



Order under Sections 31 & 95 Residential Tenancies Act, 2006

Citation: McIntyre v Boardwalk Real Estate Investment Trust, 2026 ONLTB 25816

Date: 2026-03-30

File Number: LTB-T-059122-23 &
LTB-T-016363-24

In the matter of: 812 KING ST W
KITCHENER ON N2G1E9

Between: Kylie McIntyre
Claire Alice Seeger Tenants

And

Boardwalk Real Estate Investment Trust Landlord

Kylie McIntyre and Claire Alice Seeger (the 'Tenant') applied for an order determining that Boardwalk Real Estate Investment Trust (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.
- withheld or interfered with their vital services or care services and meals in a care home (T2 application)

The Tenants also applied for an order determining that the Landlord arbitrarily or unreasonably withheld consent to the assignment or sublet of the rental unit to a potential assignee or subtenant (A2 application)

This application was heard by videoconference on December 4, 2025.

The Landlord's agent, N. Carver, and the Tenants attended the hearing.

Determinations:

1. The Tenants filed their T2 application alleging that the Landlord substantially interfered with their reasonable enjoyment of the rental unit: a) by failing to disclose that the residential complex was not wheelchair accessible, and also failing to deal with their accessibility issues, b) by creating excessive construction noise from October to December 2022, as well as April to December 2023, and c) also by withholding vital services of water and electricity on multiple dates.

2. The Tenants filed their A2 application alleging that the Landlord unreasonably refused to let them assign or sublet their lease.
3. The residential complex is a multi-storey apartment building with an elevator. It was convenient for the Tenants, one of whom moved to the unit in order to attend a PhD course in Waterloo. The monthly rent was \$1,479.00.

Substantial Interference Related to Accessibility:

4. The Tenant, C. Seeger (CS) said that she and her partner, co-Tenant, K. McIntyre (KM), moved from Alberta to Kitchener because CS was undertaking a PhD at University of Waterloo. KM has a disability and uses a wheelchair. KM was planning to undertake a remote course of study while the Tenants were in Ontario. CS said that the Tenants saw an ad for the rental unit, and they were unable to view it in person because the Tenants were still in Alberta, so they did a video tour. CS said that in the video tour they only saw the unit not the entire building, but they asked if the building was wheelchair accessible and they were told that it was accessible, and that all the building amenities were accessible. However, CS said that when the Tenants arrived, they observed that all the amenities, such as gym, laundry, community rooms, were only accessible via a stairway. CS submitted into evidence a video that showed the only way to access a level that contained the laundry room and other building amenities was by climbing three steps. CS said that the Tenants did not ask for a reduction in rent, nor did they request a refund of their deposit for the unit, because they did not think they had the resources to move elsewhere.
5. CS said that from the date they moved in, October 22, 2022, until December 2022, there was a building construction project going on, and some of the sidewalk leading to the residential complex was blocked, so it was difficult for KM to manoeuvre her wheelchair into the building, and KM required CS' help to get in and out of the building. She also said that there was a very high speed bump leading to the building, and it was impossible for KM to get over it in her wheelchair.
6. CS said that they asked the Landlord's employees if a ramp could be installed and they refused, so the Tenants dropped it. CS said that only she, not KM, could use the gym, and it was up to her to take all responsibility for doing the Tenants' laundry.
7. Although the Landlord's employee, S. Achimas (SA) did not attend the hearing to testify, the Landlord's agent, N. Carver (NC), submitted into evidence a questionnaire he asked SA to fill out. In the questionnaire, SA writes that the Tenants never mentioned to her their concerns about lack of accessibility to the laundry room or other amenities, although they told her they were upset upon moving in to see the three steps to get to the amenities level. SA writes that she told them there were only three steps for that particular level, and all other levels were accessible by elevator and "then they were ok".
8. SA also wrote in the questionnaire that the Tenants never asked for accommodation from the Landlord by way of the Landlord installing a ramp to the amenities level.

