



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

Citation: Giosa v Tomkowicz, 2026 ONLTB 24425

Date: 2026-03-23

File Number: LTB-T-055922-23-RV

In the matter of: 22 Garrett Drive
Sutton ON L0E1R0

Between: Spencer Giosa Tenant
Rachel Giosa

And

Katarzyna Tomkowicz Landlord
Krzysztof Tomkowicz
Laura Tomkowicz
Slawomir Tomkowicz

Review Order

Spencer Giosa ('SG') and Rachel Giosa ('RG') (the 'Tenants') applied for an order determining that Katarzyna Tomkowicz ('KatT'), Krzysztof Tomkowicz ('Krzyst'), Laura Tomkowicz ('LT') and Slawomir Tomkowicz ('ST') (the 'Landlords') gave a notice of termination in bad faith.

This application was resolved with the December 16, 2024 issuance of order LTB-T-055922-23 (the 'Order').

On January 15, 2025 the Landlords requested that the Order be reviewed and that the Order be stayed until the request to review the Order is resolved. Interim Order LTB-T-055922-23-RV-IN issued on February 12, 2025 directed the request for review to hearing and stayed the operation of the Order.

The request for review came on initially for hearing by videoconference on April 10, 2025. The Landlords, the Landlords' representative, J. Johnson, the Tenants and the Tenants' representative, A. Adamjee, attended the hearing.

There was insufficient time in the April 10, 2025 hearing to commence the substantive hearing of the request for review. The limited time was devoted to more clearly defining the scope of the review. As set out in Interim Order LTB-T-055922-23-RV-IN2 issued June 2, 2025, I defined the scope of the Request for Review hearing to be as follows:

1. Quantum of General Damages:
 - a. Consideration of new evidence pertaining to the Tenants' testimony about RG's physical limitations at the time the Tenants vacated the unit; and
 - b. Submissions as to whether material presented in the original hearing pertaining to mitigation by the Tenants was adequately considered in the Order.
2. Submissions as to whether the change in circumstances associated with a plan for the Landlords ST's and KatT's daughter to move into the unit are relevant to the Boards' determination.
3. Submissions as to whether the timing of the Landlords' decision about taking occupancy of the unit was properly identified in the Order.

At the subsequent June 11, 2025 appearance I modified the scope of the review hearing to include written submissions on the question of whether the Order contained a serious error in the determination that the Tenants vacated the unit 'as a result' of the Landlords' N12 notice of termination.

The hearing continued to completion by videoconference on June 11, 2025 but for additional written submissions. The Tenants, the Tenants' representative, A. Adamjee, the Landlords and the Landlords' representative, J. Johnson, attended that hearing. A Smith ('AS') signed into the hearing as a potential witness and was assigned to a breakout room.

Determinations:

Background/ Uncontested Facts

1. The Tenants moved into the unit, which was a house, on January 8, 2022.
2. The house was owned by all four of the Landlords. The Landlord KatT and ST are, respectively, mother and father of the Landlord KrzysT. LT is the wife of KrzysT. The potential witness AS, who did not testify at the hearing which gave rise to the Order, is sister to the Landlord KrzysT and daughter to the Landlords KatT and ST.
3. The Landlords served an N12 notice on the Tenants, stating that the Landlords required the unit for their own use. The notice had a termination date of March 7, 2023. At the time the notice was served the Landlords KatT and ST lived in the upper part of a separate house, with ST's parents living in a downstairs unit of that house.
4. The Landlords planned to address some financial difficulties by moving KatT and ST into the Tenants' unit and taking on income-generating tenants in the unit which they were

vacating above their parents. They would then separate the Tenants' unit into two units and rent out the new lower unit after one year.

5. There was subsequently a change in plan, as KrzyszT's grandparents in the lower unit of the other house were uncomfortable with strangers living above them in place of KatT and ST.
6. The Tenants vacated the unit on March 11, 2023.
7. In April 2023 the Tenants discovered that the rental unit was being advertised for rent as two separate units, with the upper portion already rented.

