



Order under Section 135 Residential Tenancies Act, 2006

Citation: AFOLABI v FALEYE, 2026 ONLTB 4126

Date: 2026-02-20

File Number: LTB-T-038819-25

In the matter of: 2, 9 Lexington Road
Brampton ON L6P2A9

Between: IBIYEMI OLARONKE AFOLABI

Tenant

And

OLUTOSIN FALEYE

Landlord

IBIYEMI OLARONKE AFOLABI (the 'Tenant') applied for an order determining that OLUTOSIN FALEYE (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on November 25, 2025.

The Landlord and the Tenant attended the hearing.

Preliminary Issue:

1. The Tenant sought to amend her application to include an allegation that the Landlord illegally collected a monthly fee for the rental of a furnace and air conditioner.
2. The LTB's Rule 15.4 addresses situations where a party requests to amend an order at the hearing. Rule 15.4 states that the LTB may exercise its discretion to grant a request to amend made at the hearing if satisfied that the amendment is appropriate, would not prejudice any party and is consistent with a fair and expeditious hearing.
3. I concluded that it is appropriate to allow the amendment because the complaint is made pursuant to the same provision in the Act, s135 (1) as with the Tenant's original application, the issue deals the same rental unit and people, and both parties submitted evidence regarding the matter to the Board and to each other prior to the hearing. For this reason, I was satisfied that amending the application would not likely prejudice the Landlord. On that basis, the order is amended to address the Tenant's complaint that the Landlord illegally collected a monthly fee from her for renting a furnace and air conditioner that serviced the residential complex.

Determinations:

1. The Tenant alleges the Landlord charged them an illegal rent, which they paid.
2. The tenancy commenced on February 6, 2021. The rental unit is a two-bedroom basement apartment, and the monthly rent was \$1,500.00.
3. On September 1, 2022, the monthly rent increased to \$1,518.00 in accordance with the guidelines.
4. On May 1, 2023, the Landlord gave the Tenant a Notice of Rent Increase (N1 Notice) indicating the rent was increasing from \$1,518.00 to \$1,750.00 as of September 1, 2023. The Landlord indicated that the rental unit was exempt from the rules governing changes to rent pursuant to subsection 6.1 of the *Residential Tenancies Act, 2006* (the 'Act'). On June 3, 2024, the Tenant received an N1 Notice advising the rent was being increased from \$1,750.00 to \$2,200.00 as of September 1, 2024.
5. The Tenant disagrees that the rental unit is exempt from the rules governing changes to rent.
6. The first issue to be determined is whether the rental unit is exempt from the rules surrounding rent pursuant to subsection 6.1 of the Act.

Statutory Framework:

7. Subsection 120 (1) of the Act states, "No landlord may increase the rent charged to a tenant, or to an assignee under section 95, during the term of their tenancy by more than the guideline, except in accordance with section 126 or 127 or an agreement under section 121 or 123. 2006. However, section 6.1 of the Act provides for exemptions to rent rules in section 120(1) for residential units build on or after November 5, 2018.
8. Section 6.1 includes subsections 6.1(1), (2), and (3) which describe the different classes of buildings that can fall under this exemption. Subsection 6.1(3) relates to "residential units in detached houses, semi-detached houses or row houses." Subsection 6.1(3) provides that,

Sections 120, 121, 122, 126, 127, 129, 131, 132 and 133 do not apply on and after the commencement date with respect to a rental unit if all of the following requirements are met:

1. *The rental unit is located in a detached house, semi-detached house or row house which, on or at any time before November 15, 2018, contained not more than two residential units.*
2. *The rental unit is a residential unit that meets all of the following requirements:*
 - i. *The unit has its own bathroom and kitchen facilities.*

- ii. The unit has one or more exterior or interior entrances.*
 - iii. At each entrance, the unit has a door which is equipped so that it can be secured from the inside of the unit.*
 - iv. At least one door described in subparagraph iii is capable of being locked from the outside of the unit.*
3. *The rental unit became a residential unit described in paragraph 2 after November 15, 2018.*
4. *One or both of the following circumstances apply:*
- i. At the time the rental unit was first occupied as a residential unit described in paragraph 2, the owner or one of the owners, as applicable, lived in another residential unit in the detached house, semi-detached house or row house.*
 - ii. The rental unit is located in a part of the detached house, semi-detached house or row house which was unfinished space immediately before the rental unit became a residential unit described in paragraph 2. 2018, c. 17, Sched. 36, s. 1.*

