



Order under Section 135 Residential Tenancies Act, 2006

Citation: Jonsen v Blanco, 2026 ONLTB 13320

Date: 2026-02-26

File Number: LTB-T-084638-25

In the matter of: 205, 17 Main Street East
Welland Ontario L3B3Y3

Between: Joshua Jonsen Tenant
Amber Scarlett

And

Edwin Blanco Landlord
17-19 Main Street Inc

The capitalized words "Landlord" and "Tenant" refer to all parties identified as each at the top of the order.

Joshua Jonsen and Amber Scarlett (the 'Tenant') applied for an order determining that Edwin Blanco and 17-19 Main Street Inc (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on February 5, 2026.

The Landlord's Agent Christine Blanco, the Landlord's Legal Representative Bruce Parsons, and the Tenant attended the hearing.

Determinations:

Preliminary Issue

1. The Tenant submitted that the Landlord's evidence was not received 7 days prior to the hearing as required by the Board's rules, therefore, the evidence should be excluded.
2. The Landlord's Legal Representative submitted that the Landlord's evidence was mistakenly submitted a day late, but it only consists of 4 pre-existing documents that the Tenant is well aware of, therefore, nothing new is being raised or anything the Tenant is not aware of; it should be allowed.
3. The matter proceeded on its merits, there was no prejudice to the Tenant to allow the Landlord's evidence as the quantity is nominal and does not contain anything the Tenant is not aware of.

Merits

4. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.
5. The Tenant testified that the tenancy began October 1, 2025; they paid the Landlord a first month rent and a last month rent deposit in the amount of \$1,250.00 each. On October 2, 2025, the Tenant went to the unit to do a pre-move-in cleaning: when they started cleaning, they noticed cockroaches in the kitchen, on the fridge, stove and floor. When they pulled the fridge out hundreds of cockroaches scattered out from underneath; underneath the floor was also very dirty and the cupboard under the kitchen sink was also dirty; indicating the Landlord did not ready the unit for move-in. The Tenant cleaned for approximately 5-hours then got fed up with the cockroach issue; they contacted the Landlord's Agent and advised the unit had a cockroach infestation; therefore, it was uninhabitable, and the tenancy must be terminated immediately. The Tenant said because they could not live there due to the condition of the unit, the Landlord had to return the last month rent deposit and the first month rent that they paid.
6. The Tenant relied on numerous pictures to support their position that the only option available to them was to move. The Tenant submitted the pictures were taken during the day, but the roaches were more active at night. The Tenant submitted they were not looking for perfection, but the cleanliness was terrible. The Tenant testified the pictures taken October 4, 2025, after the Landlord had done cleaning, show it was still filthy and not ready to move into. The Landlord said they would return the money and then reneged; it is contrary to the legislation for them to keep it and must be returned. Further, the Landlord should not be allowed to rely on the last month rent non-refundable clause when it is not an enforceable clause.
7. The Landlord's Agent testified the Tenant applied for the rental unit mid-September, shortly after viewing the unit the Tenant signed the lease. No issues were raised during the viewing, which is the exact state as when the Tenant moved in. The Landlord was not aware of any issues with the unit when it was rented to the Tenant; it had been prepared for renting as is every unit they rent out. When the complaint was received about the unit being uninhabitable, the Tenant said they wanted the lease terminated and the first and last month rent monies returned. Based on the Tenant's description of the unit, the Landlord verbally agreed, but upon inspection the following day, consent was retracted. The Tenant was sent an email to this effect containing the inspection report and with accompanying photos which did not reveal any roach activity. As the unit was not uninhabitable, the Landlord is not required to return the first and last month rents as the Tenant did not give proper notice to terminate. The Landlord properly mitigated their losses by advertising the unit; it took approximately 2-months to rent the unit out. The same tenant lives in the unit now, and the Landlord has not received any complaints about the unit, including roaches.

Analysis

8. Based on the testimony and evidence before me, I find the Landlord did not retain monies contrary to the legislation.

9. The law establishes that there is no unilateral right to rescind a contract that has been duly entered into by the parties (*Opara v. Cook*, 2008 CanLII 22923, [2008] O.J. No. 1934 (QL), 2008 CarswellOnt 2747, Court File No. 142/07 (Div. Ct.) (Jennings, Pitt, and Molloy JJ.)). Here, the parties entered signed a lease and the Tenant's were given possession; the issue to be addressed is whether the unit was uninhabitable when the Tenant took possession thus leaving no other option but to terminate the tenancy. Although the Tenant provided pictures that showed cockroaches, there was generally one roach in each picture, and numerous were close-ups of the same bug/area or taken at different angles. The pictures did not demonstrate that the unit was infested to the degree that it was uninhabitable; the caselaw has long-established that unless a severe lack of compliance with health, safety or maintenance standards is established, there is no fundamental breach of the contract, and it remains intact. According to the court, a fundamental breach must be such that it frustrates the real purpose of the contract (*Temlas Apartments Inc. v. Desloges* [1980] O.J. No. 3624, 29 O.R. (2d) 30 (Ont. Div. Ct.)); it must be so critical as to bring an end to the contract as a whole or repairs so protracted that occupancy is not reasonably possible (*Lord Strathcona Steamship Co. v. Dominion Coal Co.* [1926] 1 D.L.R. 873, [1926] A.C. 108 (P.C.)). If there are pest or cleanliness issues upon move-in, a landlord needs to be given the opportunity to rectify the issue(s); here, there is no dispute that the Landlord was not given a chance to address the issues.
10. Although the Landlord may have originally consented to terminating the tenancy and returning the last month rent deposit, the Tenant did not accept this offer; therefore, it is not an enforceable agreement. As such, the Tenant was required to give proper notice of termination, which is not the case as they immediately moved out. When a tenant vacates without giving a landlord proper notice of termination, the landlord is required to mitigate its losses pursuant to section 17 of the *Residential Tenancies Act 2006* (the 'Act'). Here, it was not contested that the Landlord had the unit re-rented approximately 2-months after the Tenant vacated, therefore, I find the Landlord mitigated its losses.
11. As to the clause in the lease that says the last month rent deposit is non-refundable, although not specifically raised by the Tenant, although a clause in a lease cannot be contrary to the legislation, all the above issues come into play, and the outcome of this order is not affected.
12. For all these reasons, the Tenant is not entitled to return of the first of last month rent deposit; accordingly, the application must be dismissed.

It is ordered that:

1. The Tenant's application is dismissed.

February 26, 2026
Date Issued

Diane Wade
 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.