The Order

8. The Order set out the Board's determinations that:
 - a) The Tenants established all of the requirements for an order under section 57 of the *Residential Tenancies Act*, 2006 (the 'Act'), which provides

57(1) the Board may make an order described in subsection (3) if, on application by a former tenant of a rental unit, the Board determines that,

 - (a) The landlord gave a notice of termination under section 48 in bad faith, the former tenant vacated the rental unit as a result of the notice ... and no person referred to in clause 48 (1)(a),(b), (c) or (d) occupied the rental unit within a reasonable time after the former tenant vacated the rental unit;
 - b) In making the above determination the Member found both that the Landlords had failed to rebut the presumption of bad faith triggered by the reverse onus clause in subsection 57(5) of the Act and that the Tenants had established that they vacated the unit as a result of the N12 notice; and
 - c) In addition to compensation for moving-related expenses and an amount for the rent differential between the unit and the new accommodated, the Tenants were entitled to general compensation in the amount of \$20,000.00 further to subsection 57(3)(1.1) of the Act. The reasons given with respect to this portion of the remedy were:
 43. The Tenant testified that their rent was \$2,300.00 and accordingly, the maximum amount that can be ordered for general compensation is \$27,600.00.
 44. The Landlords disputed the Tenants' request for general compensation and submitted that there is no evidence to support or quantify the amount claimed. As noted above, s. 57(3)(1.1) does not require that the Tenants incur any actual expenses.
 45. The Tenants' evidence is that moving was difficult as the Tenants had a newborn and a 4-year-old son who had just started school testifying that it was challenging to move with two children during winter. The Tenant RG testified that

because of complications during delivery of her newborn, she could not work or assist with packing their belongings.

46. The Tenant RG also testified that the experience of having to move as a result of the N12 notice was 'traumatic' and she was sent into a 'downward spiral' suffering from extreme panic attacks.

47. As decided above, the Landlords did not act with malice however, the Landlords' actions resulted in the unnecessary uprooting of a family with small children. Therefore, I find it appropriate that the Landlords pay the Tenants \$20,000.00 for general compensation representing \$10,000.00 for each Tenant.

Review – Damages Quantum – New Evidence as to RG's Physical Limitations

9. The Landlords' representative submitted that the damages award was based, in part, on false evidence about the physical challenges facing the Tenant RG at the time of the move. The Landlords submitted that they were entitled to raise new evidence which they did not raise at the original hearing which would rebut the testimony of the Tenant RG.
10. The Tenant RG had testified in the original hearing (Refer Exhibit 1, being a transcript at page 83 of the Landlords' Brief TOP Doc-5374532) that she had had a very traumatic postpartum emergency C-section which left her with limited range of motion due to some complications. She was unable to lift more than 10 pounds or otherwise pack or participate in the move.
11. The Landlords submitted that they had evidence that this testimony was false. They had not anticipated that the Tenant RG would give false testimony in the original hearing and so had not submitted the material to the Board in advance of that hearing. I allowed the Landlords to enter the new material.
12. The Landlord KrzysT referred to various photos which had been pulled from the Tenants' social media site (Refer Exhibit 2 at pages 65 – 70 of the Landlords' Brief). A photo taken in December 2022, 3 months before the Tenants vacated, showed the Tenant RG with her baby strapped to her in a carrier while she was doing dishes. One taken in January 2023, shows RG carrying her 4 year old son on her back. One taken in early February 2024 shows RG with the baby strapped to her in a carrier. And one taken shortly after the move to the new unit shows RG vacuuming while holding the baby strapped to her in a carrier.
13. The Tenant RG testified that it was necessary for her to have the baby strapped to her in the carrier from time to time as the baby could not be put down. Carrying the baby in this harness was not the same as lifting heavy weight. She reiterated that she had had complications from the baby's delivery which left her with excruciating pain and fear of a hernia so she was medically prevented from lifting weights. Her role during the move was limited to looking after the two children.
14. I find that the photos do not establish that RG's testimony about her limited involvement in the move was false.

Review – Consideration of Evidence on Failure to Mitigate

15. The Landlords' representative submitted that the Member failed to address evidence raised in the hearing by the Landlords about the Tenants' failure to mitigate the alleged hardship with respect to the timing of the move.
16. The Landlords submitted that they raised evidence about the Tenants' failure to mitigate multiple times during the original hearing. I was pointed, for example, to the following:

[Exhibit 3 at pages 109-110 of the Landlords' Brief]

KrzysT: With reference to an email sent to the Tenants on January 16, 2024 (Refer Exhibit 4 at page 59 of the Landlords' Brief), by which time the Tenants had indicated to the Landlords that they were planning to comply with the N12 notice,

'So while [the Landlords KatT and ST] are still prepared to move into the house under the terms of the N-12, this has always been a last resort for us. We still hope you're willing to stay in the house at your current rate while giving up the basement sometime in the spring, if that's what's best for you. If you want to leave but need more time to find a suitable place or don't want to move in the winter, we're happy to give you more time. So we had offered them to stay till August before. I was just trying to open the door to a solution, but I clearly stated that we're happy to have you stay"

The Member: "Under different lease terms and taking away the basement?"