Reasons and Analysis:

9. I find that the Tenants have failed to prove, on a balance of probabilities, that the Landlord substantially interfered with their reasonable enjoyment of the rental unit or the residential complex because of their failure to respond to the Tenants' accessibility issues or concerns for the following reasons.
10. The Tenants had no documentary evidence to support their allegations that they asked the Landlord about full wheelchair accessibility, that the Landlord either assured them that the amenities of the residential complex were all wheelchair accessible, nor that they ever requested an accommodation ramp that was refused by the Landlord. They submitted some correspondence with the Landlord before renting the unit (see below), and none of it mentioned wheelchair accessibility or queries about wheelchair accessibility. Although SA was not present at the hearing to provide testimony or to be cross-examined, I find that her questionnaire responses are credible, considering the lack of documentary evidence to support the Tenants' contentions. The building had an elevator and there is no evidence nor allegation that KM was not able to access the building or her unit. Further, there was no photo of the alleged speed bump submitted into evidence, so it is impossible to determine if this was a speed bump that was on the residential complex or within the control of the Landlord, or even to determine the nature of this speed bump or whether, or when, KM was obliged to manoeuvre over it.

Substantial Interference Related to Construction Noise and Shutting off Water and Electricity:

11. The Tenants said that they were told there would be construction in the building when they moved in. CS said that when they arrived, the Landlord was renovating the balconies, and the noise from construction was incredibly loud. CS said that it was active from the time they moved in until December 2022. She said that neither of the Tenants were able to work in the unit at least 50% of the time from Monday to Friday during the day. She submitted into evidence a sample of the construction noise on November 11, 2022, which had a very loud construction machinery/drilling noise.
12. CS submitted into evidence a notice from the Landlord, dated March 6, 2023, which informed the Tenants that another phase of construction was to take place, and it started on April 3, 2023. She said that it continued until the Tenants left at the end of August 2023, and she submitted into evidence a sound clip from July 17, 2023, in which there is loud construction machinery noise coming from their ceiling. CS said that the noise was actually worse from April to August 2023, than it had been from October to December 2022 because it was taking place on their side of the building.
13. CS said that both the Tenants were disturbed by the noise, and it disrupted their courses and their learning. She said that, although her course was supposed to be in-person, she discovered that most of the courses were given on-line. She said that KM was supposed to have her online classes every day, so the noise disrupted her classes every single day. She also said that there was nowhere for them to go to escape the noise.
14. CS said that the construction also disrupted their access to running water. They said that the water was shut off at least seven days, on weekdays, from February through June 2023. She said that all the electricity and hot water was shut off on at least two occasions. She said it was all the disruption, disturbance and inconvenience that convinced them to

give early notice. She said that they were sick of the noise and wanted to return to Alberta. They had originally planned to stay for three years, but when they learned that everything was being done remotely, and they did not need to stay in Kitchener, they arranged with their programme to finish their studies remotely in Alberta.

15. The Tenants are seeking a 100% rent abatement for all the disruption of the construction.
16. NC said that the Tenants were informed about the ongoing construction work before they rented the unit. He submitted into evidence an email sent by the Landlord's employee Hanna to the Tenants, dated September 7, 2022, stating that "I would like to confirm that we have advised the balcony restoration project in the building that have (sic) hammering and drilling noise during the restoration. The time frame is mostly from 7am to 6pm Monday to Friday." She further informs them that their side of the building will be completed by December 2022, and that the other side of the building will be continued in the following year from April to December. She closes the email by stating, "I am not sure if you are or will be working from home but we would like to make sure you are aware of the situation and this will not be affecting your stay."
17. NC said that the letter sent by Hanna provides the Tenants with full disclosure of what they are getting into when they rent the apartment. He submitted into evidence the reply from the Tenants, dated September 7, 2022, in which they write "I shouldn't (sic) affect us to (sic) much." They ask about use of the balcony, and they are informed that they cannot use the balcony during the project. A bit later that day, Hanna again writes to them that "If any of this circumstances (sic) not fitting your needs, please let us know before we proceed with your application. We can place your name for our sisters site for the upcoming availability." The Tenants reply, "...we would still like the apartment."
18. NC said that the restoration project was a major one, including waterproofing of the building, concrete delamination, exterior painting, torquing, and it had to be done in two phases. He said that it was about safety, and also improving the balconies.
19. NC said that the Landlord tried to mitigate the impact of water and electricity provision by doing two of them in the middle of the night when people were sleeping. He said that the water shut-off was done during the day when people were out of their units.

