subject to cross-examination.

Tenant's claims for substantial interference and harassment

79. The Tenant claims substantial interference and/or harassment both with respect to actions of the Former Landlord and with respect to actions and communications with the Mortgagees and their agents. Ultimately, she claims their combined actions created an environment that made continued occupation intolerable.

80. Section 22 of the RTA provides:

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.

81. Section 23 of the RTA provides:

23 A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.

82. Harassment is not defined under the RTA. The LTB often considers it as a course of conduct the reasonable landlord knows or ought to know would be most unwelcome to the reasonable tenant.
83. Where the event or conduct complained of is one to which the landlord is entitled under the RTA, I find persuasive the LTB case law that something more than a request for an entitlement under the RTA, such as an ability to enter the rental unit on consent, is required in order to demonstrate harassment. For instance, I find the Tenant must demonstrate an intent to harass or other improper purpose or basis, and, when it comes to substantial interference with reasonable enjoyment I find the Landlord's request must be unreasonable (see for example *TET-92081-18*, 2018 CanLII 113788 (ONLTB) at paras. 34, 35 and 39).
84. For ease of reference, I have largely divided discussion of the Tenant's claims into those pertaining to the Former Landlord's actions and those pertaining to the Mortgagees' actions.

Claims regarding the Former Landlord's actions

85. After the Tenant moved into the rental unit, the Former Landlord continued to have his personal mail delivered to the rental unit, and asked the Tenant to let him know when it was there, and to give it to him. Outside of an implied irritation or inconvenience, I am not satisfied the Tenant established these actions rise to the level of substantial interference or harassment and this aspect of the Tenant's claim is dismissed.
86. The Tenant next testified to a series of events that suggested to her that the Former Landlord was seeking to sell the property, and which I infer were more likely than not steps the Former Landlord was taking to try and avoid defaulting on his mortgage.
87. I accept the Tenant's evidence that she found the steps being taken by the Former Landlord, and later the Mortgagees, inconvenient, stressful, and distracting and that it impacted her ability to live and work in her home. Particularly when she was uncomfortable during some visits, when she lost sleep, when she got early calls, and when she had to pause working as she worked at home.
88. With respect to the Former Landlord, the specific events alleged include when:
- the Former Landlord's property manager attended to collect mail and was supposed to be accompanied by his brother but instead came with multiple unknown men who acted like they were there to view the rental unit;
 - the Former Landlord's property manager called and texted her when she was asleep or working and refused to respect her wishes and communicate via email;
 - the Former Landlord's property manager left a voice mail on February 3, 2024, asking for rent to be paid despite rent being due on February 14, 2024;
 - the Former Landlord's property manager called her at 7:24 a.m. on February 15, 2024, to say an appraiser was arriving in 15 minutes to complete an assessment for a new mortgage and, after she refused, called multiple times throughout the day;
 - the Former Landlord failed to advise that the appraiser would be taking pictures during his attendance;
 - the appraiser took photos of the rental unit and was in her son's bedroom while her son was sleeping;
 - after the Former Landlord's property manager learned the mortgage was not going to be renewed on or about February 22, 2024, he started to call her constantly about the new mortgage, conveyed the financial strain of the Former Landlord, and pushed for more showings to potential buyers;

- the Former Landlord failed to accommodate her request to provide 24 hours' notice and to schedule any showings after her work hours;
- on March 23, 2024, she was advised a potential buyer was in the foyer, but no agent of the Former Landlord was present so she was to one who had to show the unit;
- she was sent an email on April 3, 2024, at 12:48 p.m. for a 6:30 p.m. viewing later that day;
- the Former Landlord approached her in March 2024 to negotiate an early termination in exchange for compensation as he had an interested buyer, and, after he rejected her proposed counter terms, asked her again; and,
- the Former Landlord ignored her requests to repair the dryer.

