



Order under Section 135 Residential Tenancies Act, 2006

Citation: Nicholson v Bodega Inn, 2025 ONLTB 94913

Date: 2026-01-21

File Number: LTB-T-013716-25

In the matter of: 302, 75 Dalhousie street
Brantford ON N3T2J1

Between: Theodore Nicholson Tenant

And

Bodega Inn Landlord

THEODORE Nicholson (the 'Tenant') applied for an order determining that Bodega Inn (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on August 20, 2025.

The Tenant, the Landlord's Agent, Edith Kroner, and the Landlord's Legal Representative, J. Struthers, attended the hearing.

Preliminary Issue: Does the Act apply? Yes.

1. The Landlord submits that the rental unit is exempt from the Residential Tenancies Act, 2006 (the 'Act') pursuant to section 5(a) of the Act which states, "living accommodation intended to be provided to the travelling or vacationing public or occupied for a seasonal or temporary period in a hotel, motel or motor hotel, resort, lodge, tourist camp, cottage or cabin establishment, inn, campground, trailer park, tourist home, bed and breakfast vacation establishment vacation home."
2. Where the issue of jurisdiction is being challenged by the Landlord, the Landlord has the onus to prove their allegation.
3. In addition to section 5(a) of the Act set out above, the Board also considered the following sections of the Act:

Subsection 2(1) of the Act defines a "residential unit" to mean any living accommodation used or intended for use as residential premises, and "rental

unit” is defined as any living accommodation used or intended for use as rented residential premises.

Subsection 2(1) of the Act also defines a “tenancy agreement” to mean “a written, oral or implied agreement between a tenant and a landlord for occupancy of a rental unit and includes a licence to occupy a rental unit.”

Section 2(1) further defines “rent” as including the amount of any consideration paid or given or required to be paid or given by or on behalf of a tenant to a landlord or the landlord’s agent for the right to occupy a rental unit and for any services and facilities and any privilege, accommodation or thing that the landlord provides for the tenant in respect of the occupancy of the rental unit. This applies whether or not a separate charge is made for services and facilities or for the privilege, accommodation or thing.

Section 3 of the Act provides, in part, that the Act applies with respect to rental units in residential complexes, despite any other Act and despite any agreement or waiver to the contrary.

4. Pursuant to section 202 of the Act, the Board, in making findings on an application, shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants in doing so, may have regard to the pattern of activities relating to the residential complex or the rental unit.
5. The Landlord is a registered operational motel/Inn with living accommodations intended to be provided to the travelling or vacationing public or occupied for a seasonal or temporary period.
6. When the Tenant sought accommodation at the Inn, he signed a short-term accommodation agreement that specified the following financial obligations paid before occupancy. These included:
 - \$1,995 for first month’s rent.
 - \$500 security deposit.
 - \$100 for 1-time cleaning fee.
 - \$75.00 parking fee.
7. The short-term accommodation agreement also stated that the Inn reserved the right to retain the \$500.00 security deposit for default of any provisions in the agreement including payment, stay, damages to the Inn property or premises. Their written agreement permitted the Tenant to extend his stay provided he notified the Inn a minimum of 30 days advance notice of the original end of occupancy date. The room was furnished, included a kitchenette, bathroom and living area. The Tenant moved into the unit on July 1, 2023, and vacated on June 1, 2024, for a total occupancy of 11 months.
8. During his occupancy, the Tenant provided his own food, did his own cleaning of his unit and used the Inn’s laundry facility and other common areas for doing his own laundering. The Tenant never used the telephone nor Wi-Fi services provided by the Inn nor any of the guest services available at the Inn for a fee. The Tenant moved in some of his own personal items.