KrzysT: "Sure, but that's not the N12. We were willing to talk it over with them but the N12 says that they have to leave on March 7th. There's no guideline on exactly how to withdraw an N12.

.... [and on the next page]...

KrzysT: '...we offered for them to stay till August, the following year. That's another five or six months of low rent that they weren't going to find anywhere because they were getting an absolute bargain at the rent. So they could have save \$300 at least a month for those six months if they exercised their right to stay in August. That was my offer. They could have at least taken that time to find, Rachel complained, well, you know, it was really hard to find a place to move in the winter. Well, they didn't exercise their right to stay. They didn't mitigate the damages. They insisted on leaving, it feels like there was like, it feels like there was nothing we could have done to convince them to stay.

...[and on page 124]

KrzysT: "They had the option to stay longer and not move in the winter. They did nothing to mitigate the fact that they were rushed into finding a place. They could have taken more time to find a place that was cheaper, maybe, within their budget"

17. The Member did not expressly address, in the damages portion of the Order, the Landlords' allegations that the Tenants had failed to mitigate by not staying in the unit past the winter months. However the Member did address the Landlords' position in that regard elsewhere in the Order, in the section "Why Did the Tenants Vacate". The Member referred to the Landlords' testimony that the Landlords extended additional time to the Tenants and that the Landlords communicated to the Tenants that they did not want the Tenants to feel as though they were being forced to move during the winter months (Refer paragraph 13 of the Order). The Member expressly rejected the Landlords' submission that the N12 had been 'withdrawn'. The Member determined that the offers of additional time to stay at the unit came with caveats which meant that there was no unequivocal offer to let the Tenants remain in the rental unit and continue the tenancy under the terms of the tenancy agreement.
18. I find that the Member's determinations in that regard fully address the mitigation argument posed by the Landlords despite the fact that there was no express reference to 'mitigation' in the damages portion of the Order. It is clear that the Member did not accept that the Landlords had clearly offered any meaningful opportunity to the Tenants to continue their tenancy without a change in terms.
19. The Tenants submitted, further, that they were concerned about rising rental rates. Their arrangements to move as soon as possible further to the N12 notice mitigated their damages by avoiding an anticipated increase in rental costs.
20. If the Member erred by not expressly addressing the mitigation argument in the context of the Damages section of the Order, the error did not amount to a serious error and did not affect the outcome. The underlying argument was addressed elsewhere in the Order and the Member's determination in that regard is consistent with a rejection of the Landlords' submissions on the mitigation issue.

Review – Relevance of Testimony from Landlords' Daughter

21. The Landlords submitted that the Member's refusal to hear testimony from AS, who is the daughter of the Landlords KatT and ST and sister of the Landlord Krzyst, amounted to a denial of procedural fairness to the Landlords.
22. The Landlords made two submissions about the relevance of AS's testimony:
 - a) First, the Landlords submitted that there was a material change in circumstances that would allow the Landlords to meet the reverse onus against bad faith that would otherwise apply under section 54 of the Act. When it became apparent that there was a real risk that the Landlords KatT and ST would not move into the unit, the Landlords sought to effect a sort of back up plan to have KatT and ST's daughter, AS, move into the unit in their place. They believed that AS's position as a child of KatT and ST would allow her to effectively step into the shoes of the Landlords for the purposes of section 48(1). The fact and timing of AS's inability to follow through on the back up plan effected a change in circumstances relevant to rebut the bad faith presumption set out in section 57 of the Act; and

- b) Second, that the Landlords made good faith attempts to comply with the N12 notice when they found that KatT and ST could not make the originally-planned move.

23. I find that AS's testimony was properly excluded. It would have been both unnecessary and irrelevant. It was unnecessary as there was no dispute that the Landlords attempted to effect a back up plan with AS and that the back up plan fell through. It would have been irrelevant because the 'change of circumstances' relevant to the reverse onus clause was a change of circumstances pertaining to occupancy by those named in the N12 – being KatT and ST. The Landlords were incorrect in their understanding that a different individual than that named in the N12 could effectively be substituted.

