



Order under Section 135 Residential Tenancies Act, 2006

Citation: Ogbanna v Doan Hanh, 2026 ONLTB 2758

Date: 2026-01-07

File Number: LTB-T-041796-25

In the matter of: 8 Saywell
North York ON M3J0E9

Between: Chioma Gloria Ogbonna Tenant

And

Cliff Doan Hanh Landlord

Chioma Gloria Ogbonna (the 'Tenant') applied for an order determining that Cliff Doan Hanh (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on August 28, 2025.

The Landlord's agent Lam Nguyen and the Tenant attended the hearing.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenant \$500.00.
2. The facts in this case are straightforward. Ms. Ogbanna paid to the Landlord a \$500.00 deposit on May 17, 2025 to hold the rental unit. The parties agreed that Ms. Ogbanna was to move in on June 1, 2025 and pay \$1,400.00 rent. A lease would be signed on move in day. Neither first nor last month's rent was paid and keys were never given. Instead, on May 19, 2025 the Ms. Ogbanna texted the Landlord that she would not be able to move into the unit until July 1 2025, if it was still available. The Landlord had removed the advertisement from Facebook, and did not re-list the rental unit because he believed no one would rent on June 1. He did not contact the other interested prospective tenants to see if they were interested any longer.

There was no tenancy agreement

3. Section 13 *Residential Tenancies Act, 2006* (the 'Act') states that a tenancy agreement takes effect when the tenant is entitled to occupy the rental unit, whether or not the tenant actually occupies it.

4. The Divisional Court in *Benedetto v. Dineen et al.*, (September 8, 2005) Toronto Docket No. 325/05 (Div. Ct.), 2006 Carswell Ont. 3233, is more factually similar to this case. That case also concerned a prospective tenant who paid a rent deposit, but no written tenancy agreement was signed. The Court determined that where a landlord has collected a rent deposit before entering a tenancy agreement, but no tenancy agreement is entered into, the prospective Tenant is entitled to a refund of the paid deposit.
5. In this present case, the facts before me are that no tenancy agreement was entered into, nor did one take effect, and no vacant possession was given to Ms. Ogbonna. The parties continued to negotiate both price and time of move-in. I find no tenancy agreement took effect nor was one entered into. No keys were exchanged. Ms. Ogbonna never gained the right to occupy the rental unit. The evidence before me is that the lease was to be signed the day Ms. Ogbonna was to move in.

Deposit Must be Returned

6. Section 107(1) of the Act states that a landlord shall repay the amount received as a rent deposit in respect of a rental unit if vacant possession of the rental unit is not given to the prospective tenant.
7. The Court of Appeal in *Musilla v. Avcan Management Inc.* [2011] O.J. No. 3203 interpreted section 107(1) of the Act and found that a prospective tenant is entitled to return of a 'rent deposit', where the landlord refused or was unable to provide vacant possession. In that case, unlike here, a full rent deposit was paid and an agreement to enter into a tenancy agreement was signed, but no final lease was signed. *Musilla* is distinguishable from this case because no full deposit was paid, no keys exchanged, and no lease signed.
8. However, the Court of Appeal in *Musilla* went on to find that the nature of the deposit was an illegal forfeiture penalty which would be lost if the tenancy agreement was not entered into.
9. Section 105 and 106 permit the Landlord to collect only a rent deposit equal to one month's rent and prohibits all other types of security deposit. Section 105(2) specifically defines 'security deposit' to mean:

"security deposit" means money, property or right paid, or given by, or on behalf of a tenant of a rental unit to a landlord or to anyone on the landlord's behalf to be held by or for the account of the landlord as security for the performance of an obligation or the payment of a liability of the tenant or to be returned to the tenant upon the happening of the condition.

10. What section 105(2) means is that any security deposit meant to secure the performance of an obligation, in this case, the right to hold the rental unit and to signing a tenancy agreement in the future is illegal.
11. Following *Musilla*, I find the 'deposit' paid by Ms. Ogbonna was intended to hold the rental unit, and thus was security to assure Ms. Ogbonna signed the lease. The amount paid was not a 'rent deposit', as permitted by section 105 of the Act, but was a 'holding fee', which is a charge not permitted under the Act. The rent was \$1,400.00 not \$500.00 and

the evidence before me by both parties was that the \$500.00 was mean to 'hold' the unit. The rental was contingent on the Ms. Ogbanna signing the tenancy agreement on June 1, 2025.

12. Accordingly, I find the Landlord collected a charge of \$500.00 which is not allowed by the *Residential Tenancies Act, 2006* (the 'Act').

Return of Deposit.

13. Even if I am incorrect that no tenancy agreement was entered into on May 15, 2025, and the \$500.00 was not an illegal holding charge, I find the Landlord not entitled to retain the charge. I say this because the Landlord did not comply with section 88(4) of the Act to mitigate his losses.

14. Section 88(1) of the Act states that:

If a tenant vacates the rental unit after giving notice that was not in accordance with this Act, arrears of rent are owing for the period that ends on the earliest termination date that could have been specified in the notice, had the notice been given in accordance with section 47, 96, or 145, as the case may be. In this case, no tenancy agreement was entered into because no lease was signed, vacant possession of the unit was not given.

15. Section 88(3) of the Act only obligates a tenant to pay rent up to the date a new tenant takes possession of the rental unit.

16. Section 88(4) requires the Landlord to take reasonable steps to minimize losses.

17. Ms. Ogbanna gave less than 2 weeks' notice contrary to the Act. The Landlord was obligated according to s.88 of the Act to take reasonable steps to minimize losses. The Landlord acknowledged he did nothing to revive the rental listing or contact other interested parties. He may well have re-rented to another interested party given the Landlord knew as early as 10 days before June 1, 2025 that the unit would be available.

18. Accordingly, for the reasons above, the Landlord must return to Ms. Ogbanna the \$500.00 charge.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$500.00. This amount represents:
 - \$500.00 for the illegal charge collected.
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by January 18, 2026.
3. If the Landlord does not pay the Tenant the full amount owing by January 18, 2026, the Landlord will owe interest. This will be simple interest calculated from January 19, 2026 at 4.00% annually on the balance outstanding.

4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

January 7, 2026

Date Issued

Julie Broderick

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.