89. For the reasons set out immediately below, I have not found all of the individual events above amount to substantial interference or harassment. However, I am satisfied there was a pattern of communications during the period after February 22, 2024, until the Mortgagees took possession, particularly from the Former Landlord's property manager, that substantially interfered with the Tenant's reasonable enjoyment.
90. Under the RTA, entry without notice is permitted on consent and there is no right for a tenant to dictate at what exact time, i.e. only after work, entries may take place nor the medium by which a landlord communicates. As a result, I do not find that on their face, the actions taken by or on behalf of the Former Landlord to seek consent to entry for showings were unreasonable or to rise to the level of harassment.
91. With respect to the actual entries complained about, the Tenant admitted she let the Former Landlord's property manager and the men who accompanied him to collect the mail in and that they left the rental unit when she asked. She also testified the appraiser worked with her to accommodate her concerns and that she permitted them to take photographs and go into her son's room. Given the Tenant consented and the individuals with whom she was interacting listened to her and accommodated her concerns, I do not find these events amount to substantial interference or harassment.
92. Nonetheless, I find the Tenant's contemporaneous communications with the Former Landlord reflect that within her first few months of living in the rental unit she found the showings and entries disruptive to her reasonable enjoyment of the rental unit.
93. The Former Landlord's communications were largely attempts by the Former Landlord or his agent to exercise his rights under the RTA, in particular rights of entry.
94. However, I find that on February 22, 2024, the Tenant made clear to the Former Landlord that she was feeling harassed and wished the Former Landlord to abide by her right to 24 hours' notice. After this point, I find it was not reasonable for the Former Landlord to continue to seek entry for showings on short notice.

95. Therefore, I find the Former Landlord substantially interfered with the Tenant's reasonable enjoyment of the rental unit when his agent continued to press for showings on short notice and this aspect of the Tenant's claim is granted.
96. I am not satisfied that the above events amount to harassment as I am not satisfied the Former Landlord's communications were made other than with a proper, albeit at times inconsiderate, intent to exercise the Former Landlord's rights under the RTA.
97. With respect to the communications regarding termination of the tenancy, the RTA permits parties to negotiate a termination of the tenancy. The Tenant admitted she never told the Former Landlord not to try and negotiate an end to the tenancy with her and so I do not find the Former Landlord's attempts to negotiate to be unreasonable or support a finding of harassment.
98. Finally, with respect to the dryer, the Tenant testified when she told the Former Landlord about the broken dryer the Former Landlord said he would look for and give her a serial number he had received from the condominium corporation. I find the Former Landlord's immediate response was reasonable.
99. The Tenant heard nothing further from the Former Landlord and so she raised it with the Mortgagees' realtor on April 22, 2024. To me this suggests the communication with the Former Landlord was close to the time when the Tenant was made aware of the Mortgagees. Notably, the Tenant could not recall when she contacted the Former Landlord outside of it possibly being in April before the Mortgagees went into possession.
100. As of April 23, 2024, the Former Landlord was no longer the landlord. In the absence of knowing when the Tenant told the Former Landlord about the dryer, I find the Tenant has not demonstrated the Former Landlord did not respond and therefore acted unreasonably with respect to the dryer while it was still his obligation to do so nor that his actions rise to the level of harassment.

Claims regarding the Mortgagee's actions

101. With respect to the Mortgagees, the specific events the Tenant claims substantially interfered with her reasonable enjoyment and harassed her are when:
- the Mortgagees' realtor:
 - contacted her on a Sunday; and,
 - when he told her to retain counsel, advised that the Mortgages Act supersedes the RTA, and said she would be forced to vacate unless the Former Landlord repaid the mortgage;
 - the Mortgagees' lawyer:
 - confirmed the realtor's and Mortgagees' authority to execute a power of sale with court order;
 - told her she was in arrears of rent for not having paid April's rent to the Mortgagees and threatened to file a L1 Application at the LTB;

- maintained that the Mortgagees had not taken possession and were not her landlords; and,
 - threatened she would be liable to repay the Mortgagees if the sale of the rental unit was delayed because of her refusal to permit showings;
- the Mortgagees refused to repair her dryer;
 - the Mortgagees applied for and obtained an Order for vacant possession;
 - on May 3, 2024, the Mortgagees' process server posted notices on the front door of the rental unit asking the Former Landlord to call a number despite the Mortgagees knowing she was the occupant of the rental unit; and,
 - they made repeated requests for showings.

102. As with the claims specific to the Former Landlord, I do not find all of the above individual events amount to substantial interference or harassment.

