



Order under Section 135 and 31 Residential Tenancies Act, 2006

Citation: De Carvalho Soares Dias v Hunt (Wade), 2026 ONLTB 21587

Date: 2026-03-31

File Number: LTB-T-029304-24

In the matter of: 417, 3025 The credit woodlands
Mississauga ON L5C2V3

Between: Marta De Carvalho Soares Dias Tenant

And

Janet Hunt (Wade) Landlord
Anthony Salmon
2528880 Ontario inc.

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

Marta De Carvalho Soares Dias (the 'Tenant') applied for an order determining that Janet Hunt (Wade), Anthony Salmon and 2528880 Ontario inc. (the 'Landlord'):

- collected or retained money illegally (the 'T1 application').
- had substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household (the "T2 application").

This application was heard by videoconference on March 10, 2026.

Only the Tenant, the Tenant's Legal Representative (law student) Balaal Hamid, and the Tenant's Legal Representative supervisor Seema Kavar, attended the hearing.

As of 9:22 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.

It should be noted that the Landlord Janet Hunt (Wade) signed into the hearing room at approximately 10:09 a.m., after the hearing had completed and the other parties were no longer in attendance. The Landlord was advised that the hearing was over, and she would be receiving a copy of the order.

Determinations:

Preliminary Issue –Service of Evidence and Jurisdiction of the Board

1. The Tenant's Legal Representative advised that the Tenant's evidence had been served to the Landlord approximately 1 week prior to the original hearing that was scheduled for October 3, 2024.
2. It was noted from the previous hearing that was adjourned, the Landlord intended on raising a preliminary issue as to the Board's jurisdiction; the issue was the Landlord having a room onsite which exempted the tenancy from the Act.
3. The Tenant's Legal Representative submitted that the Act applies despite any agreement or waiver to the contrary; as per the Divisional Court case *Re Ramsay and Heselmann*, the Landlord cannot change the lease to get out of the Act, therefore it is irrelevant that the Landlord crossed off 'the Act applies' on the lease. Further, there is no section 5(i) exemption with respect to sharing, as 'occasional use' is not 'required use'. The Landlord's text, at page 35 of the Tenant's document brief, says the Tenant shares the kitchen and laundry with other people "and occasionally your landlord", thus establishing that the Landlord did not live there.
4. Based on the uncontested submissions and evidence before me, I find that the Act applies to this tenancy.
5. Section 3(1) of the *Residential Tenancies Act, 2006*, (the 'Act') says, except for the Human Rights Code, it applies to rental units in residential complexes, despite any other Act, agreement or waiver to the contrary, and section 4 says any part of a tenancy agreement that is inconsistent with the Act is void. Therefore, that the Landlord indicated they kept a room onsite at the top of the lease and replaced the word 'tenant' with 'boarder', does not exempt the tenancy from the Act. To be exempt from the Act, the tenancy must fall under a permitted exemption.
6. Section 5 of the Act sets out the exemptions where the Act does not apply. In determining whether the tenancy is exempt, section 202 says the Board must ascertain the real substance of all transactions and activities. According to the Court of Appeal, the Board "may disregard the outward form of a transaction" by "looking behind the written agreement to determine the true nature of the contract (*Matthews v. Algoma Timberlakes Corp.*, [2010] O.J. No. 2710, 2010 ONCA 468). Section 5(i) of the Act says the tenancy is exempt if the tenant is required to share a bathroom or kitchen with the owner.
7. Here, even though the Landlord crossed off the word 'Tenant' on the lease and replaced it with 'boarder' and included that 'the Landlord has a room onsite' at the top of the lease, this does not exempt tenancy from the Act. Section 5(i) specifically references that the tenant must be *required* to share. That the Landlord may keep a room to use occasionally, does not meet the section 5(i) exemption.
8. The caselaw is clear, 'occasional use' of a kitchen or bathroom is not sufficient to exempt the tenancy from the Act (*Re File No. TNT-04593-IN* [2005] O.R.H.T.D. No. 86 (O.R.H.T.)); the owner/landlord must live in the rental unit/complex (*Marshall v. Burt* [1990] O.J. No.

1451 (Ont. Dist. Ct.), and must be living there at the time the tenancy agreement was entered into (*Cowie v Bindlish*, 2010 ONSC 2628). The tenancy cannot be transformed into that of a licensor and licensee merely by describing the occupier as a something other than a tenant (*Re Ramsay and Heselmann*, (1983) 42 O.R. (2d) 255 148 D.L.R. (3d) 764). Here, as already indicated, the Landlord only uses their onsite room occasionally, they do no live onsite.

