



## **Order under Section 31 Residential Tenancies Act, 2006**

**Citation:** Boomer v Legett, 2023 ONLTB 79371

**Date:** 2023-12-13

**File Number:** LTB-T-064048-22

LTB-T-071648-22

LTB-T-071686-22

**In the matter of:** Basement, 378 Delaware Avenue Toronto  
Ontario M6H2T8

**Between:** Natasha Boomer Tenant

**And**

Paul Legett  
George Reiter Landlords

Natasha Boomer (the 'Tenant') applied for an order determining that Paul Legett and George Reiter (the 'Landlords') substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household and harassed, coerced, obstructed, threatened or interfered with the Tenant (T2 Application).

The Tenant also applied for an order determining that the Landlords collected or retained money illegally (T1 Application).

The Tenant also applied for an order determining that the Landlords gave a notice of termination in bad faith (T5 Application).

This application was heard by videoconference on November 15, 2023.

The Tenant's Legal Representative, Elaine Page, the Tenant, and the Landlord, George Reiter ("GR"), attended the hearing.

### **Determinations:**

1. As explained below, the Tenant proved the allegations contained in the T5 and T1 applications on a balance of probabilities. Therefore, the Landlords must pay the Tenant \$6,867.21 and administrative fine of \$5,000.00.

*Tenant's Evidence*

2. The Tenant testified that tenancy commenced in September 2009 and the rent amount was \$725.00.
3. The Tenant testified she paid the Landlords \$725.00 on September 9, 2009 for the last month's rent deposit and no interest has been paid by the Landlords.
4. The Tenant testified the Landlords increased the rent from \$725.00 to \$750.00 effective October 1, 2012, from \$750.00 to \$780.00 effective July 1, 2018, and from \$780.00 to \$800.00 effective July 1, 2019. The Tenant submitted that the Landlords did not provide her a N1 Notice of Rent Increase ("NORI") for any of the increases, but she paid the increased rent amounts as requested.
5. On February 10, 2021, the Tenant testified that GR requested her to move to the rental unit upstairs due to renovations. The Tenant declined and on February 18, 2021, GR served her a N12 Notice for purchaser's own use with a termination date of May 1, 2021.
6. The Tenant testified that GR called her 6 times and texted her. The Tenant submitted that she did not respond to GR as he had been aggressive with her in past communication.
7. The Tenant submitted that she accepted the N12 Notice and agreed to vacate the rental unit on March 31, 2021 in exchange for \$8,000.00. The Tenant submitted into evidence emails between the Tenant's Legal Representative and the GR's Legal Representative from March 1, 2021 to March 11, 2021 with terms of the agreement.
8. The Tenant testified the Landlords did not pay her compensation by the termination date on the N12 Notice. The Tenant testified the Landlords have not paid her compensation as of the hearing date.
9. On March 9, 2021, the Tenant signed a lease to commence on April 1, 2021 for another rental unit for a monthly rent of \$1,200.00.
10. On March 18, 2021, the Tenant's Legal Representative followed up with the GR's Legal Representative requesting the executed paperwork. GR's Legal Representative responded that the Landlords were waiting for information from the purchaser.
11. On March 19, 2021, the Tenant testified that GR called and notified her that she did not have to vacate. The Tenant submitted that she proceeded with her plans to vacate as she had already signed a new lease and hired movers.
12. The Tenant testified that she had resided in the rental unit for 12 years and had no intention of moving. The Tenant testified that GR would yell at her and throw away her belongings to declutter and their relationship worsened throughout the sale process which began in September 2020.

13. After vacating the rental unit, the Tenant testified that no one moved into the rental unit. She observed the property undergoing renovations and large bins in front of the rental property for months until the fall of 2021 when the Tenant stopped walking that way.

