



Order under Section 135 Residential Tenancies Act, 2006

File Number: LTB-T-034552-25

In the matter of: 1, 539 Victoria Street
Sudbury Ontario P3C1L3

Between: Nedra Hunter Tenant
Marley Atkinson

And

CKSO Properties Landlord

Catherine Asmut Landlord's Agents
Paulina Lubian

Nedra Hunter and Marley Atkinson (the 'Tenant') applied for an order determining that CKSO Properties (the 'Landlord') and Catherine Asmut and Paulina Lubian (the 'Landlord's Agents') collected or retained money illegally.

This application was heard by videoconference on October 29, 2025.

Only the Tenants attended the hearing.

As of 9:30 a.m., the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Tenant's evidence.

Determinations:

1. As explained below, the Tenants proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must return the prepaid rent in the amount of \$1,850.00 to the Tenants.
2. The Tenant, Marley Atkinson (MA) testified that the Tenants signed a tenancy agreement to commence on May 1, 2025.
3. The Tenant, MA, submitted documentary evidence confirming that the Tenants paid a total of \$3,700.00 to the Landlord, representing prepaid rent for the first and last months of the tenancy. The Tenants seek the return of the prepaid first month's rent in the amount of \$1,850.00.

4. MA testified that, due to mental health issues affecting one of the Tenants, the Tenants were unable to take possession of the rental unit and relocate as planned. MA stated that the Landlord was provided with 32 days' notice that the Tenants would not be moving into the unit. No documentary medical evidence was submitted to substantiate the alleged mental health condition.
5. The Tenants submitted text message evidence dated April 3, 2025, in which the Landlord's property manager agreed to terminate the tenancy but advised that the deposit would not be returned. A subsequent text message dated April 13, 2025 confirms that the rental unit had been relisted for rent.
6. I find that the payment made to the Landlord included both a last month's rent deposit and prepaid rent for the first month of the tenancy.
7. Pursuant to the *Residential Tenancies Act, 2006* (the "Act"), a landlord may not retain a rent deposit where a tenant does not take possession of the rental unit, unless the landlord establishes that they suffered a loss of rental income arising from the termination of the tenancy. The Act further requires a landlord to take reasonable steps to mitigate any such loss, and a rent deposit may not be retained as a penalty.
8. The Landlord did not attend the hearing and provided no evidence regarding any loss suffered or efforts made to mitigate such loss. I find that where a landlord fails to demonstrate actual loss or mitigation, the retention of prepaid rent is not permitted.
9. In this application, the Tenants seek only the return of the prepaid first month's rent. As the Tenants never took possession of the rental unit and the Landlord has failed to establish any entitlement to retain the prepaid rent, I find that the Landlord must return the prepaid first month's rent in the amount of \$1,850.00.

It is ordered that:

1. The total amount the Landlord shall pay the Tenants is \$1,903.00. This amount represents:
 - \$1,850.00 for the first month's rent collected.
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenants the full amount owing by January 23, 2026.
3. If the Landlord does not pay the Tenants the full amount owing by January 23, 2026, the Landlord will owe interest. This will be simple interest calculated from January 24, 2026 at 4.00% annually on the balance outstanding.
4. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

January 12, 2026
Date Issued

Christina Philp
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.