103. I again do not find there is any restriction in the RTA as to when a landlord can contact a tenant and do not find that the Mortgagees' realtor contacting a Tenant on a Sunday - when there was no indication this was not welcome to her - to be unreasonable, or amount to harassment.

104. I also do not find that posting a notice on the rental unit door for the Former Landlord to contact the Mortgagees' process server rises to the level of substantial interference or harassment. The posted notices were 2 pieces of 8½ x 11 paper secured by scotch tape and stretched from the door frame across to the door [Exhibit 13 – p. 8 of EVID 6959432]. It is clear from the photographs that opening the door would detach the notices, and the Tenant admitted she was able to and did move the notices. As a result, I do not accept that these notices effectively blocked her entrance.

105. With respect to the Tenant's claim of a subjective experience of embarrassment due to the notices, the notices clearly identify that someone other than the Tenant is being sought and there was no evidence anyone read the notices. Even though it was known to the Mortgagees that the Tenant was the occupant, I do not find it unreasonable for the firm they contracted to try and contact the owner of a property by attending at the property and leaving a notice as others may be then able to relay that information back to the owner. As a result, I do not find the posting of these notices amounts to substantial interference or harassment.

106. With respect to the Mortgagees' application for vacant possession, the Mortgages Act gives the Mortgagees the right to bring this application and so I do not think commencement of this claim was improper.

107. The Tenant's issue with the Order for vacant possession seems to revolve around the indication in the Order that she agreed to vacate. The Tenant was represented during that proceeding and I find that any issue she may have with what occurred or costs she expended regarding that proceeding, is not within the jurisdiction of the LTB.

108. I have also reviewed the communications between the Tenant and the Mortgagees' counsel. I find the Mortgagee's counsel's communications reflect the positions they took in law. I also note that the Mortgagees' counsel repeatedly recommends the Tenant seek counsel to explain the law to her, in essence because they cannot advise the Tenant as they represent the Mortgagees.
109. While I understand and accept that the Tenant experienced these communications as stressful, I find that the Tenant's responses demonstrate a clear understanding of her rights, expression of her positions, and an indication she was not going to be intimidated or harassed.
110. I find the Tenant's true issue was that she disagreed with the Mortgagees' position that they were not her landlord and refusal to repair her dryer while at the same demanding she pay them rent and permit access for showings.
111. I find the communications between the Tenant and the Mortgagees' counsel were professional and more akin to negotiations and exchange of contradictory positions and do not find these amount to intimidation or threats directed at the Tenant. Given the Mortgagees' realtor's oral comments were clarified through with the Mortgagees' counsel, I also find it more likely than not that these comments did not rise to the level of substantial interference or harassment.
112. As of May 14, 2024, the Tenant was represented.
113. Contact with the Tenant nonetheless continued; albeit it in a diminished form, through an automated system of the Mortgagees' realtor that notified the Tenant when there was a request to see the property. I do not find the mere setting up of such a system up to be unreasonable or a course of conduct that amounts to harassment.
114. The Tenant received 29 notification requests between April 22, 2024, and July 17, 2024 [Exhibit 8 – EVID 6957280]. While I agree that potentially showing your home 29 times in a three month period would be a high number, only one showing – a showing to which the Tenant consented - was held before the tenancy terminated. Further, it was not until June 20, 2024, that the Tenant advised she did not wish to be contacted and all communications should go through her counsel.
115. After June 20, 2024, the Tenant only received 4 requests to show the unit and two of these were sent after she moved out. The communications sent after the tenancy terminated cannot form a basis for substantial interference or harassment. Additionally, the earlier two communications were sent after the Tenant had served her N9 Notice and so I do not find these contributed to her decision to end the tenancy.
116. In the above circumstances, I do not find the frequency of showings or requests to show the rental unit rise to the level of substantial interference or harassment and this aspect of the Tenant's claims is dismissed.