Review – Question of Causation

24. The Landlords submitted that the January 19, 2023 email sent by the Landlords to the Tenants established that the Tenants vacated the unit as a result of no longer feeling comfortable in the unit rather than as a result of the N12 notice of termination. They submitted that the reason provided in that email was never controverted in evidence and so necessarily stands as a rebuttal to any allegation by the Tenants that the second branch of the subsection 57(1)(a) test had been made out. The Landlords submitted that, in the face of that email, the Member's finding that the Tenants left as a result of the N12 notice was a serious error.

25. The January 19, 2023 email in question was sent in response to a January 16, 2023 email from the Landlords to the Tenants (Refer Exhibit 4 at page 59 of the Landlords' Brief). Relevant excerpt of the January 16th email are:

"...Your offer contained in that email was something we were willing to negotiate on. We were always happy to have you stay while giving up the basement. ... We were prepared to move in under the N12 as our last resort if that was our only legal choice if you were unwilling to negotiate."

26. Relevant excerpts from the January 19, 2023 email (Refer Exhibit 5 at page 60 of the Landlords' Brief) are:

"Unfortunately at this point in time, considering all the goings on over the past few weeks – not only from our initial conversations but also since lawyers have been involved that we no longer feel comfortable and at home here."

27. I find that it is clear, from the emails exchanged, that the Tenants understood that the only way they could remain in the unit in the face of the N12 notice was to 'renegotiate' the terms of the tenancy. Although there is no express reference in the two January emails to an increase in rental rate, it is abundantly clear that any arrangement by which the Tenants could stay, as an alternative to vacating pursuant to the N12, was to relinquish their rights of occupancy to the basement. Their decision to forego further negotiations to that effect and vacate further to the N12 notice was in effect a decision to vacate as a result of the N12 notice.

28. There is no question that the relationship between the Tenants and the Landlords had deteriorated, and this point was acknowledged by the Member in the Order. The term 'as a result of' does not include a requirement that the service of the N12 be the sole driver behind a tenant's decision to vacate.
29. The Tenants submitted that, contrary to the Landlords' position that no direct evidence was obtained about their reason for vacating, the Tenant RG expressly confirmed, with reference to the same January 19th email, that the Tenants moved out because they were cooperating with the N12. (Refer RG testimony from the original hearing at page 82 of the Landlords' Brief). I concur with the Tenants' further submission that if the Landlords took issue with this testimony they were free to pursue the point in cross examination and declined to do so.
30. The Member addressed the question of whether the Tenants vacated 'as a result of' the N12 in some detail. The Member's reasons expressly referenced, and rejected, the Landlords' arguments in this regard. The Member's reasons specifically addressed the same arguments about the January 19, 2023 email which underpin the Landlords' present arguments on the causation point.
31. I find that the Member fully and reasonably addressed the question of whether the Tenants vacated 'as a result of' the N12 notice and find no error in the Order in that regard.

Review – Adequacy of Reasons for Quantum of General Damages

32. Subsection 57(3)(1.1) of the Act provides that, if the Board finds that a landlord has issued an N12 notice of termination in bad faith, the Board may order that the landlord pay a specified sum to the former tenant as general compensation in an amount not exceeding the equivalent of 12 months of the last rent charged to the tenant.
33. The Order granted the Tenants general damages in the amount of \$20,000.00, representing roughly 73% of the \$27,000.00 maximum quantum further to subsection 57(3)(1.1). As set out above, the reasons given in the Order for this award were that moving, particularly in the winter, was difficult for the Tenants with a newborn and a 4-year-old who had just started school. The Tenant RG could not assist with the move because of complications further to the delivery of the newborn. RG suffered trauma and severe panic attacks as a result of the termination experience.
34. Deference is to be accorded a member's exercise of discretion and this award is discretionary. Discretion, however, has its bounds. As set out in the Board's interpretation Guideline 8 – Review of an Order, the grounds for a finding of a serious error in an order include:
- 'An unreasonable exercise of discretion which results in an order outside the usual range of remedies or results and where there are no reasons explaining the result'
35. By way of Interim Order LTB-T-055922-23-IN3, following the conclusion of the oral hearing, I requested that the parties provide written submissions on the question of whether the evidence before the Board supports a finding that the award of \$20,000.00 for

general compensation falls within the range of reasonable, acceptable outcomes. The parties were also requested to provide submissions on what amount should properly be awarded if the Board were to determine that the \$20,000.00 award falls outside that range.