Reasons and Analysis:

20. Where a tenant seeks an abatement of rent due to interference with the enjoyment of the premises during repairs, section 8 of Ontario Regulation 516/06 must be considered.
21. Section 8 was enacted in order to encourage landlords to keep the rental units and residential complexes in a good state of repair and to undertake repairs without a loss in their rental income. The section limits the Tenants' ability to succeed on an application for an abatement of rent because of substantial interference during construction and repairs.
22. Section 8 of the regulation reads, in part:

8(2) For the purposes of section 22, paragraph 3 of subsection 29 (1) and subsection 31 (1) of the Act, this section applies to the Board in making a determination,

(a) as to whether a landlord, superintendent or agent of a landlord, in carrying out work in a rental unit or residential complex, substantially interfered with the reasonable enjoyment of the unit or complex for all usual purposes by a tenant or former tenant, or by a member of the household of a tenant or former tenant; and

(b) whether an abatement of rent is justified in the circumstances.

8 (3) In making a determination described in subsection (2),

(a) the Board shall consider the effect of the carrying out of the work on the use of the rental unit or residential complex by the tenant or former tenant, and by members of the household of the tenant or former tenant; and

(b) the Board shall not determine that an interference was substantial unless the carrying out of the work constituted an interference that was unreasonable in the circumstances with the use and enjoyment of the rental unit or residential complex by the tenant or former tenant, or by a member of the household of the tenant or former tenant.

23. Subsection 8(3) sets out a two part test. First, subsection 8(3)(a) requires the Board to consider whether the carrying out of the work impacted on the Tenants. The Tenants' uncontested evidence is that they were disturbed by the noise, as well as the withdrawal of water, heat and electricity. The noise lasted from October to December 2022, as well as April to August 2023. The withdrawal of water service, heat or electricity, took place mostly between January and June 2023. The Tenants said they were unable to study, undertake their online classes, and there was nowhere else for them to go. Consequently, I find that the Tenants have proved their allegation with respect to the first part of the test contained in subsection 8(3)(a).
24. Second, according to subsection 8(3)(b), in order for the Tenants to be successful in their application, the Board must find that the carrying out of the work constituted an interference that was unreasonable in the circumstances, with the use and enjoyment of the premises.
25. The question is, given the nature and the extent of the work that had to be done, could the Landlords reasonably have been expected to do it in a manner that was less disruptive.
26. The Tenants were told repeatedly that the work was for safety, and it was necessary. However, the Landlord's agent did not provide much evidence about the necessity for the work. He did not provide much evidence or testimony about exactly what the work was for, except to say that the Landlord was improving the balconies and doing some structural

work on the building. He did not provide any documentation about what exact work was being done nor why it required such a lengthy period of time to complete.