### *Landlords' Evidence*

14. GR acknowledged that the Tenant paid a last month's rent deposit and that no interest has been paid. GR testified that he would advise the Tenant of the rent increases in writing 2 months before the increase was effective.
15. GR testified that he sent the Tenant texts on February 17, 2021 and he stopped all communication with the Tenant directly once the Tenant requested him to stop and to contact her representative.
16. GR acknowledged that he asked the Tenant to move upstairs and that he served the Tenant a N12 Notice for purchaser's own use with a termination date of May 1, 2021.
17. GR submitted that he was just the messenger and that there was no bad faith or harassment. GR denied yelling at or being aggressive towards the Tenant.
18. GR denied there was an agreement between the parties for the Tenant to vacate on March 31, 2021 in exchange for \$8,000.00.
19. GR testified that he did not recall when the Tenant vacated. GR submitted that the tenancy was terminated effective May 1, 2021 as per the termination date on the N12 Notice. GR submitted that the Tenant paid the rent for February 2021, one month's rent was waived as compensation for the N12 Notice, and the last month's rent deposit was applied to the rent for April 2021.
20. GR testified that the sale of the property was finalized in early May 2021 and that he did not know if the purchaser moved into the unit after the property closed. GR acknowledged that the sale would have still closed if the Tenant was still in the unit. The Landlords did not submit into evidence a copy of the purchase and sale agreement. GR testified that he moved to another area after the sale and did not return to visit the property.

### *Analysis*

#### *T2 Application - Substantial Interference and Harassment*

21. The Tenant alleges that she experienced verbal abuse from GR and that GR harassed her regarding the termination of her tenancy through phone calls and text messages. The Tenant alleges that the GR's conduct resulted in the substantial interference of her reasonable enjoyment of the rental unit by engaging her in insincere negotiations to mislead her into vacating the rental unit.

22. Section 22 of the *Residential Tenancies Act*, 2006 (the 'Act') states:

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. Section 23 of the Act states:

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

24. While there is no definition of "harassment" in the Act, the Ontario Human Rights Code defines "harassment" as: engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.

25. Based on the evidence before me, I do not find the Landlords' conduct amounted to substantial interference with the Tenant's reasonable enjoyment of the rental unit or harassment. GR acknowledged that he called and texted the Tenant but stopped as soon as the Tenant requested him to stop and to contact her legal representative. The Tenant confirmed this. The Tenant submitted 3 text messages from GR on February 17, 2021 and February 18, 2021 and there was no evidence, such as a screenshot of the call history log, of the phone calls made by GR to the Tenant. In my view, the content of the text messages did not amount to the level of harassment. While the Tenant submitted that GR has been aggressive towards her in the months leading up to February 2021, there was no evidence of specific incidents that occurred between the Tenant and GR.

26. While the Tenant submitted that she vacated early due to subsequent negotiations with the Landlords after the N12 Notice was served, the Tenant had the option of remaining in the rental unit and waiting for the Landlords to serve them with a proper notice of termination and possibly file an application with the Board. Instead, the Tenant agreed to move out in response to the Landlords' notice.

27. As such, the Tenant's T2 application is dismissed.

#### *T5 Application – Bad Faith*

28. This application is brought pursuant to s. 57(1)(b) of the Act, which requires the Tenant to prove each of the following on a balance of probabilities:

- a) The Landlords gave the Tenant an N12 Notice under section 49 of the Act in bad faith;
- b) The Tenant vacated the rental unit as a result of the N12 Notice; and
- c) No person referred to in subsection 49(1) of the Act occupied the rental unit within a reasonable time after the Tenant vacated.

29. Based on the evidence before me, I find that the Tenant vacated as a result of being served the N12 Notice. I found the Tenant's testimony to be credible and reliable. Her testimony was consistent throughout. The Tenant had lived in the rental unit for 12 years and had no intention of moving. By GR's own admission, the tenancy terminated May 1, 2021 in accordance with the N12 Notice.
30. Based on the evidence before, I find, on a balance of probabilities, that the purchaser did not move into the unit in a reasonable time after the Tenant vacated. The Tenant testified that she observed the property under major renovations until at least the fall of 2021. GR did not contradict this evidence and admitted that he did not know if the purchaser moved into the rental unit or not.
31. By GR's own admission, there was no need for the Tenant to vacate the rental unit. GR testified that the sale of the property was not dependent on the Landlords providing vacant possession of the rental unit to the purchaser and that the sale would have closed if the Tenant stayed in the unit. GR testified that he did not care if the Tenant moved or stayed after March 19, 2021. While GR advised the Tenant she could continue to stay in the unit on March 19, 2021, it was too late by that time as the Tenant had already signed a new lease and arranged for her move. Based on the evidence before me, the Landlords had no valid reason to serve the Tenant the N12 Notice. As such, I find the Landlords gave the Tenant an N12 Notice in bad faith.
32. The Tenant has established all three of parts of the test contained in s. 57(1)(b) of the Act. I therefore find that the Landlords served the notice of termination in bad faith.

