



Order under Section 135 Residential Tenancies Act, 2006

Citation: Russom v Ertel, 2026 ONLTB 7416

Date: 2026-01-20

File Number: LTB-T-008213-25

In the matter of: 9 CATHEDRAL BLUFFS DRIVE
SCARBOROUGH ON M1M2T6

Between: Martha Russom Tenant
Valencia Penn

And

Peter U Ertel Landlord

Martha Russom and Valencia Penn (the 'Tenant') applied for an order determining that Peter U Ertel (the 'Landlord') collected or retained money illegally.

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

The Landlord and the Tenant attended the hearing.

Determinations:

1. As explained below, the Applicants have not established that they are “tenants, former tenants or prospective tenants” within the meaning of section 135 of the *Residential Tenancies Act, 2006* (the 'Act'). As a result, the Board does not have jurisdiction to consider their claim that the Landlord collected or retained money illegally, and the application must be dismissed.
2. In their T1 application and attached letter, the Applicants state that they rented space at 9 Cathedral Bluffs Drive from the Landlord beginning December 1, 2023 and moved out on October 31, 2024. They allege that the Landlord was a tenant of the property owner, Robert McVicker, paying \$2,000.00 per month, but that he charged them \$3,000.00 per month for seven months and therefore “overcharged the tenants for seven months, resulting in an over payment of \$7,000.” They ask the Board to order repayment of this “excess rent” and other compensation.
3. The documentary record includes an earlier order of the Board, LTB-L-049602-24-AM, issued October 7, 2024 (amended October 9, 2024). In that order, the Board determined that Robert McVicker was the landlord, that Peter, Laura, Blake and Holly Ertel were the tenants, and that the Applicants, along with another individual, were “Unauthorized

Occupants.” On consent, that order terminated the tenancy between Mr. McVicker and the Ertel tenants and required the Applicants, as unauthorized occupants, to vacate the rental unit and to pay specified amounts directly to the landlord.

4. Section 135(1) of the Act provides that a tenant or former tenant may apply to the Board for an order that the landlord, superintendent or agent pay to the tenant any money collected or retained in contravention of the Act or the former *Tenant Protection Act, 1997*. Section 135(2) extends this right to a prospective tenant. There is no provision in section 135 allowing an application by an “unauthorized occupant” or other person who is not a tenant, former tenant or prospective tenant.
5. The Applicants submit that because they signed written rental agreements with the Landlord using the standard form of lease, they should be treated as tenants entitled to recover illegal rent from him. However, the Board has already determined, in the McVicker order noted above, that as between the property owner and the Ertel tenants, the Applicants were “Unauthorized Occupants” who were in possession of the unit without the owner’s consent.
6. For a lawful subtenancy to exist under the Act, the original tenant (the “head tenant”) must vacate the rental unit, grant another person the right to occupy for a term ending before the end of the head tenant’s term, retain the right to resume occupancy afterward, and obtain the landlord’s consent. Based on the earlier Board order and the evidence before me, these requirements were not met: the Applicants’ occupation of the premises was not authorized by the property owner, and they have already been found to be unauthorized occupants in the related file.
7. In light of that determination, I find that the Applicants were not tenants, former tenants or prospective tenants of the rental unit within the meaning of the Act. They were unauthorized occupants as between the property owner and the Ertel tenants, and their contractual arrangement with Mr. Ertel does not, on these facts, confer standing to bring an application under section 135.
8. Because section 135 is limited to applications by tenants, former tenants and prospective tenants, and because the Applicants do not fall within any of these categories, the Board has no jurisdiction to make an order concerning the money they say was overcharged or retained. It is therefore not necessary or appropriate for me to decide whether the amounts charged by the Landlord were otherwise in contravention of the Act.
9. For these reasons, the application is dismissed for lack of jurisdiction.

It is ordered that:

1. The Tenant’s application is dismissed.

January 20, 2026
Date Issued

Colin Elsby
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.