



AMENDED ORDER
Order under Section 135
Residential Tenancies Act, 2006

File Number: LTB-T-044618-24-AM

In the matter of: 1 Balmoral Place
St Catherine's ON L2T1Z2

Between: Allyssa Mollison Tenant

And

Anthony Barletta (aka Antonio Barletta) Landlord

This amended order is issued to correct a clerical error in the original order. The correction has been bolded and underlined for ease of reference.

Allyssa Mollison (the 'Tenant') applied for an order determining that Anthony Barletta (aka Antonio Barletta) (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on August 27, 2025.

The Landlord's representative, Sara Atkinson, and the Tenant attended the hearing.

Preliminary issue:

Does the act apply?

1. The Landlord's representative submits that the Act does not apply because the Landlord's daughter occupied the house along with the Tenant. The exemption the Landlord relies upon is found in 5(i) of the Act: "living accommodation whose occupant or occupants are required to share a bathroom or kitchen facility with the owner, the owner's spouse, child or parent or the spouse's child or parent, and where the owner, spouse, child or parent lives in the building in which the living accommodation is located".
2. The Landlord's representative submitted that Tenant moved into the unit on September 1, 2023, and the Landlord's daughter occupied the same house as the Tenant until September 5, 2023, when she left to go to Muskoka.
3. The Tenant submits that it was not mentioned on the lease agreement that the Act does not apply or that the Landlord's daughter also lives at the residential complex as she has never seen her. The Landlord's representative submitted into evidence the lease

agreement which also does not state the Tenant shares a kitchen and bathroom with the Landlord's daughter.

4. In making findings on an application, section 202 of the Act requires me to determine the real substance of all transactions and activities pertaining to a rental unit with respect to this tenancy.
5. The onus or burden of proving that an exemption applies rests on the person claiming the exemption on a balance of probabilities. In this case, the Landlord asserted the exemption; however, I do not find that the Landlord met this burden.
6. Case law dealing with s. 5(i) essentially establishes a two-part test and the party relying on the exemption has to establish both:
 - 1) is the occupant required to share a bathroom or kitchen facility with the owner, the owner's spouse, child or parent or the spouse's child or parent, and
 - 2) does the owner, spouse, child or parent live in the building in which the living accommodation is located.
7. With respect to the first part of the test, there is case law that finds that the tenancy agreement must include the requirement for the tenant and the landlord or the landlord's family member to share a kitchen and/or bathroom (see for example, TET-82410-17 (Re), 2018 CanLII 113120 (ON LTB)). I am inclined to agree. Tenancy agreements are contracts requiring a meeting of the minds about the fundamental terms of the tenancy, and it is necessary for tenants to agree that they will be required to share a kitchen or a bathroom at the outset, particularly since it determines whether they are entitled to protection under the Act. The Landlord led no satisfactory evidence that this was the case.
8. I also find that the Landlord failed to satisfy the second part of the test. The Landlord claims that their daughter lived in the rental unit for five days in September 2023. The Tenant claims they never saw the Landlord's daughter at the unit. The Landlord did not submit any concrete objective evidence to substantiate their claim that their daughter ever lived in the rental unit during the tenancy or at all. The Landlord's daughter did not attend to testify about whether she lived there or whether her belongings were still there. As such, I find that there is no direct evidence the Landlord's daughter lived there for the time period of September 1 to the 5, 2023, or at any point during the tenancy.
9. As the Landlord did not establish that it is more likely than not that the exemption in s. 5(i) applies to the accommodation, I find that the Act applies.

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 \$657.54 on or before October 27, 2025.

2. The Landlord did not use the Tenant's rent deposit to pay for the last rental period of the tenancy and did not return the deposit to the Tenant. This is prohibited by the *Residential Tenancies Act, 2006* (the 'Act').
3. The Tenant testified that the Landlord did not use their last month rent deposit in the amount of \$625.00 for the month of September 30, 2023.
4. It was undisputed that the Tenant paid \$625.00 towards the last month rent deposit.
5. The parties do not dispute that the Tenant moved out as of September 30, 2023, and the unit was re-rented for October 1, 2023. The Tenant provided notice on September 15, 2023, to moved out by September 30, 2023. The Landlord did not agree to the notice to vacate as the Tenant provided less than 60 days notice. It was also undisputed that the Landlord did not return the last month rent deposit.
6. The Landlord's representative submitted that the Landlord did not return the deposit because the Tenant gave short notice and as such, the Landlord retained the deposit to offset rent loss.
7. Subsection 106(10) of provides that:

Rent deposit applied to last rent

(10) A landlord shall apply a rent deposit that a tenant has paid to the landlord or to a former landlord in payment of the rent for the last rent period before the tenancy terminates.

8. In this case, the Tenant had paid rent for September 2023 and the Landlord was holding the last month rent deposit. The Landlord's representative submitted that the Landlord moved in another tenant from a different unit as of October 1, 2023.
9. With respect to the Landlord's representative's submissions that they should be able to retain the deposit to offset his rent loss, I am not satisfied that the Landlord incurred rent loss. I say this because the Landlord re-rented the unit shortly after the Tenant left. It was also the Landlord's choice to transfer another Tenant rather than re-list the unit for rent.

10. Section 134(1.1) says:

(1.1) No landlord shall, directly or indirectly, with respect to any rental unit, collect or require or attempt to collect or require from a former tenant of the rental unit any amount of money purporting to be rent in respect of,

(a) any period after the tenancy has terminated and the tenant has vacated the rental unit;
or

(b) any period after the tenant's interest in the tenancy has terminated and the tenant has vacated the rental unit.

11. Therefore, based on s.134(1.1), I find that the Tenant's interest in the unit ended on September 30, 2023, as the unit was successfully re rented on October 1, 2023. As such, I find that the Landlords have illegally retained the and an order will issue for same.
12. The Landlord's representative submitted that the Landlord left \$300.00 for a portion of the last month rent deposit at the rental unit and it should have been picked up the Tenant. The Tenant denied receiving the money. The Landlord did not attend the hearing to provide direct evidence on how he facilitated the \$300.00 to be returned to the Tenant. As such, I find that \$300.00 was not re-paid to the Tenant.
13. For the reasons above, the Tenant's application is granted, and the Landlord shall pay the Tenant \$625.00.

Last Month's Rent Deposit Interest

14. Based on the evidence before me, I find that the Landlord has failed to pay the Tenant interest on the last month's deposit as required by section 106(6) the Act.
15. The Tenant is seeking interest from the date the deposit was collected on September 1, 2023. As such, interest is calculated for the period from September 1, 2023, to August 27, 2025, the hearing date, in the amount of \$32.54.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$657.54. This amount represents:
 - \$625.00 for the last month's rent deposit.
 - \$32.54 for interest on the last month's rent deposit.
2. The Landlord shall pay the Tenant the full amount owing by October 27, 2025.
3. If the Landlord does not pay the Tenant the full amount owing by October 27, 2025, the Landlord will owe interest. This will be simple interest calculated from October 28, 2025, at 4.00% annually on the balance outstanding.
4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

November 13, 2025
Date Issued

March 26, 2026
Date Amended

Vinuri Sivalingam
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.