



Order under Section 30 Residential Tenancies Act, 2006

Citation: Martinez v Zhang, 2026 ONLTB 22674

Date: 2026-03-18

File Number: LTB-T-022986-23

In the matter of: 2406 Ventura Drive
Oakville Ontario L6L2H4

Between: Nicola Martinez
Andrew Martinez
Tenants

And

Guanren Zhang
Landlord

Nicola Martinez and Andrew Martinez (the 'Tenants') applied for an order determining that Guanren Zhang (the 'Landlord') failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards ('the T6 application').

The Tenants also applied for an order determining that the Landlord collected or retained money illegally ('the T1 application')

This application was heard by videoconference on December 2, 2025.

The Tenants, the Tenants' support person Angela Valela, The Landlord, the Landlord's legal representative, Yunqiao Zhang, and the Landlord's language support person, Haopeng Zhang, attended the hearing.

Determinations:

The T6 Application

1. The Tenant's did not prove on the balance of probabilities that the Landlord failed to meet their maintenance obligations under the Act or that the Landlord failed to comply with health, safety, housing or maintenance standards. Accordingly, the Tenant's T6 application is dismissed.
2. On the Tenants' move in date of October 7, 2022, they discovered water pouring from the ceiling in the garage. The Tenants informed the Landlord immediately. The parties agree that the call to the Landlord was placed sometime between 2:00 and 3:00 PM. The

Landlord called a repair person who attended at the unit at approximately 4:30 PM. The repair person discovered that the leak was coming from the hot water tank in the unit. The water to the tank was turned off and the Landlord subsequently called Reliance who arrived at the rental unit the following day.

3. The Landlord submitted work orders from Reliance which confirm that a worker attended the unit on October 9, 2022, and then again on October 11, 2022, to complete necessary repairs to the water heater. It was undisputed that the Landlord's repair person replaced drywall and painted the ceiling of the garage after the repairs to the hot water tank were completed.
4. Despite the assurance from Reliance that the hot water tank was now in good working order, the Tenant requested that the Landlord replace the existing hot water tank with a new one. The Landlord complied with this request and on October 12, 2022, the Landlord signed a new contract with Reliance for a new tank to be installed on October 15, 2022.
5. There is no dispute that prior to the Tenants' move in date, they participated in a walk-through inspection of the unit with both the Landlord's leasing agent and the Tenants' leasing agent present. The inspection took approximately 3 hours. The only noted issues with the unit during this inspection was a minor issue with a toilet handle and an issue with the fireplace. No other issues were noted and specifically there was no leaking in the garage or obvious issues with the hot water tank.
6. The Tenants testified they were very concerned about mold from the water leak and on October 8, 2022, they sent photos of the affected area to a mold inspector who indicated that there could possibly be mold present. The Tenants stated that the mold inspector would not come to the unit to do a more thorough investigation because they required permission from the Landlord and the Landlord refused.
7. In *Onyskiw v. CJM Property Management*, 2016 ONCA 477, the Court of Appeal for Ontario determined that a contextual approach should be adopted when considering a landlord's potential breach of subsection 20(1) of the Act and a breach will not be found if the landlord's response to a maintenance issue was reasonable in the circumstances.
8. I find that the Landlord's response to the issues were reasonable in all of the circumstances. The inspection of the unit with the Tenants that took place on September 29, 2022, revealed no issues with the hot water tank or a water leak. The water leak from the hot water tank appears to be a latent defect that the Landlord could not have reasonably been aware of. When the Landlord did become aware of the emergent issue of water leaking through the ceiling in the garage he acted immediately by calling a repair technician and subsequently calling Reliance when the source of the leak was determined to be the hot water tank. The Reliance technician fully completed a repair within 4 days. The Landlord then agreed to replace the hot water tank to relieve the Tenants' concerns of something similar happening in the future.
9. The Tenants' concern regarding mold resulting from the leak was exactly that, a concern. The Tenant did not satisfy me, on the balance of probabilities, that mold was present. Considering no mold was noted during the inspection, I find it would be unlikely for mold to be present within a few days of a water leak when the source of the water leak was

detected and repaired within a few days. It was not unreasonable for the Landlord to refuse payment of a mold inspection.

10. Since the Tenants have not established a breach of the Landlord's obligations under section 20(1) of the *Act*, the application must be dismissed.

The T1 Application

11. The Tenants T1 application alleges that after the Tenants entered into the tenancy agreement, the Landlord did not allow them to move into the rental unit and did not return the money they paid as a deposit.
12. Section 107 of the Residential Tenancies Act, 2006 (the 'Act') address this allegation made by the Tenants and states the following:

A landlord shall repay the amount received as a rent deposit of a rental unit if vacant possession of the rental unit is not given to the prospective tenant.

13. The decision of the Ontario Court of Appeal in *Musilla v Avcan Management Inc.*, 2011 ONCA 502 provides guidance on the interpretation of section 107 of the Act. Starting at paragraph 8:

[8] The Board and the Divisional Court held that s. 107(1) requires a landlord to return a rent deposit only if vacant possession is refused by the landlord. Where there is an agreement for a rental of a residence and the tenant does not take possession of the residence when offered, the landlord is entitled to retain a rent deposit in accordance with the provisions of the rental agreement.

[9] We agree with the reasons of the Divisional court that s. 107(1) of the Act does not authorize a tenant to obtain the automatic return of a rent deposit where the landlord has done everything necessary to give the possession of the lease premises and the tenant has unilaterally repudiated the rental agreement.

