



**Order under Sections 77 and 31  
of the Residential Tenancies Act, 2006**

**Citation:** BERRY v TYNES, 2023 ONLTB 24794

**Date:** 2023-05-09

**File Numbers:** LTB-L-045776-22-SA

LTB-L-045779-22-SA

LTB-T-051286-22

**In the matter of:** 105, 60 HOMEWOOD AVENUE  
TORONTO ON M4Y2X4

**Between:** RAHUL BERRY

**and**

VERONICA LOUISE TYNES

I hereby certify this is a  
true copy of an Order dated

**MAY 09, 2023**

Landlord and Tenant Board

Landlord

Tenant

RAHUL BERRY (the 'Landlord') applied for an order to terminate the tenancy and evict VERONICA LOUISE TYNES (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy.

The Landlord's application LTB-L-045779-22 is a duplicate of LTB-L-045776-22.

LTB-L- 045779-22 was resolved by order LTB-L-045779-22 issued October 11, 2022. LTB-L-045776-22 was resolved by order LTB-L-045776-22 dated October 14, 2022.

The Tenant filed motions to set aside order LTB-L-045776-22 and order LTB-L-045779-22.

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

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household; and,
- harassed, obstructed, coerced, threatened or interfered with the Tenant ("T2 Application").

*Procedural History*

The Tenant's motions were heard by videoconference on November 10, 2022. The Tenant attended the hearing and declined the opportunity to speak with Duty Counsel. The Tenant's daughter, Jacques Tynes, was also present.

The Tenant summonsed the Landlord's Former Legal Representative, Bitia DiLisi, as a witness; however, the witness was not present but their Legal Representative, Sarah Teal, was present.

As of 1:36 p.m., the Landlord was not present or represented despite having been properly served with notice of the hearing by the Board.

The hearing was adjourned to permit the Tenant's motions to be heard with the Tenant's T2 Application LTB-T-051286-22. In addition, it was noted the Landlord had written to the Board on October 31, 2022, indicating they were not available.

At the return on January 9, 2023, the Tenant and her daughter, Jacques Tynes, were present and the Tenant declined the opportunity to speak with Duty Counsel. As of 9:20 a.m., the Landlord was not present or represented. There was no record or evidence the Landlord was served with the notice of hearing nor that notice of the hearing had been sent for the joined Tenant's application. As a result, the hearing was adjourned.

*Landlord failed to attend the hearing on March 28, 2023*

At the return on March 28, 2023, the Tenant attended the hearing. The Tenant's daughter, Jacques Tynes, was also present.

As of 1:14 p.m., the Landlord was not present or represented. The Landlord was properly served with notice of the hearing and responded to the emailed notice of hearing saying he was not available and requesting written submissions be considered. The Landlord provided no explanation why he could not attend nor why he could not send someone on his behalf.

While the Landlord requested his written materials be considered, there was no explanation or evidence that suggested holding an electronic hearing would cause the Landlord significant prejudice in accordance, nor result in an unfair hearing, nor that it was a request for accommodation in accordance with LTB Rule 7.2 and the LTB's *Practice Direction on Hearing Formats*.

There was no evidence the Landlord had attempted to comply with the process for rescheduling a hearing under LTB Rule 21 nor why he could not have complied. Further, where a Request to Reschedule is submitted the onus is on the requesting party to confirm if it has been granted and attend if a Request is denied.

This is the second time the Landlord has emailed the LTB advising he is not available for a hearing and has not attended or sent anyone to speak on his behalf and the third time the Tenant has attended prepared to proceed.

The Landlord provided no explanation why he could not attend and has seemingly made no attempt to comply with the LTB's Rules or procedures. The Notice of Hearing clearly states if the Landlord does not to attend or send a representative, the hearing may proceed in his absence and a decision made based only on the Tenant's evidence.

In the above circumstances, I was not satisfied an adjournment was necessary for an adequate hearing to be held and declined to exercise my discretion to adjourn the hearing. As a result, the hearing proceeded with only the Tenant's evidence. As the Tenant's daughter indicated she was present both as a witness and as support for her mother, she testified first.