27. The Tenants said that the work, the noise and disturbance, commenced from the time they arrived in October 2022, until December 2023, and then again from April to August 2023. It is also undisputed that there were water shut-offs, as well as electricity and heat shut-offs between January and June 2023.
28. There is no evidence that the Tenants asked for a quieter location to do their work, nor that the Landlord offered a quite location.
29. The Landlord's position was that the Landlord disclosed all the possible disruption and problems to the Tenants prior to their moving in, and that the Landlord followed all required protocols to inform the Tenants about any shut-off of services and also to minimize any disturbance to the Tenants.
30. The Tenants said that during construction there was noise at least 50% of the time throughout the day, during the week. The Landlord provided no countering evidence whatsoever about when the noise took place, how loud it was, or how many hours a day it continued.
31. The Tenants provided no evidence of complaints to the Landlord, nor did they testify that they had complained to the Landlord, from the time they moved in until the beginning of June 2023, when they sought to terminate the tenancy early.
32. Given the paucity of evidence from the Landlord about the necessity, nature and scope of the work, I find, on the uncontested evidence of the Tenants, that the carrying out of the work constituted an interference that was unreasonable in the circumstances, with the use and enjoyment of the premises.
33. Subsection 8(4) of the O. Reg. 516/06 provides the criteria to determine whether, if the work was found to unreasonably interfering with a tenant's reasonable enjoyment, as I have above, an abatement of rent is appropriate. It provides that the Board "shall not" order an abatement of rent if all the following conditions are satisfied: 1) the Landlord gave notice to the tenant 60 days before the commencement of the work, 2) the landlord gave notice to any prospective tenant of a rental unit at the first opportunity to do so before the landlord entered into a new tenancy agreement with the tenant, 3) the notice describes the nature of the work to be carried out, the expected impact on tenants, 4) the notice was reasonably accurate and comprehensive in the circumstances it was given, 5) if there was a significant change in the information, the landlord provided an update to the notice in a timely manner, 6) the work is necessary to protect or restore the physical integrity of the residential complex, necessary to comply with maintenance, health, safety or other housing related standards, necessary to maintain a plumbing, heating, mechanical, electrical, ventilation or air conditioning system, provides access for persons with disabilities, promotes energy or water conservation, or maintains or improves the security of the residential complex, 7) whether a permit was issued if the work was required under the Building Code Act, 1992, 8) the work was carried out at reasonable times, 9) the duration of the work was reasonable in the circumstances, 10) the landlord took

reasonable steps to minimize any interference resulting from noise associated with the work.

34. As already mentioned above, the Landlord brought very little supporting documentation to describe the work that was carried out, what permits were required or obtained, nor why it was being carried out. Nevertheless, if I give the Landlord the benefit of the doubt on almost every criteria mentioned above that prohibits me from awarding an abatement to the Tenants, I find that the Landlord failed to prove criteria #6, that is that the work was necessary to protect or restore the physical integrity of the residential complex, necessary to comply with maintenance, health, safety or other housing related standards, necessary to comply with plumbing, heating, mechanical, electrical ventilation or air conditioning systems, or to provide access for persons with disabilities. The Landlord also failed to prove, on a balance of probabilities, criteria #9, that is, that the duration of the work was reasonable in the circumstances. This necessarily follows from the lack of evidence to prove what exact work was being done, and why it was being done. The evidence before me is that the work disrupted the Tenants' reasonable enjoyment in the rental unit and the residential complex most days for the entire time they lived there, October 2022 to August 2023, a period of 10 months. As a consequence of my determinations above, I find that I can consider the Tenants' request for an abatement of rent.
35. Subsection 8(5) of the O. Reg. 516/06 provides the criteria for me to consider when determining an order for an abatement of rent, including the nature, duration and degree of interference, steps taken by the landlord to minimize interference with the reasonable enjoyment, whether the tenant took advantage of any service or arrangement provided by the landlord. Finally, subsection 8(6) of the O. Reg. 516/06 provides that no abatement of rent shall exceed 25 per cent of the monthly rent, or it can exceed 25 per cent if the interference "far exceeded the level that would normally be expected" if work was done at unreasonable times, contravened the permit, took place over an excessive period of time, or the landlord refused to take reasonable steps to minimize interference.

