



**Order under Section 135
Residential Tenancies Act, 2006**

File Number: LTB-T-073907-25

In the matter of: Basement Rm 1, 18 Falmouth Ave
Scarborough, Toronto ON M1K4M4

Between: Fazal Kamal Qasim Tenant

And

Amita Biswas Landlord

Fazal Kamal Qasim (the 'Tenant') applied for an order determining that Amita Biswas (the 'Landlord') collected or retained money illegally. (T1 application)

This T1 application was heard by videoconference on March 24, 2026.

Only the Tenant attended the hearing.

As of 10:14 am, 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.

I raised a preliminary issued about the rental unit address. The Tenant was able to confirm that the tenancy in question was supposed to be for one room in the basement apartment of 18 Falmouth Ave, not the whole house. With the concurrence of the Tenant, I amended the style of cause to identify the rental unit more precisely. The title of proceedings above reflects this correction.

Determinations:

1. The allegations in the T1 application are that the Landlord collected or retained money illegally stemming from the parties having entered into a tenancy agreement for the rental unit, but the Landlord did not allow the Tenant to move in and refused to return the rent deposit he paid her.
2. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the T1 application is dismissed.
3. The Tenant testified that he had agreed to rent the rental unit from the Landlord for a September 1, 2025 move-in date. He said he e-transferred the Landlord a \$600.00 rent

deposit on August 15, 2025 and submitted exhibit TT#1(a+b) into evidence, which prove he paid the rent deposit.

4. The Tenant testified there was no signed lease or anything in writing to evidence the tenancy agreement they had reached orally. However, he affirmed the oral agreement for the tenancy was indeed reached mutually between the parties. He explained the Landlord's son lived in the upstairs unit and the separate basement apartment below was where he would share the apartment with two or three other tenants.
5. The T1 application stated that shortly after paying the rent deposit, an unexpected emergency had happened and he informed the Landlord he could no longer move into the unit as they had agreed.
6. He then requested the rent deposit back from the Landlord who refused to give it back to him. The Tenant stated he tried to follow-up with the Landlord a number of times, and the Landlord blocked his calls.
7. In support of his testimony about following-up, the Tenant submitted exhibit TT#2(a+b), which is a copy of a text-message sent by him to the Landlord on or about September 4, 2025. TT#2 essentially sets out the claim made in the T1 application.
8. I asked the Tenant about the nature of the emergency which led him to decide against moving in. The Tenant said that on or about July 27, 2025, he fractured his arm and had to leave his employment at Pizza Hut, which led him to going on Employment Insurance (EI). He also stated his sister was scheduled to marry in India in December 2025 and he wanted to travel to India well before December, to attend her wedding.
9. The Tenant confirmed that he viewed the rental unit and paid the \$600 deposit in mid-August 2025, well after he had fractured his arm, and the resulting EI situation.
10. Before me, the Tenant ended up admitting there was no sudden emergency that caused him to decide against moving in on September 1, 2025.
11. The Tenant confirmed he told the Landlord of his change of mind on or about August 27, 2025, just five days before the tenancy was supposed to start. I asked the Tenant for the Landlord's response when he told her of his change of mind. The Tenant stated the Landlord told him she did not agree with his decision as they had an agreement for the rental unit tenancy which she wanted to proceed with. I note that the Tenant did not claim that the Landlord refused to allow him to proceed with the tenancy, but after telling her he would not move in on September 1st, she deliberately stopped communicating with him after that date,
12. The Tenant concluded his testimony by stating he ended up travelling to India on or about September 10, 2025. He said he stayed there then until December 2025, when he attended his sister's wedding.
13. The Tenant made no submission on what happened afterward with the rental unit and the Landlord.

14. Subsection 107(1) of the *Residential Tenancies Act, 2006* (the ‘Act’) sets out the Landlord’s responsibility to return a rental deposit if vacant possession is not given to the Tenant. It states:

“107(1). 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”.

15. I considered the Tenant’s uncontested testimony and evidence he submitted. The T1 application was based on the claim that the Landlord had refused to allow the Tenant to move in. I find this was not the case at all. I find it was the Tenant who decided not to proceed with the tenancy five days before the tenancy was supposed to begin. The Landlord was against cancellation and did not refuse or prevent the Tenant from starting the tenancy, based on the Tenant’s own submissions.
16. For my findings above, I rely on *Musilla v. Avcan Management Inc.*, 2011 ONCA 502 in which the Court of Appeal considered the proper interpretation of subsection 107(1) of the Act. In quick summary, the Court of Appeal agreed that subsection 107(1) of the Act should not apply when a landlord is willing/able to provide possession, but the tenant refuses to move in.
17. Continuing to assert the claim of the illegal collection or retention of money paid under the T1 application, the Tenant stated an unexpected emergency had prevented him from moving into the rental unit on September 1, 2025. This also was not the case. The Tenant’s fractured arm and EI source of income were already present when he viewed the rental unit and entered into an oral agreement with the Landlord for the rental unit. Further, the Tenant’s desire or plan to travel to India for his sister’s wedding in December 2025 was certainly not an emergency situation.
18. Thus, I find the “emergency” claim had/has no basis for its assertion. I also note the Tenant made no other submission relating to the illegal collection or retention of money claim.
19. I was satisfied from the Tenant’s testimony that the oral tenancy agreement was indeed reached between him and the Landlord through mutual means. This oral agreement was a binding agreement for the following reasons. The Landlord offered the rental unit with terms and lawful purpose that the Tenant accepted. The Tenant then paid a rent deposit of \$600 which under basic contract law is “consideration” that signifies that something of value exchanged between the parties. Finally, it was clear both parties had the legal capacity to enter into a tenancy agreement (meeting landlord and tenant definitions under the Act).
20. It is clear the Tenant changed his mind unilaterally about starting the tenancy and he tried to cancel his tenancy agreement simply by informing the Landlord — however, the Landlord was evidently not in agreement to have the tenancy agreement cancelled and still wanted to proceed. Basic contract law does not allow for one party to unilaterally change terms of a binding agreement, especially material terms such as was the case here.
21. I was unable to determine what the real motivation for cancellation was, but on a balance of probabilities, I would say it more likely had to do with the Tenant’s plans to travel to India, and not because of an “emergency”.

22. As there was/is no substantiated basis of claim for the T1 application, the application must fail.

It is ordered that:

1. The Tenant's T1 application is dismissed.

April 9, 2026
Date Issued

Alex Brkic
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.