36. The parties provided written submissions in response to that interim order. Both parties presented arguments about what should and should not have been considered in the calculation of the award but presented little in the way of submissions about what would constitute a 'usual range' of remedies.
37. The Tenants' representative submitted that applications of this sort had been awarded similar or much greater amounts in recent years and that awards of this nature were not novel at the Board. My comments on the cases to which she referred in support of this submission are as follows:
 - a) *TST-90503-17(Re)*, 2019 Can LII 87012 (ONLTB) – This case awarded administrative fines in the amount of \$25,000.00 for each of three units as a result of the landlord's contempt of a Board interim order. As noted by the Landlords' representative, an administrative fine serve an entirely different purpose from an award of general damages. The latter are compensatory in nature and are not aimed at deterrence or punishment of the landlord. The Member in the Order expressly found that this was not an appropriate case in which to order a fine. He noted that the Landlords did not act with malice and that neither the behaviour nor conduct of the Landlords showed a blatant disregard for the Act. I find that the award in the cited case is not relevant to my determination about 'usual range' for general damages;
 - b) *McClymounth v Singh Nanuan*, 2025 ONLTB 41859 (CanLII) – The Board awarded \$10,000.00 in general damages in a situation where a bad faith termination forced the break-up of a family unit. The tenants were elderly and had had a very long term tenancy. I note that the amount awarded was substantially less than the \$20,000.00 which is the subject of the present enquiry and that the reasons describe an unusually significant impact on the tenants;
 - c) *Reid v. Shewen*, 2025 ONSC 4196 (Can LII) – The Tenant's representative characterized this case as evidencing an award of \$24,000 as being affirmed by Divisional Court. In fact the appeal before that court concerned a finding of whether the landlord had reasonably been able to participate in the hearing which gave rise to the award. The court denied the landlord's appeal on the basis that the landlord failed to exercise due diligence with respect to the notice of the hearing. The court made no comment or finding on the award itself and no details as to the basis of that award were presented; and
 - d) *Odie v. Al-mter*, 2023 ONLTB 78288 (CanLII) – The member in this case awarded the full 12 months of rent in general compensation. No reasons were given for the extent of the award. While I accept that it exemplifies an award at the limit of the range, I do not accept that it evidences the 'usual range' for such remedy.

38. The failure of the parties to provide submissions on a 'usual range' of remedies is not, in fact, surprising. My own review of cases involving this general damage request showed a wide range of awards, commensurate with the wide range of potentially relevant factual considerations in play. The concept of 'usual range' referenced in Guideline 8 applies more effectively to remedies which generally attract more consistent decisions than those which, like this remedy, entail a significant level of subjectivity. My review yielded decisions ranging from nil to the full 12 months of rent.
39. I find that, while the award in the Order tended toward the higher end of the available remedy, the variability in past awards does not put this award outside the realm of 'usual'. Further, the Member provided reasons for the award. A reader can understand, from the reasons given, the basis for the quantum determined by the Member.
40. The Tenants' representative included, in the final written submissions, a number of reasons which could or should have substantiated the Member's award and which were not referenced by the Member. She referred to such items as the Tenants' suffering subsequent to the filing of the Landlords' application and allegations about the Landlords' profit following the termination. These allegations were either not before the member in the first instance, not relevant to a general damages award or not before me in evidence during the review hearing.
41. The Landlords' representative re-iterated arguments about mitigation and evidence which were raised in the context of the oral review hearing and which have been addressed in the earlier paragraphs of this order.
42. I find that the Member's award of \$20,000.00 for general damages does not amount to a serious error and find that the award should properly stand.

It is ordered that:

1. The request to review order LTB-T-055922-23 issued on December 16, 2024 was granted.
2. Further to the hearing of the review, the Order is confirmed and remains unchanged except that the date for payment set out in paragraph 2 of the Order is amended to April 2, 2026 and the date from which interest accrues further to paragraph 3 of the Order commences on April 3, 2026.
3. Interim order LTB-T-055922-23-RV-IN issued on February 12, 2025 is cancelled. The stay of order LTB-T-055922-23 is lifted immediately.

March 23, 2026
Date Issued

Lynn Mitchell
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.