**Determinations:**

*Preliminary Issues*

Adjournment and joining of T2 Application and set aside motions

1. On November 10, 2022, the Tenant's motions to set aside in LTB-L-045776-22 and LTB-L-045779-22 were adjourned to be heard with the Tenant's T2 Application, LTB-T-051286-22.
2. A central issue on both the Tenant's set aside motions and the T2 Application is the validity of and circumstances surrounding the agreement to terminate, including the N11 agreement relied on by the Landlord in his L3 Applications for termination and eviction.
3. The Tenant's motion to set aside alleges the Landlord reneged on the terms of the agreement to terminate and ceased communicating with the Tenant which resulted in her not being able to secure new living accommodations. The Tenant sought fulfilment of the termination agreement or to be permitted to move back into the rental unit. Aside from setting aside the eviction orders, the remedies sought were not available on the Tenant's motions to set aside.
4. The Tenant's T2 Application alleged substantial interference and harassment for the same events, between the same parties, and again sought fulfilment of the terms of the termination agreement in addition to out-of-pocket costs.
5. Hearing these proceedings separately would have required hearing the same evidence twice and may have resulted in inconsistent findings. In these circumstances, the Tenant consented to hearing her motions to set aside with her T2 Application and the hearing was adjourned. It was also noted the Landlord emailed the Board on October 31, 2022, indicating they were not available for the hearing on November 10, 2022, due to a family emergency.

Landlord's Witness motion to quash the summons

6. In advance of the hearing on November 10, 2022, the Tenant requested and received a summons for the Landlord's Former Legal Representative to attend as a witness.
7. The Witness' Legal Representative submitted the summons was not properly served and no fee had been provided. In addition, the Witness' Legal Representative advised the summons requested evidence that was not in the possession of the witness, was privileged or confidential, and/or was not necessary.

8. As the hearing was adjourned, no determination was made on this issue.
9. The Tenant advised she would not be summoning the Landlord's Former Legal Representative as a witness on the T2 Application. The Witness' Legal Representative requested the Tenant be directed to serve any evidence on her client in the event she was again summonsed, and I declined to make such a pre-emptive order.
10. At the return on March 28, 2023, the Tenant confirmed she was no longer seeking to summons the Landlord's Former Legal Representative.

Not appropriate to permit Tenant to amend and raise issues not identified in the T2 Application

11. The Tenant wished to raise issues at the hearing that were not identified in her T2 Application; although, documents supporting some of these claims had been provided in advance of the hearing.
12. Applications can be amended at a hearing where an amendment is appropriate, would not prejudice any party, and is consistent with a fair and expeditious process.
13. The Landlord was not present and I was not satisfied the Landlord was provided with notice in advance of the hearing that the Tenant would be advancing additional issues. I find permitting the Tenant to pursue these issues would have been unfair to the Landlord particularly as the Tenant is able to pursue applications under section 29(1) for one year after the events in issue. While such might have been accommodated by way of adjournment, in the circumstances, I did not find another adjournment consistent with an expeditious process.
14. As a result, I did not find it appropriate to amend the T2 Application and the Tenant was not able to address events not identified in her T2 Application.

*Determinations on Tenant's Claims and Set Aside Motions*

15. The Tenant's claim is in essence that she felt pressured to enter into an agreement to terminate the tenancy with the Landlord, the Landlord then breached this agreement, and as a result, the Tenant has suffered damages in the form of out-pocket expenses and compensation not delivered under the agreement.

Background facts

16. The Landlord and Tenant signed an N11 agreement to terminate the tenancy as of August 31, 2022.
17. The signing of the N11 satisfied one term of the Landlord Proposal to Mutually End the Tenancy dated July 29, 2022 which was accepted and signed by the Tenant on August 3, 2022 and the Landlord on August 4, 2022. (the "Mutual Termination Agreement")