[10] In particular, we agree with the following observation [at para 22]:

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.

[11] This interpretation accords with common sense and fairness. To permit a tenant, who is legally obligated to take possession, to regain a rent deposit where the landlord has done everything it was required to do in order to give possession would render meaningless the concept of a rent deposit to secure the tenant's obligation to pay rent.

14. Accordingly, the only question before the Board on the present matter is did the Tenant unilaterally repudiate the rental agreement?

Did the Tenants unilaterally repudiate the tenancy agreement?

15. Based on the evidence before me, I find that there was a tenancy agreement in place when the Tenants sought the return of their rent deposit and pre-paid rent. It was undisputed that the parties signed the lease agreement on September 17, 2022, with a commencement date of October 1, 2022. I am satisfied there was a mutual understanding and agreement by the parties on the essential terms of the tenancy. The Landlord gave the Tenants the keys and the Tenants moved some personal belongings into the unit. Therefore, I find that the Landlord gave vacant possession of the unit to the Tenants.
16. It was not until after the hot water tank incident that the Tenants became displeased with the Landlord's solution attempts and decided to end the Tenancy. The Tenants testified that on October 8, 2022, they gave the Landlord a letter saying they wanted to end the tenancy. Based on the evidence and testimony provided, I am not satisfied that the unit was uninhabitable and as stated above, I find the Landlord acted swiftly and appropriately to address the hot water tank leak and resulting damage to the ceiling in the garage.
17. However, to find that the Tenant's unilaterally repudiated the agreement I must assess whether the Landlord agreed to terminate the lease. I was the Landlord's position that he did not agree to terminate the lease.
18. The Landlord submitted various email communications with the Tenants surrounding the events that transpired. On October 18, 2022, the Landlord sent an email to the Tenants. The last two paragraphs of that email state, in part, as follows:

.....I feel I have done everything on my side to show my sincerity, but I cannot meet your unreasonable demands and unacceptably high claims over and over again. So I respect your decision not to move back to the premises.

I now formally inform you that I have received your request to unilaterally terminate the tenancy agreement on October 8th. I will not ask you to indemnify me additionally for your unilateral breach of a one-year tenancy agreement and release you from your rental liability for the next nine months (from November 2022 to July 2023).
19. The Landlord could not force the Tenants to stay when their intention was to leave. The Landlord respecting the Tenants' decision does not equate to acceptance of terminating the lease contract. For these reasons, I find the Tenants did unilaterally terminate the lease.
20. It was undisputed that the Tenants paid a total sum of \$12,900.00 to the Landlord prior to moving into the unit. This represented the Tenants' last month rent deposit (\$4,200.00), their first two months of rent (\$8,400.00), and a refundable key deposit (\$300.00). To date the Landlord has not returned any of these funds to the Tenants. The Landlord did not challenge that the unit keys were returned.
21. Section 106(1) of the Act states that "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."

22. This section of the Act allows for a last month's rent to be paid prior to or at the time of entering into a tenancy agreement. A portion of the payment the Tenants made was equivalent to one month's rent; therefore, the deposit paid to the Landlord was lawful. Since the Tenant unilaterally repudiated the tenancy agreement, there is no obligation for the last month's rent to be returned.
23. The Act further requires lawful notice when terminating a tenancy. Subsection 44(4) regarding fixed term leases states that notice shall be given at least 60 days before the expiration date specified in the tenancy agreement, to be effective on that expiration date.
24. However, in accordance with section 16 of the Act, a landlord has an obligation to minimize their losses by taking reasonable steps to re-rent the unit.
25. The Landlord submitted a copy of the lease agreement with a new tenant which commenced on March 1, 2023. Considering the time it takes to monitor responses to advertisements, schedule showings, and the time it takes for a prospective tenant to submit a rental application and supporting documents, as well as considering the reduction in rental interest over the holidays, a 4-month delay in re-renting the unit is not unreasonable. Additionally, in the email of October 18, 2022, the Landlord agreed to release the Tenants from their liability to pay rent for November 2022 until the end of the lease term. For these reasons I find the Landlord appropriately mitigated their losses as required by the Act.
26. Therefore, the Landlord has lawfully retained the last month's rent deposit. Furthermore, the Tenants are responsible to pay the Landlord the rent that was required for the first month of the tenancy agreement (October 1 to 31, 2022) due to unlawful notice to terminate the tenancy.
27. The Landlord may not retain the Tenants' pre-paid rent for November 2022 or the refundable key deposit. The Landlord must pay to the Tenants a total of \$4,500.00. The Tenants did not incur costs for filing the application.
28. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
29. This order contains all of the reasons for the decision within it and no further reasons will be issued.

It is ordered that:

1. The Tenants' T6 application is dismissed.
2. With respect to the T1 application, the total amount the Landlord shall pay the Tenants is \$4,500.00. This amount represents:
 - \$300.00 for the return of the key deposit.

- \$4,200.00 for the return of pre-paid rent.
3. The Landlord shall pay the Tenants the full amount owing by April 17, 2026.
 4. If the Landlord does not pay the full amount by April 17, 2026, the Landlord will owe interest. This will be simple interest calculated from April 18, 2026, at 4.00% annually on the balance outstanding.
 5. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

March 18, 2026
Date Issued

Melissa Anjema
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.