#### *T5 Application – Remedies*

33. The Tenant is requesting an abatement of the rent, administrative fine, rent differential for one year, out of pocket expenses for moving and storage, and compensation of \$8,000.00.

#### *Abatement*

34. Although the Tenant is requesting an abatement of rent in the amount of \$6,400.00, I do not find that remedy to be warranted here. Abatement recognises the idea that a tenant is paying rent for a bundle of goods and services and if the tenant is not receiving everything being paid for then he or she is entitled to abatement proportional to the difference between what is being paid for and what is being received. At the hearing, the Tenant led no evidence that she was prevented from using a portion of the rental unit at any time before she moved out. For this reason, the Tenant is not entitled to an abatement of the rent.

*Rent Differential*

35. With respect to rent differential, the Tenant is now paying \$400.00 more per month than she was for the rental unit. I see no reason not to grant the Tenant the remedy requested in this regard. The Tenant's new unit is comparable to her old and no evidence was led the rent she is now paying is in any way unreasonable. An order will issue requiring the Landlords to pay to the Tenant \$4,800.00 for rent differential for a period of one year.

*Moving and Storage*

36. The Tenant also incurred reasonable out of pocket expenses in the amount of \$1,011.35 for moving. The Tenant submitted an estimate from TWO MEN AND A TRUCK with the amount claimed. I am satisfied the amount claimed are reasonable moving expenses and an order will issue requiring the Landlords to pay to the Tenant \$1,011.35 for reasonable out of pocket expenses.

*Compensation of \$8,000.00*

37. The Tenant requested compensation in the amount of \$8,000.00 which was the amount the parties allegedly agreed to for the Tenant to vacate the rental unit on March 31, 2021. The Landlords have no obligation under the Act to pay this amount. There is no evidence before me that the Tenant incurred additional expenses by vacating the rental unit on March 31, 2021 instead of May 1, 2021, the termination date on the N12 Notice. As such, The Tenants' request for compensation of \$8,000.00 is denied.

*Administrative Fine*

38. The Tenant is requesting that the Landlords be ordered to pay an administrative fine. Pursuant to the Board's Interpretation Guideline 16:

An administrative fine is a remedy to be used by the Board to encourage compliance with the *Residential Tenancies Act*, 2006 (the "RTA"), and to deter landlords from engaging in similar activity in the future. This remedy 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. Administrative fines and rent abatements serve different purposes. Unlike a fine, a rent abatement is intended to compensate a tenant for a contravention of a tenant's rights or a breach of the landlord's obligations.

39. In light of the other remedies awarded, I find that this is an appropriate case for an administrative fine for deterrence. There is no dispute that the Landlords have been landlords for more than a decade. GR engaged in behaviour that he knew, or ought to have known, would have consequences. In my view, it is unreasonable to terminate a 12-year tenancy and displace a Tenant for no apparent reason. GR denied that there was an agreement between the parties for the Tenant to vacate by March 31, 2021 in exchange for

\$8,000.00. Based on the evidence before me, I find it unlikely that GR was unaware of the negotiations between his own legal representative and the Tenant's legal representative. A copy of an email from GR's legal representative to the Tenant's legal representative on March 19, 2021 was submitted into evidence by GR. The emails states: "My client wrote a response below which he insisted I sent to you. I do not necessarily agree with all of it, but I must still send it to you based on his instructions." This means that the Landlords knew or ought to have known that their conduct was inappropriate. An administrative fine for deterrence is warranted.

40. Here, the impact on the Tenant was considerable because she endured considerable stress due to the Landlords' actions. Not only did the Tenant have to vacate her home of 12 years during a time when there were lockdowns and restrictions due to COVID, the Tenant is now paying more rent than she would not be paying but for the Landlord's actions. This kind of behaviour on the part of GR, particularly as he had legal representation, must be strongly condemned. A substantial fine is necessary for its general deterrence effect. Given all of the above and my knowledge of like similar cases before the Board, it seems to me a reasonable administrative fine in all of the circumstances here would be \$5,000.00.

#### *T1 Application - Illegally Collection of Retention of Money*

##### *Rent Increases*

41. The Act strictly governs a landlord's ability to raise the rent. Section 116(4) provides that an increase that is made not in accordance with the Act is void. It is clear that the

Landlords did not comply with section 116, and thus the increase in rent from \$725.00 to \$800.00 would otherwise be void. The Landlords did not provide the Tenant with at least 90 days written notice of the rent increases in a form approved by the Board.