18. On August 9, 2022, the Landlord filed L3 Applications for termination of tenancy based on the N11 Agreement. On September 8, 2022, the Tenant filed a T2 Application.
19. The Landlord's L3 Applications were granted as set out above and on October 12, 2022, the Tenant filed her motion to set aside. Both *ex parte* orders were stayed.
20. The Tenant alleged the Landlord threatened to harm her reputation and made comments about her character and accommodation/financial status substantially interfering with her reasonable enjoyment of the rental unit and residential complex and harassing her after she was late paying rent in July 2022, such that she felt she had no choice but to enter into the Mutual Termination Agreement and N11 Agreement.
21. The rental unit is now occupied by a third party. As a result, the Tenant cannot be placed back into possession of the rental unit. Additionally, the motions to set aside the Landlord's applications brought under section 77 of the Act are to a large extent moot. Nonetheless, the underlying facts are relevant to the Tenant's T2 Application and so I have considered the validity of the N11 Agreement on which the Landlord's L3 applications were based.

Events in July 2022 leading up to the Mutual Termination Agreement

22. The Tenant testified in July 2022, her employer, a not-for-profit organization was having issues and her pay was going to be delayed. She testified she told the Landlord this was why she would be late on her rent.
23. The Tenant identified a series of communications from the Landlord that flowed from her providing this advice.
24. The first email sent on July 8, 2022, records the Landlord's frustration with an alleged pattern of late payment and the impact on him, and references his expectations of how the Tenant should behave.
25. Secondly, on July 11, 2022, the Landlord sent an email advising he had reached out to his contacts in media to investigate and write a story about how the organization the Tenant works for is not paying its employees. He concluded he hoped this would expedite the deposit of her pay.
26. Finally, on July 13, 2022, the Landlord advised he had told his friends to temporarily hold off on the investigation in response to a communication from the Tenant and in consideration of the fact that she had events upcoming so as not to negatively impact her as he was an "exemplary landlord". The email concluded with a hope she would "give weightage" to his email as his patience to be an "exemplary landlord" was fading.
27. The Tenant testified she interpreted the Landlord's statements in the first email to be insulting and him calling her a child.

28. With respect to the subsequent emails, I find it is clear the Landlord was aware a story about the Tenant's work would not be welcome and might negatively impact the Tenant in her career as an entertainer. While the Landlord withdrew the request for an investigation into publishing a story in consideration of these factors, he left hanging the possibility that this course of action might be pursued in the future.
29. As a result, I find these emails were threatening to the Tenant and accept the Tenant's submissions in her T2 Application that she felt uncomfortable and unsafe. The Tenant also mentioned verbal interactions and other issues with the Landlord; however, as discussed above these events were not specified in the T2 Application and so I have not considered them.

The Mutual Termination Agreement was not signed under duress

30. The Tenant testified when she received the Landlord's without prejudice proposal regarding termination of the tenancy dated July 20, 2022, she asked her daughter, a lawyer in Nova Scotia who is currently on maternity leave, to speak with the Landlord's Former Legal Representative.
31. As a result, there was no direct communication between the parties regarding the terms to terminate the tenancy after this date because the Tenant's daughter and the Landlord's Former Legal Representative were the ones in contact with each other.
32. There were approximately two weeks between the receipt of the original proposal and the signing of the N11 Agreement and Mutual Termination Agreement. During this time the Tenant had the benefit of assistance from a legally trained family member and engaged in negotiation she testified resulted in the addition of a favourable \$1,000.00 term.
33. In the above circumstances, I do not find the Tenant was coerced into signing the Mutual Termination Agreement nor that she signed it under duress.

The N11 Agreement is null and void

34. The Mutual Termination Agreement provides, in part:

The landlord and tenant have agreed to the following:

1. Terminate your tenancy and move out of the rental unit on or before **August 31, 2022**.
2. Sign, date and return the N11- Agreement to terminate the tenancy and this agreement outlining terms of settlement to [stonegatelegalservices@gmail.com](mailto:stonegatelegalservices@gmail.com)
3. The landlord agrees to compensate you in the amount of **\$10,000.00 (CAD) + \$1,000.00 (CAD) bonus** upon move out and receipt of the keys on or before the termination date inclusive of interest on your last month's rent.

