



Order under Section 135 Residential Tenancies Act, 2006

File Number: LTB-T-055844-25

In the matter of: Basement (Down Floor), 366 Blackthorn
Avenue South
Toronto Ontario M6M3B9

Between: Folashade Oduntan Tenant

And

Pauline Levy Landlord

Folashade Oduntan (the 'Tenant') applied for an order determining that Pauline Levy (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on February 19, 2026.

Only the Tenant attended the hearing.

As of 10:04 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 Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenant \$600.00.
2. 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.
3. The Tenant testified that the rental unit was advertised on Facebook Marketplace as a 4-bedroom, 1 bathroom house.
4. The Tenant provided Facebook messages between herself and the Landlord on May 26, 2025 where the Tenant indicated an interest in property and asked for a viewing.
5. The Tenant testified that her intent was to move into the rental unit with three friends on July 1, 2025. She sent the Landlord a \$600.00 deposit, along with a copy of her identification, on May 28, 2025 to reserve the unit.

6. The Tenant testified that her three friends viewed the unit on May 31, 2025 and identified that the unit was actually three bedrooms (the alleged fourth bedroom was located inside one of the other three bedrooms). As such, the Tenant's friends decided that the unit was unsuitable for them.
7. The Tenant contacted the Landlord on WhatsApp and indicated that the apartment would not be suitable for their needs and requested her \$600.00 back. The Landlord refused to refund the Tenant's deposit.
8. The Tenant visited the rental unit on June 2, 2025 and spoke with three people who were living there. The Tenant testified that these three individuals showed her proof that they were Tenants in the unit and that they had paid the Landlord \$2,400.00 in rent between the three of them.
9. Section 107 of the *Residential Tenancies Act, 2006*, (the 'Act') provides:

“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.”

10. The decision of the Ontario Court of Appeal in *Musilla v. Avcan Management Inc.*, 2011 ONCA 502 provides the Board with guidance, starting at paragraph 10:

When one looks at the words of section 107(1), it is notable that the landlord is to return the deposit if vacant possession is not given to the prospective tenant. The words “not given” suggest that it is the refusal or inability of the landlord to provide the premises that triggers the obligation to return the deposit to the prospective tenant. In the present case, however, it is the tenant’s action in refusing to take the unit that prevented him from taking possession, not any act of the landlord

However, with respect to a landlord’s ability to retain a rent deposit, section 105(1) and 106(1) of the Act provides that a landlord may only take a deposit as security against the payment of the last month’s rent. The landlord may not take a deposit to secure any other obligation. Thus, if a tenant breaches a tenancy agreement and the landlord, in accordance with its obligations to mitigate its damages, is able to re rent the premises without suffering any loss of rent, the landlord is not entitled to retain the rent deposit. The landlord cannot realise double payment by use of a deposit, nor can it apply the funds to any other purpose.

11. The Divisional Court, in *Opara v. Cook*, [2008], O.J. No. 1934 (Ont.Div.Ct.), also deals with the issue currently before the Board. In simple terms, the court held that a tenancy agreement is a contract and once the parties have entered into a tenancy agreement, unless the Landlord agrees, the Tenant cannot decide to break the agreement.
12. Accordingly, the only real questions before the Board is whether the parties had entered a tenancy agreement at the time that the Tenant informed the Landlord that she (and her friends) no longer wished to rent the unit and requested the return of her deposit and whether the Tenant is entitled to the return of the deposit pursuant to section 107 of the Act

13. In my view it is not clear, in this case, that there was a “meeting of the minds” and a tenancy agreement was actually arrived at between the Tenant and the Landlord as there was no confirmation of who would be occupying and paying for the other $\frac{3}{4}$ of the rent owing for the unit.
14. It is clear based on the evidence and submissions at the hearing that the parties had agreed to a monthly rent but the essential elements had not been reached, particularly with respect to who would be responsible for the remaining \$1,800.00/month in rent, which I believe was not been solidified. A binding contract requires that there be a consensus between the parties on the essential terms. Therefore, I am satisfied that the tenancy agreement had not been completed.
15. It seems that where a landlord has collected a rent deposit before entering a tenancy agreement as permitted by subsection 106(1) of the Act, and no tenancy agreement is entered into, the phrase “vacant possession of the rental unit is not given” in subsection 107(1) of the Act may encompass the situation where either party chooses not to proceed with entering the tenancy agreement, thereby entitling the prospective tenant to a refund of a paid rent deposit. By contrast, once a tenancy agreement is made, whether pursuant to the terms of a rental application (as in *Musilla, supra*) or in some other unspecified form (as in *Opara v. Cook, supra*), neither party may unilaterally repudiate the agreement, and a tenant who does so is not entitled, under subsection 107(1) of the Act, to the return of the rent deposit. Following the foregoing logic, since no tenancy agreement was made in this case, the Tenant would be entitled, under subsection 107(1) of the Act, to a refund of the rent deposit.
16. The Landlord retained the Tenant's last month's rent deposit contrary to subsection 107(1) of the Act. This is prohibited by the Act.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$600.00. This amount represents the \$600.00 collected for a rent deposit.
2. The Landlord shall pay the Tenant the full amount owing by March 7, 2026.
3. If the Landlord does not pay the Tenant the full amount owing by March 7, 2026, the Landlord will owe interest. This will be simple interest calculated from March 8, 2026 at 4.00% annually on the balance outstanding.

February 24, 2026

Date Issued

Curtis Smith

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.