42. However, section 135.1 of the Act states as follows:

An increase in rent that would otherwise be void under subsection 116(4) is deemed not to be void if the tenant has paid the increased rent in respect of each rental period for at least 12 consecutive months

43. Subsection 135.1(5) of the Act provides that section 135.1 applies with respect to an increase in rent even if it was charged before section 135.1 came into force, provided the validity of the rent increase was not finally determined by the Board before that day.

44. The Tenant paid \$800.00 in rent each month from July 1, 2019 to February 1, 2021, which is a period more than 12 consecutive months. The Tenant did not bring an application within one year after the increase was first charged. As such, pursuant to section 135.1, \$800.00 was deemed to be the lawful rent.

45. Because there was no unlawful increase in rent, the Tenant has not established that the Landlords illegally collected or retained any money

*N12 Compensation*

46. Pursuant to section 49.1(1) of the Act:

A landlord shall compensate a tenant in an amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant if,

- (a) the landlord gives the tenant a notice of termination of the tenancy on behalf of a purchaser under subsection 49 (1) or (2); and
- (b) the notice of termination is given on or after the day the *Protecting Tenants and Strengthening Community Housing Act*, 2020 receives Royal Assent.

47. There is no dispute the Landlords served a N12 Notice for purchaser's own use. Based on the evidence before me, I find that the tenancy was terminated effective March 31, 2021. The Tenant paid the rent for February 2021 and the last month's rent deposit must be applied to the month of March 2021. The Landlords did not pay the Tenant compensation equal to one month's rent or offer the tenant another rental unit acceptable to the tenant. As such, the Landlords are ordered to pay the Tenant \$800.00, the amount of one month's rent.

*Interest on Last Month's Rent Deposit*

48. There is no dispute that the Landlords did not pay the Tenant interest on the last month's rent deposit. The Tenant paid the Landlords \$725.00 on September 9, 2009 for the last month's rent deposit. As such, the Landlords are ordered to pay the Tenant \$149.86,

which represents the interest owing on the last month's rent deposit from September 9, 2009 to March 31, 2021.

*Landlords' Address*

49. The Tenant's Legal Representative requested that the Board order GR to provide a current address. The tenancy has been terminated and the Tenant's applications were heard in full. As such, I do not find it appropriate for the Board to order the Landlords to provide a current address. The Tenant's request for the Landlords to provide a current address is denied.



*Filing Fees*

50. As the Tenant's T1 and T5 applications were granted, I find that the Tenant is entitled to be reimbursed for the costs of filing these two applications in the amount of \$106.00. The Tenant paid \$53.00 to file each application.

*Landlords' Request for Costs*

51. GR requested the Tenant to pay costs. Pursuant to Rule 23.3 of the Board's Rules of Procedure, an order for party costs will usually only be awarded when one party engages in unreasonable conduct which causes undue delay or expense. I am not satisfied GR has established that the Tenant engaged in this kind of conduct. The request for compensation of costs is therefore denied.

**It is ordered that:**

1. The Tenant's T1 and T5 applications are granted. The Tenant's T2 application is dismissed.
2. The total amount the Landlords shall pay the Tenant is \$6,867.21. This amount represents:
  - \$4,800.00 for increased rent the Tenant has incurred for 12 months commencing April 1, 2021.
  - \$1,011.35 for the moving expenses that the Tenant has incurred.
  - \$800.00 for the N12 Notice compensation.
  - \$149.86 for the interest owing on the last month's rent deposit.
  - \$106.00 for the costs of filing the T1 and T5 applications.
3. The Landlords shall pay the Tenant the full amount owing by December 24, 2023.
4. If the Landlords do not pay the Tenant the full amount owing by December 24, 2023, the Landlords will owe interest. This will be simple interest calculated from December 25, 2023 at 7.00% annually on the balance outstanding.
5. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.
6. The Landlords shall pay an administrative fine in the amount of \$5,000.00 by December 24, 2023.

**December 13, 2023**

**Date Issued**

15 Grosvenor Street, Ground Floor

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Vicky Liu

Member, Landlord and Tenant Board

**File Number:** LTB-T-064048-22 LTB-T-071648-22  
LTB-T-071686-22

Toronto ON M7A 2G6

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

Payment of the fine must be made to the LTB by the deadline set out above. The fine can be paid by certified cheque, bank draft or money order made payable to the Minister of Finance. If paying in person, the debt can also be paid by cash, credit card or debit card.

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