Analysis

9. To qualify for the exemption, a residential unit must meet all four of the criteria in subsection 6.1(3).
10. The residential complex is a detached home with five bedrooms. The Landlord resided in the home between 2020 and 2022. While the Landlord gave evidence that he rented rooms in the home to boarders, it is unclear whether this occurred prior to November 15, 2018. Accordingly, I am satisfied the rental unit meets criteria number one.
11. I am satisfied the rental unit was equipped with its own bathroom and kitchen facilities, at least one exterior or interior entrance which can be secured from the inside of the unit and is capable of being locked from the outside after November 15, 2018. Therefore, the Landlord has met the second and third criteria.
12. The issue here is with respect to criteria four. The Landlord did not live in another residential unit in the detached house at the time the rental unit was first occupied. Furthermore, I am not convinced the rental unit was unfinished space immediately before the rental unit became a residential unit as described in criteria two.
13. The Landlord characterized the basement as a recreational space that he, and other boarders, used before it was officially recognized by the City of Brampton as a separate dwelling for the purpose of a rental. The evidence before me establishes that other tenants slept in the basement and stored food in the basement refrigerator.
14. I find that “unfinished space” as used in subsection 6.1(4)(ii) clarifies that the exemption in 6.1(3) applies only to rental units which are created from spaces which previously were not

suitable for residential use. In this instance, the basement was used for housing boarders. Accordingly, the rental unit was not an “unfinished space”.

14. As the Landlord has failed to sufficiently establish that the rental unit meets all four criteria, the rental unit is not exempt from the rules regarding rent.

Illegal rent

15. The Landlord charged the Tenant rent increases that were not exempted from section 120. For determining the amount of money owed to the Tenant, if any, it is necessary to consider sections 135(4), and 136 (1) and (2) which read as follows:

135(4) No order shall be made under this section with respect to an application filed more than one year after the person collected or retained money in contravention of this Act or the Tenant Protection Act, 1997. 2006.

136 (1) Rent charged one or more years earlier shall be deemed to be lawful rent unless an application has been made within one year after the date that amount was first charged and the lawfulness of the rent charged is in issue in the application. 2006, c.17.

136(2) An increase in rent shall be deemed to be lawful unless an application has been made within one year after the date the increase was first charged, and the lawfulness of the rent increase is in issue in the application. 2006, c. 17.

16. Here, the Tenant filed her T1 application on May 13, 2025, and so she is statute barred from claiming any of the illegal rent-increase payments paid earlier than May 13, 2024.
17. During this period the Tenant paid the Landlord a rent increase of \$232.00 for 12 months from September 1, 2023, to September 1, 2024. Therefore, this became the legal rent on September 1, 2024, pursuant to subsection 136 (2) and so is not eligible for refund.
18. However, the Tenant is able to claim any illegal charged rent from May 13, 2024, to May 13, 2025. During this 12-month period, the Landlord imposed an illegal monthly rent increase of \$450.00 effective September 1, 2024.
19. The Tenant paid this illegal rent increase for 9 months and the Landlord will be ordered to return (\$450.00 x 9) \$4,050.00 to the Tenant.

Illegal fee

20. The Tenant alleged in her application that in June of 2022, the Landlord persuaded the tenants of the residential complex to contribute a monthly fee to replace the furnace and air conditioner when the air conditioner failed. The Tenant testified that she agreed to pay a monthly fee of \$49.50, which amounted to 30% of the monthly rent for the appliances, because she was unaware that it is illegal under the Act.

21. Subsection 20(1) states that the Landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance.
22. Subsection 123(1) of the Act permits the Landlord to increase the rent charged to tenant if the landlord and tenant agree that the landlord will add services or things, and the agreement has not been entered into as a result or coercion or as a result of a false, incomplete or misleading representation by the landlord. This, however, did not add a service.
23. In this regard, subsection 135 (1) of the Act authorizes a tenant or former tenant to apply to the Board for an order requiring the Landlord pay to the Tenant any money collected or retained in contravention of this Act.
24. However, subsection 135. (4) states that no order is permitted with respect to an application filed more than one year after the person collected or retained money in contravention of this Act or the *Tenant Protection Act, 1997*.
25. The Tenant claimed that she paid the Landlord \$49.50 monthly from January 2023 to November 2025. Since the Tenant is prohibited for claiming for more that 12 prior to November 25, 2025, when her application was amended to include this claim.
26. The Landlord will be ordered to pay the Tenant $(12 \times \$49.50) = \594.00 .
27. The Landlord will also pay for the Tenant's application filling fee of \$48.00
28. The Landlord will therefore be ordered to pay the Tenant \$4,644.00 plus the filling fee of \$48.00.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$4,692.00 which represents:
 - a. \$4,050.00 for the excess rent collected.
 - b. \$ 594.00 as the Tenant's share for the rental furnace and air conditioner.
 - c. \$ 48.00 for the cost of filing the application.
3. The Landlord shall pay the Tenant the full amount owing by March 10, 2026.
4. If the Landlord does not pay the Tenant the full amount owing by March 10, 2026, the Landlord will owe interest. This will be simple interest calculated from March 10, 2026, at 4.00% annually on the balance outstanding.
5. If the Landlord does not pay the Tenant the full amount owing by March 11, 2026, the Tenant may recover this amount by deducting it from the rent until the full amount is recovered.
6. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

February 27, 2026
Date Issued

Douglas Malanka
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.