117. Finally, with respect to the Mortgagees' refusal to repair the dryer, I find this was a corollary of their position that they were not the Tenant's landlords.
118. The analysis of whether and when a Mortgagee goes into possession is a fact specific determination. I have found the Mortgagees were in possession as of the date they served the Tenant with the Notice of Assignment and Direction to pay rent.
119. Even accepting that it is possible another adjudicator may have found otherwise, as referenced above, the definition of landlord under the RTA includes assigns of the owner and I find that by the time the Mortgagees were presenting the Tenant with the assignment of rent from the Former Landlord and demanding she pay rent to them, they knew or ought to have known they were landlords under the RTA.
120. As a landlord, the Mortgagees were responsible for repair and maintenance under section 20 of the RTA and so I find the Mortgagees' refusal to repair the dryer was unreasonable.
121. The Tenant testified the broken dryer was the tipping point for her and that it impacted her usual activities of living in the rental unit including taking up space in the rental unit and clothing not being wearable when desired. In the above circumstances, I find the Mortgagees' refusal to repair the dryer substantially interfered with the Tenant's reasonable enjoyment of the rental unit.
122. However, I do not find this denial rose to the level of harassment as I find this was the result of the dispute as to the extent of the parties' rights and obligations to each other under the Mortgages Act that was largely mediated through their counsel. While disputes and conflict are stressful, I do not find the evidence supports finding there was any intent to harass or bad faith that would rise to the level of finding the Mortgagees' harassed the Tenant. As a result, the Tenant's claim for harassment in this respect is dismissed.

Cumulative effect

123. The Tenant testified she served her N9 Notice because she determined it would be a drawn-out process if she stayed in the rental unit given the Mortgagees' desire for vacant possession and so she decided to leave.
124. As discussed above, I do not find the Mortgagees' positions or application for vacant possession are a basis for finding substantial interference or harassment.
125. I have also found that only some of the Former Landlord's actions and only the Mortgagee's refusal to repair the dryer amounted to substantial interference with the Tenant's reasonable enjoyment and dismissed the remainder of the Tenant's T2 claims.
126. As a result, while sympathetic to the situation in which the Tenant found herself, I am not satisfied that the Former Landlord's and Mortgagees' actions collectively gave rise to an environment that made continued occupation intolerable and this aspect of the Tenant's claims is dismissed. I also note I was not satisfied the Tenant's decision to move

to a different province was a decision that was more likely than not caused by the actions of the Former Landlord or Mortgagees.

Remedies

Abatement

127. At the hearing, the Tenant clarified she sought abatement of 50% for the three months when the Former Landlord was seeking to and showing the rental unit and 30% for the months following when the Mortgagees were in possession until the end of the tenancy for a total of \$6,360.00.
128. Abatement is a return of rent paid for elements bargained for and not received which elements I find includes the right to reasonable enjoyment of the rental unit.
129. I accept the Tenant's evidence that the Former Landlord's communications and pattern of behaviour with respect to trying to show the rental unit created stress and interfered with the Tenant's usual use of the rental unit. As she testified, this included her ability to work from home, prepare meals, and care for her child, and she took steps she would not otherwise have engaged in as a result of the showings in particular removing personal and confidential belongings from display to preserve her privacy.
130. However, I have found the Former Landlord's actions did not rise to the level of substantial harassment until towards the end of February. As a result, I find only two months of abatement is appropriate. I am also not satisfied that an award of 50% is appropriate. The Tenant experienced some disruption of her normal use and enjoyment of the rental unit; but, the rental unit itself was still fully functional and she still had the benefit of access and use.
131. In the above circumstances, I find an award of 33% appropriate for the months pertaining to the Former Landlord's actions. The Tenant testified her rent was \$2,650.00 a month and so I fix the amount of abatement at \$1,750.00.
132. With respect to the issues surrounding the dryer, the Tenant testified not having a dryer meant she had to hang their clothes in the bathroom. She testified this was highly inconvenient and when she went to retrieve clothing she wished to wear it was not dry.
133. Similarly to the above, I find the Tenant experienced some disruption but still had access and use of the rental unit. I find an award of 10% is appropriate for the approximate three months when the Mortgagees refused to repair the dryer and fix this amount of abatement at \$795.00.

