



Order under Section 135 Residential Tenancies Act, 2006

Citation: Patel v Kliber, 2026 ONLTB 27256

Date: 2026-04-02

File Number: LTB-T-057300-25

In the matter of: 66 FORSYTH AVE N
HAMILTON ON L8S4E3

Between: Taksh Patel Tenant

And

Jacek Kliber Landlord

Taksh Patel (the 'Tenant') applied for an order determining that Jacek Kliber (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on February 17, 2026. The Tenant and the Landlord attended the hearing.

Determinations:

1. The Tenant's application alleges that the Landlord did not use the last month's rent deposit of \$800.00.00 to pay for the last period of the tenancy and that the Landlord did not return the rent deposit to the Tenant.
2. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.
3. The following facts were not in dispute:
 - the rental unit is a bedroom in a house, located in the basement at 66 Forsyth Avenue North in Hamilton;
 - there was a verbal agreement between the parties that the Tenant would rent the rental unit when it became available and no specific move in date was provided;
 - the Landlord collected a deposit of \$1,600.00, on or about August 27, 2024, which was for the first and last month's rent; and
 - there was a verbal agreement that the Tenant would move into a bedroom in another home owned by the Landlord, located at 112 South Oval in Hamilton, and reside there on a temporary basis until the rental unit became available.

4. It was the Tenant's evidence that he was going to McMaster University and was looking for housing close by. He saw that there was room for rent at 66 Forsyth Avenue North and proceeded to set up an appointment to view the room. At the time of the viewing, there was an international student living there but the Tenant was told that they would be vacating soon.
5. However, on September 1, 2024 the Tenant's mother received a message from the Landlord that the room had not been vacated and the Landlord offered the Tenant a different room for the time being at 112 South Oval. The Tenant stated that, in the message, the Landlord promised that the Tenant could move into the room at 112 South Oval without having to pay rent. The Tenant tendered a text message from the Landlord, dated September 2, 2024, in support of his testimony. The message stated, in part, the following:

...he can use that room until Forsyth opens up when the current tenant flies back to Italy. This way he gets to start his university without the hassle of five hours commuting. No cost to you except utilities will be split for the month amongst everyone'...

6. The Tenant was agreeable and moved into a room at 112 South Oval on September 2, 2024. The Tenant stated that the room was a bit smaller and further from the university but was otherwise fine. He lived in the room until October 20, 2024.
7. On October 20, 2024, the Landlord sent a message advising that the rental unit was still not vacant but that the master bedroom with ensuite in the same property had become available. The Tenant went to look at the master bedroom but decided not to take it and moved out of 112 South Oval the same day.
8. For the most part, the Landlord did not dispute the evidence of Tenant. The Landlord stated that he knew the rental unit would become available but was not sure what date and communicated this to the Tenant and his mother.
9. The Landlord did not dispute that he told the Tenant's mother that the Tenant could stay in the room at 112 South Oval until the rental unit was available at no extra cost.
10. It was the Landlord's evidence that the Tenant's mother suggested that the Tenant would prefer the master bedroom unit at 66 Forsyth Avenue North and so when it became available, it was offered to the Tenant to move in. The Landlord stated that there was an agreement that the Tenant would take the master bedroom unit and move in. He testified that the Tenant attended at the rental unit with his father and started moving boxes in on October 20, 2024. However, approximately 30 minutes later, the Tenant's father approached the Landlord and said the Tenant did not want to move in. The Landlord opposed this on the basis that they had an agreement for the Tenant to move in the master bedroom. In response, the Tenant's father stated that the Landlord had the deposit.
11. It was the Landlord's view that the rent for 112 South Oval was paid for, specifically the months of September and October 2024, by the \$1,600.00 he collected from the Tenant for the first and last month's rent. In this regard, the Tenant lived in the unit at 112 South Oval for two months and failed to give the Landlord any notice that he was moving out on October 20, 2024. In light of this, he felt he was entitled to keep the last month's rent deposit.

Analysis

12. Subsection 107 (1) of the *Residential Tenancies Act, 2006* (the 'Act') states that a landlord shall repay the amount received as a rent deposit in respect of a rental unit if vacant possession of the rental unit is not given to the prospective tenant.
13. However, there is an exception to this. Subsection 107 (2) of the Act states that, despite subsection (1), if the prospective tenant, before he or she would otherwise obtain vacant possession of the rental unit, agrees to rent a different rental unit from the landlord, the landlord may apply the amount received as a rent deposit in respect of the other rental unit; and the landlord shall repay only the excess, if any, by which the amount received exceeds the amount of the rent deposit the landlord is entitled to receive under section 106 in respect of the other rental unit.
14. Based on the evidence and submissions provided, I find that the parties agreed that the Tenant would rent the unit at 112 South Oval. While I accept that this was meant to be on a temporary basis, I am not satisfied based on the evidence provided that it was to be on a rent-free basis as suggested by the Tenant. In my view, the messaging from the Landlord was clear that he would let the Tenant move into 112 South Oval without collecting any further charges or deposits so that the change in units would be no cost to the Tenant.
15. For these reasons, I find that the Landlord was not required to return the rent deposit to the Tenant. Accordingly, the application must be dismissed.

It is ordered that:

1. The Tenant's application is dismissed.

April 2, 2026
Date Issued

Rachel Gibbons
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.