



Order under Section 135 Residential Tenancies Act, 2006

Citation: Mauviel v Daoud, 2026 ONLTB 2511

Date: 2026-01-06

File Number: LTB-T-039394-25

In the matter of: 2, 246 Presland Road
Ottawa ON K1K2B8

Between: John Mauviel Prospective Tenant

And

Capital Rentals Landlord
Sam Daoud

John Mauviel (the 'Prospective Tenant') applied for an order determining that Sam Daoud and Capital Rentals (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on October 30, 2025.

The Sam Daoud and the Prospective Tenant attended the hearing.

Determinations:

1. As explained below, the Prospective Tenant proved the allegations contained in the application on a balance of probabilities. The Landlord collected a rent deposit but did not give the prospective Tenant vacant possession of the rental unit. Therefore, the Landlord must repay the rent deposit and reimburse the Prospective Tenant's cost in filing this application.

Preliminary Issue: The Board's Jurisdiction

2. The Landlord's agent submitted at the hearing that the Board does not have jurisdiction to hear Mr. Mauviel's application because there was never a landlord-tenant relationship between the parties.
3. Section 135(2) explicitly empowers the Board to hear applications brought by a "prospective tenant" under section 135(1). The Landlord accepted a deposit from Mr. Mauviel because he applied to live in one of the Landlord's rental unit and alleges that he was not permitted to move into the rental unit by the Landlord.

4. It is undisputed that Mr. Mauviel provided the deposit alongside his application for an apartment. It would be an unreasonable reading of the statute to conclude that these actions are not those of a prospective tenant. The Act explicitly provides protections to prospective tenants against landlords who illegal charge or retain funds contrary to the Act. Section 107(1) of the Act requires a landlord to repay a rent deposit to a prospective tenant if they are not given vacant possession of the rental unit. Section 135 explicitly provides prospective tenants a remedy if the Landlord does not do so. That is exactly the allegation here. It would be non-sensical to conclude that the Board does not have jurisdiction to hear the dispute.
5. The evidence and the law are clear. Mr. Mauviel is a prospective tenant and has the right to bring an application before the Board pursuant to subsections 135(1) and (2).

The Landlord Collected a Rent Deposit from the Prospective Tenant

6. It is undisputed that the Landlord collected \$1,600.00 from the Prospective Tenant when he applied to reside in one of the Landlord's residential complex.
7. The Landlord's agent takes the position that the money collected by the Landlord is not a "rent deposit" but rather an "application deposit." This is, frankly, a distinction without a difference.
8. The Landlord is of the view that the "application deposit" only becomes a "rent deposit" when the tenancy crystalizes. That is non-sensical. The rental application signed by the Prospective Tenant (DOC-6627009) specifically pegs the amount of the deposit to "the amount of a 1-month rent" (sic) and states that the deposit will be "withheld by the landlord as my last month's rent if [the Prospective Tenant's] application is accepted".
9. In my view, drawing a distinction between a "rent deposit" and an "application deposit that may become a rent deposit if a lease is signed" would significantly undermine the tenant protection purpose of the Act and sections 107 and 135 in particular: section 1 of the Act.
10. In any event, if I accepted the Landlord's position, the "application deposit" would constitute an additional charge prohibited by section 134 of the Act and the Prospective Tenant would be able to apply to the Board to seek a remedy under section 135.
11. The amount paid by the Prospective Tenant bears all the hallmarks of a rent deposit. That is because it is a rent deposit. It was money paid by the Prospective Tenant that would have been applied to the last month of the tenancy (had the tenancy commenced). The Prospective Tenant is entitled to a return of the rent deposit under section 107(1) if the Board finds he was not given vacant possession of the rental unit.

The Tenant Never Received Vacant Possession of the Rental Unit

12. The Landlord argues that section 107 does not require the return of the deposit in this scenario as the Prospective Tenant withdrew his application for the apartment. The parties agree that the prospective tenancy did not move forward because the Prospective Tenant had difficulty securing a suitable guarantor and ultimately withdrew his application for the tenancy. As a result, no lease was ever signed.

13. The Divisional Court decision of *Benedetto v. Cleland*, Jamal and Krochak (May 15, 2006) Toronto Docket No.325/05 (Div. Ct) re: TST-08299 ('*Benedetto*') is instructive in this case. In that matter, the tenants applied for an order determining that the landlord had collected or retained money illegally. The tenants had given the landlord a rent deposit. When the tenants could not obtain a guarantor, as required by the landlord, they found another unit to rent. The tenants asked the landlord to return their rent deposit, but he refused. The (then) Tribunal found that the *Tenant Protection Act, 1997* (the 'TPA'), s. 188.1(1) (which is nearly identical to current subsection 107(1) of the Act) applied in these circumstances as the landlord did not give the tenants vacant possession of the rental unit.
14. The landlord appealed the Tribunal's decision to the Divisional Court, arguing that the Tribunal's interpretation of s. 118.1 was incorrect, as he was willing and able to give the tenants vacant possession of the rental unit, but the tenants decided not to accept it. The Court agreed with the Tribunal's decision and dismissed the appeal.
15. The facts in the case before me are remarkably similar to the facts in *Benedetto*. The Prospective Tenant asked the Landlord to return the rent deposit after being unable to find a suitable guarantor. Similar to the case in *Benedetto*, the reason the Prospective Tenant is not determinative of whether the rent deposit is to be returned pursuant to section 107. Rather, what is determinative is that the Tenant was never given possession of the rental unit. The Prospective Tenant never signed a lease agreement, was never given keys for the rental unit, and never had the legal right to occupy the rental unit. The Tenant was never given possession of the rental unit, and that is all that is required for section 107 to apply.

The "Forfeiture Clause" Relied on by the Landlord is Void

16. The Landlord takes the position that the Landlord accepted the Prospective Tenant's application but that, due to the so-called "forfeiture clause" of the rental application, the deposit should not be collected. The clause reads as follows:

"I [the Prospective Tenant] accept that if my application is accepted but I do not sign a lease for a rental period beginning on the date mentioned above, part of or all of my deposit may be forfeited to cover expenses involved in checking my references and halting the process of finding another tenant."
17. Such a provision is clearly inconsistent with subsection 107(1) of the Act, which requires the return of the rent deposit if a tenancy does not commence. The provision is therefore void by operation of section 4 of the Act. For another example of the application of this reasoning by the Board, see para. 18 of *TET-02020 (Re)*, 2009 CanLII 74527 (ON LTB).

It is ordered that:

1. The total amount the Landlord shall pay the Prospective Tenant is \$1,653.00. This amount represents:
 - \$1,600.00, representing the rent deposit.
 - \$53.00 for the cost of filing the application.

2. The Landlord shall pay the Prospective Tenant the full amount owing by January 17, 2026.
3. If the Landlord does not pay the Prospective Tenant the full amount owing by January 17, 2026, the Landlord will owe interest. This will be simple interest calculated from January 18, 2026 at 4.00% annually on the balance outstanding.
4. The Prospective Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

January 6, 2026
Date Issued

Jeremy Henderson
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.