Administrative Fine

134. The question of an administrative fine was also raised at the hearing.

135. An administrative fine is not normally imposed unless a landlord has shown a blatant disregard for the RTA and other remedies will not provide adequate deterrence and compliance [see *LTB Interpretation Guideline 16: Administrative Fines*].
136. In order to find there was a blatant disregard of the RTA, I find there must be more than just a breach whether because of the nature, impact, or duration of events.
137. I am not satisfied the Former Landlord or Mortgagees acted in blatant disregard of the RTA and even were I to so find, I would find adequate deterrence has already been ordered as the Tenant has already received compensation for their actions by way of abatements and will be awarded the return of her last months' rent deposit and key deposit. No administrative fine will be awarded.

Who is liable to pay the Tenant?

138. The Tenant submitted the change in landlord between the Former Landlord and Mortgagees has not nullified her experience as she paid her deposits up front and these have not been returned to her nor has she received the benefit of them.
139. In *Royal Bank of Canada v MacPherson*, [2009] O.J. No. 3806, the tenant prepaid an entire year of rent to their landlord, who then defaulted on their mortgage. The mortgagee in possession bank refused to recognize the prepaid rent and brought an application seeking payment of arrears. The LTB dismissed the application and held that the prepaid rent was a 'covenant that ran with the land'.
140. On appeal, the Divisional Court confirmed the LTB's decision and noted prepaid rent was a term of the tenancy. The Court held that as a deemed landlord under the Mortgages Act, the bank had no greater rights than the former landlord. Since the former landlord could not claim for arrears, neither could the bank. The Court also noted the bank could have recourse against the owner for any shortfalls in rent.
141. The Divisional Court also rejected the bank's submission that liability for pre-paid rent was limited to the period for which it was deemed to be the landlord; but, they left open whether a mortgagee in possession would not be responsible for an abatement of rent for conduct that took place when they were not the deemed landlord.
142. As deemed landlords under s. 47 of the *Mortgages Act*, the Mortgagees were subject to the tenancy agreement and provisions of the RTA. When the Mortgagees became the landlords, all covenants ran with the land under section 18 of the RTA. This meant that once the Mortgagees were the landlords they stepped into the shoes of the Former Landlord and took on the benefits of the tenancy such as collection of rent but also its obligations.
143. Additionally, as a result of subsection 47(2) of the *Mortgages Act*, the Mortgagees were the sole landlord at the time the tenancy terminated and I have found they are the proper respondent to these applications.

144. Further, even if I was to accept that it was appropriate to name the Former Landlord as a respondent, I find the reasoning of the Divisional Court in *Akbari v. Blenkinsop*, 2024 ONSC 1184, in paras 30-39 persuasive and adopt it insofar as there is no requirement for the LTB to adjudicate and apportion liability between landlords. Such is counter to the general purpose of the RTA which is to balance rights and resolve disputes between landlords and tenants and not between multiple landlords. As with the issue of prepaid rent, the Mortgagees may have recourse against the Former Landlord and resolution of any such claims may involve complicated and lengthy evidence and legal submissions about contractual arrangements to which the Tenant was not a party.

145. In the above circumstances, I find as the respondent, the Mortgagees are the party against whom the Order should issue. In my view, any disputes between the Former Landlord and Mortgagees about the apportionment of liability should be resolved in a different forum.

146. There was no evidence there was some form of settlement agreement with the tenant which may have supported finding a claim against the Mortgagees was an abuse of process. I also did not find submissions about whether the Mortgagees may not have agreed to terminate the tenancy early had they understood they were the deemed landlords relevant or material.

147. As a result, I make the below orders for payment against only the Mortgagees.

It is ordered that:

1. The total amount the Mortgagees shall pay the Tenant is \$5,641.00. This amount represents:
 - \$2,700.00 for the last month's rent deposit;
 - \$300.00 for the return of the key deposit;
 - \$2,545.00 abatement; and,
 - \$96.00 for their costs of filing the applications.
2. The Landlords shall pay the Tenant the full amount owing by March 15, 2026.
3. If the Landlords do not pay the Tenant the full amount owing by March 15, 2026, the Landlord will owe interest. This will be simple interest calculated from March 16, 2026 at 4.00% annually on the balance outstanding.

March 4, 2026
Date Issued

Rebecca Case
Vice Chair, 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.