9. For all these reasons, the Act applies to this tenancy.

Merits

10. As explained below, the Tenant proved the allegations contained in the applications on a balance of probabilities. Therefore, the Landlord must repay the money illegal charged/retained and/or the amount related to substantially interfering with the Tenant's reasonable enjoyment.
11. The Tenant signed the tenancy agreement on or around April 24, 2023; the lease term was April 25, 2023 to April 24, 2024.
12. The Tenant moved into the rental unit on or around April 28, 2023, and moved out later that day.
13. The monthly rent was \$998.00
14. The Tenant testified she is an international student with no understanding of Canadian law. During the viewing the Tenant did not see any evidence that the Landlord lived there, she saw: a middle-aged man who was yelling and swearing at the Landlord; a young man about her age, 23 years old; and a frail elderly gentleman. When the Tenant expressed her discomfort about living with adult males, the Landlord said that the middle-aged man was going to be moving out and no more adult males would be moved in. After viewing the unit, the Tenant texted the Landlord and explained that she needed confirmation that the individual in question was moving and when, because her parents said it is inappropriate that she, a young female student, move into the same home as working-age adult men. The Landlord said the individual would be moving no later than May 31, 2024. As the Tenant's old lease was expiring the end of April 2023, she needed to find a new place quickly; therefore, she agreed to take the room based on the Landlord's statement/confirmation that no more middle-aged/adult men would be living there. The Tenant signed the lease and gave the Landlord the \$4,342.00 they required. This amount was for three months rent plus the last month rent deposit, \$3,992.00, a \$50.00 key deposit, a \$100.00 key fob charge, and \$200.00 towards the first and last month payment for utilities. When she signed the lease, the Landlord included at the top that the "Landlord has room onsite" and crossed off the word 'tenant' and put 'boarder'; the Landlord did not explain why.
15. The Tenant also testified she received the front door and bedroom keys about April 28, 2023, and went to the home later that day. Upon finding another older man living there, she texted the Landlord immediately and explained she did not feel safe living in such an environment; afraid to use the washroom or kitchen or sleep at night "knowing there are men who could physically overpower me only a few meters away". When the Tenant asked

for return of the monies she had paid, the Landlord said they had already been deposited. The Landlord also said that she had spoken to a lawyer, and the lease the Tenant signed was not a contract covered by the Board. The text said this was because the Tenant was renting a room in a house where the washroom, kitchen, and laundry were shared with other people and occasionally the Landlord. The Landlord refused to return any of the money the Tenant paid.

16. The Tenant corroborated her testimony and the amounts paid with a copy of the lease, texts between her and the Landlord, and bank statements.
17. The Tenant requested that all monies she paid to the Landlord be returned; the Tenant's Legal Representative submitted they were an illegal charge, being retained illegally, or their retention amounted to the Landlord substantially interfering with her reasonable enjoyment. The Representative also submitted that the tenancy agreement was void because the Landlord made a material misrepresentation to the Tenant with respect to who would be living in the house.

Analysis and Remedies

18. As already established above, this tenancy is covered by the Act.
19. Based on the uncontested testimony and evidence before me, I find that the Landlord collected and retained a charge/money contrary to the Act, and/or substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant.
20. According to section 105 of the Act, a landlord may collect a rent deposit in accordance with section 106, which says the deposit cannot be more than the equivalent of one-month rent. Therefore, by collecting four-months rent, \$3,984.00, the Landlord collected three-months more than what is allowed by the Act. As such, the Tenant is entitled to return of three-months rent, \$2,988.00.
21. Section 134 of the Act says, unless otherwise prescribed, a landlord shall not collect "a fee, premium, commission, bonus, penalty, key deposit, or other like amount of money whether or not the money is refundable". Section 17(3), O.Reg. 516/06, says only a refundable key/fob deposit is permitted under the Act, therefore, the \$200.00 charged as a deposit towards the first and last month payment of utilities constitutes an illegal charge. Also, although, the key and fob deposit may be permitted under the Act; by not refunding the amounts, the Landlord retained the money illegally and the Tenant is entitled to their return pursuant to section 135. For these reasons, the Tenant is also entitled to return of the \$50.00 key and \$100.00 fob deposits.
22. The case 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 Carswell Ont 2747, Court File No. 142/07 (Div. Ct.) (Jennings, Pitt, and Molloy JJ.)). However, a tenancy agreement can be void due to a material misrepresentation that caused the tenant to enter into the tenancy agreement (*Opara v. Cook*, 2008 CanLII 22923 (ON S.C.D.C.))

23. I accept the Tenant's uncontested testimony that she would not have signed the lease had it not been for the Landlord's confirmation that no more adult/middle-aged men would be living there. I find this was a fundamental requirement of the Tenant and as such, goes to the heart of the tenancy agreement; by not respecting this condition, the Landlord made a material representation that voids the tenancy agreement. Also, by not returning the funds, the Landlord retained money contrary to the Act, and/or substantially interfered with the Tenant's lawful right to have it returned. For all these reasons, the Tenant is also entitled to reimbursement of the first month rent paid in the amount of \$998.00.
24. Therefore, based on the above, the Tenant is entitled to return of the full \$4,342.00 paid to the Landlord.
25. Since the Tenant is successful in her application, she is further entitled to reimbursement of the application filing fee.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$4,390.00. This amount represents:
 - \$4,342.00 for the Landlord acting contrary to the Act.
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by April 11, 2026.
3. If the Landlord does not pay the Tenant the full amount owing of \$4,390.00 by April 11, 2026, the Landlord will owe interest. This will be simple interest calculated from April 12, 2026, 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.

March 31, 2026
Date Issued

Diane Wade
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.