Abatement for Noise, Water and Electricity Shut Down:

36. The Tenants said that they were disturbed by noise at least 50% of the time, during the day during the week, from October to December 2022, and then from April to August 2023, a period of eight months. The Tenants' noise samples proved, on a balance of probabilities, that the noise was very loud. Therefore the noise was loud for 50% of the time, for 8 months, 20 days of the month, for 8 hours, I find that, without other considerations, this would merit a 20% rent abatement. However, I must also consider that the Tenants were informed, before they entered the lease, that there would be work taking place in the building, all day during the week, and the work would cause drilling and noise and the Tenants should consider how much time they had to spend in the rental unit during the day. While the Tenants said that they did not know how much time they would be obliged to spend doing online learning prior to the tenancy, it should have been clear to them that KM, at the very least, was doing solely online learning. Yet they nevertheless chose to rent the unit, despite the warning, and despite even the Landlord's offer to put them on a waiting list for a different building. There is also the fact that the Tenants had no evidence to prove that they had ever complained to the Landlord about the noise, and the Landlord was unaware of just how greatly the Tenants had been disturbed until June 2023

when they asked to terminate the lease early. Therefore, there is no way for me to determine whether the Landlord had an opportunity to offer the Tenants a quieter location during the day. The Tenants chose to suffer in silence, so there is no evidence for me to consider about whether the Landlord would have appropriately responded to the Tenants' concerns.

37. As a result of the mitigating factors mentioned above, the forewarning provided by the Landlord, as well as the lack of evidence about whether the Landlord was willing or unwilling to provide the Tenants with some relief from the noise, I find that a fair rent abatement for the eight months of noise is 10%, or $\$1,479.00 \times 10\% \times 8 = \$1,183.20$.
38. There was evidence that water was shut down for lengthy periods of time, often eight hours, on at least eight occasions. There were also at least two periods of no electricity or power, for at least four hours, in the middle of the night. Considering that there was no evidence from the Landlord to support the necessity of such lengthy shut-downs of water and electricity, I find, pursuant to subsection 8(5) of O. Reg. 516/06, that eight hour shutdowns of water, and at least four hours shutdown of all power is excessive duration and degree of interference. I say this because the complete power shutdowns took place in the middle of the night. The Landlord's agent said this was to minimize disruption to the tenants, but I find, in fact, that it was extremely dangerous to shut down all power in the middle of the night, which included being unable to enter or exit the building, or use the elevator, when there were tenants who could only access the exits by wheelchair and would have required the elevator in the case of an emergency.
39. Consequently, I find that an abatement of 25% for the eight days of water shutdowns, and an abatement of 50% for the two days of full power shutdowns is appropriate (it far exceeded the level of disturbance expected). The per diem rent is \$48.62. Therefore, the Tenants are entitled to $25\% \times 8 \times \$48.62 = \97.24 , and $50\% \times 2 \times \$48.62 = \48.62 , a total of \$145.86.

A2 Application:

40. The Tenants allege that the Landlord unreasonably refused to let them assign or sublet their lease.
41. After the Tenants decided that they were tired of the noise and vital service disturbance, and they discovered they could continue their courses remotely, they asked the Landlord if they could terminate their lease early. The lease terminated on October 31, 2023. The Tenants had documentary evidence that they wrote to the Landlord's employee on June 1, 2023, to request early termination at the end of August 2023. It is in that message that the Tenants mention, for the first time, disappointment with wheelchair accessibility, excessive noise disruptions affecting their work.
42. The Landlord replies, that the Tenants may, in theory, assign their lease, and it is undisputed that the Tenants proceeded to advertise the unit. The documentary evidence proves, and it is undisputed, that the Tenants provided the Landlord with potential tenants to take over their lease at the end of August 2023, by June 20, 2023. The documentary evidence also proves, and it is undisputed, that the Landlord refused some of the

prospective tenants because they did not have an income exceeding \$45,000.00, or because too many people proposed to live in a “junior suite, or the proposed tenants could not prove a working history in Ontario.