4. Half of the compensation is to be paid to the tenant upon signing this agreement and the N11 and the balance payable upon receipt of the keys.
- ...
8. If the tenant surrenders the keys before the termination date, this date shall be deemed as the last date of the tenancy and shall become the new termination date.
- ...
10. The N11 Agreement to end the tenancy is part of this mutual agreement to end the tenancy. If this agreement is not fully executed by the landlord, the N11 will be null and void.
35. The Tenant testified she received the first half of funds, but the Landlord never paid her the full second half of the funds after the keys were returned.
36. The Tenant testified she understood the word “executed” under point 10 to mean that if the Landlord did not comply with all the terms i.e. make full payment, the N11 Agreement would be null and void.
37. As the Landlord did not attend, there was no evidence presented that this was not the meaning.
38. That executed could be interpreted to mean fulfillment of all terms is possible and was consistent with an email the Tenant’s daughter sent to the Landlord’s Former Legal Representative indicating there was no authorization to end the lease until payment was received in full as per the agreement.
39. As a result, based on the uncontested evidence of the Tenant that she did not receive the funds in full, I find the N11 Agreement is null and void and could not form the basis for any application under section 77 of the Act.
40. Orders LTB-L-045779-22 issued October 11, 2022, and LTB-L-045776-22 issued October 14, 2022, will be set aside.

Statutory basis for Tenant’s claim for substantial interference and harassment

41. The Tenant’s T2 claims for harassment and substantial interference are statutory claims under sections 22 and 23 of the Act and are distinct from a claim for breach of contract. In order to be successful, the Tenant must prove each of the elements in the statute.
42. Sections 22 and 23 of the Act provide:

**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.

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

43. I find any breaches of sections 22 and 23 of the Act are limited to the time during which there was a landlord and tenant relationship. Section 23 provides for a “landlord” not harassing a “tenant” implying there must be an ongoing landlord and tenant relationship during the period in question. Section 22 also provides it is limited to “any time during a tenant’s occupancy of a rental unit.”
44. The Tenant testified that if she was not paid then the tenancy did not terminate. However, unlike the specific clause in the Mutual Termination Agreement that negates the validity of the N11 Agreement upon the Landlord’s failure to fully execute the Mutual Termination Agreement, there is no clause that negates the termination of the tenancy on the date the Tenant surrendered her keys.
45. The Tenant admits her daughter left the keys with the concierge for the Landlord to retrieve on August 12, 2022. As a result, I find the tenancy terminated on this date.
46. As I have found the tenancy terminated on August 12, 2022, I do not find any events that took place after this date can be considered.

Tenant’s claim the Landlord failed to comply with the Mutual Termination Agreement post-dates the tenancy


47. The Tenant alleges the Landlord failed to give her the second half of the funds provided for under the Mutual Termination Agreement. She claims this caused her to incur out-of-pocket costs including storage and a plane ticket and she also sought the amount unpaid.
48. The Mutual Termination Agreement provides the balance of funds were payable upon receipt of the keys. I have found the tenancy terminated when the Tenant’s daughter left the keys for the Landlord on August 12, 2022.
49. The Tenant’s daughter testified she was advised before she left the keys the Landlord wanted to inspect the rental unit again. Her evidence was, while concerned, she took steps to record the state of the rental unit and dropped the keys off. She testified it was after this that she was told the Tenant would not receive funds until the Landlord could personally inspect the rental unit. Subsequently, the total amount of funds the Tenant claims were owed were not received.
50. In the above circumstances, I find the Landlord’s alleged breach of failure to pay took place after the termination of the tenancy.
51. As a result, I find this event cannot be considered and any consequential damages or out-of-pocket costs are not recoverable on this T2 Application.
52. The Tenant’s T2 Application is dismissed.



**It is ordered that:**

1. The motions to set aside Orders LTB-L-045776-22 and LTB-L-045779-22, issued on October 11 and 14, 2022, respectively are granted.
2. Order LTB-L-045776-22 issued on October 11, 2022, and LTB-L-045779-22 issued on October 14, 2022 are set aside and cannot be enforced.
3. The Landlord's L3 applications are dismissed.
4. The Tenant's T2 Application is dismissed.

**May 9, 2023**  
**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.