9. In applying section 202 of the Act, I find the real substance of the transactions establishes that there is a landlord and tenant relationship, and the Act applies. The fact that the rental unit is in an Inn (hotel) is not solely a determining factor. The issue is the intention of the parties when this tenancy started, and I'm persuaded that there was a tenancy agreement because of the following:
10. During the Tenant's 11-month occupancy at the Inn, the Tenant continued his occupancy on a month-to-month rental basis without providing notice to the Inn to extend his tenure nor was the Landlord's consent sought or required. The tenancy continued as long as the Tenant paid his monthly rent charges on the first of each month. One of the conditions of the short stay agreement was that he had to register and pay a fee for his guests who stayed in his unit for more than a month that wasn't enforced by the Landlord. This is clearly contrary to the Inn's short-term agreement signed by the Tenant. In addition, the agreement did not identify any other permanent address for the Tenant; there was no indication the Tenant was expected to pay taxes such HST, atypical of hotel charge, and this was supported by the last invoice given to the Tenant, which did not include an HST charges. Furthermore, it is acknowledged the agreement may have included terms not consistent with the Act, but it was also noted that Landlord failed to enforce those unlawful conditions, such as that about guests referred to hereof. Lastly, the stay was long term and not indicative of hotel accommodations for the vacationing public that is temporary.
11. Based on the totality of the evidence and noting the Board's role is to determine the real substance of the activities and of the accommodation, I find on a balance of probability that the Landlord has failed to prove that the Tenant's rental unit at the Inn was exempt under section 5(a) of the Act.
12. I find that the Tenant's living accommodations at the Bodega Inn during the period from July 1, 2023, to June 1, 2024, was a residential tenancy and the Act applies.

Determinations:

13. The Tenant alleged in his application that on September 11, 2024, he had paid the Landlord illegal charges in the amount of \$5,046.00. The tenancy terminated on June 1, 2024, when the Tenant vacated the rental unit. Shortly after vacating the unit, the Landlord called the Tenant to say he owed rent, a cleaning fee and costs for damaged property. In August 2024, the Tenant was contacted by a collection agency. On September 13, 2024, the Tenant received an invoice from the Landlord for \$5,046.00 for the following breakdown: \$1863.00 for 27 days for June 1 to 27, 2024 having given notice on May 28, 2024; \$532.54 for replacing or repairing damaged to pots and pans, duvet cover soiled and burnt and other bedding items, and missing towels; \$150.00 for cleaning, and \$2,500.00 to replace the carpet. The Tenant insisted to the Landlord he was not responsible for any of the fees claimed for cleaning, repairing or replacing damaged or lost property. The Tenant and Landlord agreed to settle the bill at \$3,000.00. The

Tenant said he only paid because was fearful of the negative report on his credit rating. A short while after paying the \$3,000 settlement, the Landlord called the former tenant again and told him that the collection agency was demanding full payment of the bill because his Landlord was not allowed to accept a lesser cash settlement. On September 19, 2024, the Tenant paid the Landlord \$2,046.00 to ensure the collection agency removed the negative credit report on his record. The Tenant insists that he paid the bill under duress solely to avoid a negative credit report on his credit rating and seeks an order that Landlord refund the \$5,046.00 he paid to them.

14. The Tenant also argued the Landlord had not applied his \$500.00 security deposit or one-time cleaning fee of \$100.00 towards their bill.
15. Subsection 135 (1) of Act states, “that a tenant or former tenant of a rental unit may apply to the Board for an order that the landlord, superintendent or agent of the landlord pay to the tenant any money the person collected or retained in contravention of this Act...”
16. Subsection 105 (1) of the Act states, “The only security deposit that a landlord may collect is a rent deposit collected in accordance with section 106 (1) of the Act.
17. Section 106 (1) of the Act states, “A landlord may require a tenant to pay a rent deposit with respect to a tenancy if the landlord does so on or before entering into the tenancy agreement”. The only deposit permitted under section 106 is a deposit that can be applied to last month of the tenancy as specified under section 106(10) of the Act.
18. I find the Landlord collected money illegally under section 135 (1) of the Act. The security deposit collected, based on the parties’ testimony, was for broad purposes including damage and was not collected for the purpose of a rent deposit to be applied to the last month of the tenancy. Any deposit, other than a deposit for the last month rent, is unlawful. Therefore, I find the Landlord collected and retained an illegal security deposit of \$500.00 and \$100.00 deposit for cleaning.
19. The \$5,046.00 the Tenant paid to the Landlord over three months after the tenancy terminated was not collected when the tenancy started nor was it collected during the tenancy. The Tenant elected to pay the charge three months after the tenancy ended. The Board has no jurisdiction to consider this part of the claim.
20. The Landlord owes the Tenant a total of \$648.00 which is inclusive of the application fee.

It is ordered that:

1. The Landlord will pay the Tenant **\$648.00** which is calculated as follows:

- \$500.00 represents illegal security deposit.
 - \$100.00 for cleaning fee
 - \$48.00 for the application fee
2. The Landlord shall pay the Tenant the full amount owing by January 30, 2026.
 3. If the Landlord does not pay the Tenant the full amount owing by January 31, 2026, the Landlord will owe interest. This will be simple interest calculated from January 31, 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 21, 2026
Date Issued

Douglas Malanka
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.