43. The Tenants said that they had a back-and-forth message exchange with SA until the beginning of July 2023, and they then sought legal advice. The Tenants said that they were advised that they could break the lease early because of the Landlord’s refusal to permit them to assign their lease. They paid rent, including their last month’s rent deposit, to August 31, 2023. They submit that they should not be responsible for any rent or Landlord charges after that time.
44. The Tenants said that the Landlord, nevertheless, charged them rent to September 8, 2023, the date on which the Landlord managed to re-rent the unit. The Tenants said that the Landlord sent an alleged debt to a collections agency, and they should not be responsible for paying any extra days of rent, or added charges by the Landlord which included cleaning and damage charges.
45. NC said that the Landlord reasonably refused the Tenants’ proposed candidates to take over the lease because they either had insufficient income, or they had no working and living history in Ontario. He said that the Landlord did not refuse all the Tenants’ proposed tenants. The Landlord was prepared to accept the Tenants’ further proposed tenants as of the beginning of July 2023, and SA sent the Tenants a lease assignment agreement on July 8, 2023. Instead of signing it and returning it to SA, the Tenants replied that they were going to talk to a lawyer before signing. He submitted into evidence a message sent by the Tenants to SA on July 27, 2023, in which they assert that the Landlord has arbitrarily and unreasonably refused consent to an assignment of their lease, and they have the right to terminate the tenancy on 30 days’ notice. They conclude by saying that they have the right to terminate the tenancy on August 31, 2023, and they attach N9 notices of termination for August 31, 2023.
46. NC said that the Landlord mitigated the loss and re-rented the unit by September 8, 2023, and the Landlord only charged them seven further days of rent (\$340.37), plus cleaning charges and interest (\$247.80).

Reasons and Analysis:

47. The Tenants have failed to prove the allegations contained in the application on a balance of probabilities for the following reasons.
48. The undisputed evidence is that the Landlord consented, in theory, to an assignment of the Tenants’ lease, provided the Tenants proposed suitable candidates to take over their lease, and the Landlord responded within seven days of the first request, as required by section 95 of the Act.
49. While the Landlord did refuse the Tenants’ first proposed candidates, the documentary evidence proves, on a balance of probabilities, that the Landlord sent the Tenants an agreement to assign their tenancy on July 8, 2023. The only evidence before me was that, had they signed it, the Tenants would have been able to assign their lease by the end of

August 2023. The documentary evidence proves, on a balance of probabilities, that the Tenants did not sign the agreement, and that they wrote to the Landlord on July 27, 2023, simply asserting that the Landlord had unreasonably refused to permit them to assign their lease, and they had a right to terminate the lease on August 31, 2023 pursuant to section 96 of the Act.

50. I find that the documentary evidence proves, on a balance of probabilities, that the Landlord reasonably permitted the Tenants to assign their lease, and it was not unreasonable for the Landlord to ask the Tenants to sign an agreement to assign their lease. However, the Tenants refused to sign it.
51. Nevertheless, the Landlord mitigated their loss as they were obliged, pursuant to section 16 of the Act, and they re-rented the unit eight days later. Therefore, the Landlord was entitled to charge the Tenants the further seven days of rent. But that charge is not the appropriate consideration for me with an unproved A2 application.
52. The Landlord was not entitled to charge the Tenants the further \$247.80 for the cleaning fees and interest, nor was the Landlord entitled to send off the total alleged debt to a collections agency before filing an appropriate application to the Board. Reimbursement of the amount charged to the Tenants could have been a consideration in a T1 application, or even a consideration if an appropriate remedy had been requested in the Tenants' T2 application. As it happens, the Tenants did not mention the extra cleaning charge and interest in their T2 application. It only came up during the hearing. Therefore, I cannot consider these illegal charges.
53. Since my only consideration here is the A2 application for unreasonable refusal to assign a tenancy, which the Tenants have failed to prove, I am unable to consider other breaches of the Landlord here.
54. With respect to the Tenants' A2 application, it will be dismissed.

It is ordered that:

1. The total amount the Landlord shall pay the Tenants is \$1,377.06. This amount represents:
 - \$1,329.06 for a rent abatement.
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenants the full amount owing by April 10, 2026.
3. If the Landlord does not pay the Tenants the full amount owing by April 10, 2026, the Landlord will owe interest. This will be simple interest calculated from April 11, 2026 at 4.00% annually on the balance outstanding.

March 30, 2026
Date Issued

Nancy Morris
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

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