



Order under Section 135 Residential Tenancies Act, 2006

File Number: LTB-T-074164-25

In the matter of: Unit 1, 179 Major Street
Toronto ON M5S2K9

Between: Angeline Najla Nijmeh Tenant

And

Irena Firchuk Landlord

On September 5, 2025, Angeline Najla Nijmeh ('ANN' or the 'Tenant') applied for an order determining that Irena Firchuk ('IF' or the 'Landlord') collected or retained money illegally. (T1 application)

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

The Tenant, the Landlord and the Landlord's Legal Representative, Leo Corsetti ('LLR'), attended the hearing. Benjamin Dunn ('BD') was called forward as a witness during the hearing. The Tenant consulted with Tenant Duty Counsel prior to the commencement of the hearing.

LLR raised a preliminary issue relating to the Tenant's disclosure. Specifically, the Tenant submitted her disclosure into the LTB, but never served the Landlord or LLR with any of it. This does not comply with the LTB's Rule 19.1. After taking brief submissions, I indicated I would allow the Tenant to rely on her disclosure as submitted into the LTB, and if the Landlord had any specific objection to something being adduced that was objectionable, I would hear the objection at that time.

Determinations:

1. The T1 application makes two claims: (i) the parties entered into a tenancy agreement but the Landlord did not allow the Tenant to move in, thus the Tenant is seeking reimbursement of the first month's rent and last month's rent (LMR) deposit totalling \$5,600.00; and (ii) the Landlord did not apply the LMR deposit of \$2,800.00 to the last month of tenancy and did not return the LMR deposit to the Tenant. The Tenant is also seeking reimbursement of the \$48.00 T1 filing fee.
2. The two parties' separate testimonies (including cross-examination and redirect) actually converged to produce the following facts:

- i. the Tenant viewed the rental unit on or about August 22, 2025;
 - ii. on or about August 26, 2025, the parties signed a one-year term (Sep 1/25 to Aug 31/26) lease for the rental unit as it had been shown to the Tenant;
 - iii. a first month's rent and a last month's rent deposit totalling \$5,600.00 were paid by the Tenant to the Landlord;
 - iv. keys to the rental unit were made available to the Tenant on August 31, 2025 so the Tenant could take possession;
 - v. the Tenant moved in only a few of her belongings on August 31, 2025 (ANN and her mother) and then again twice on September 3, 2025 (ANN with her sister and a friend, and then with her partner);
 - vi. ANN complained of maintenance issues by speaking to BD (and once to IF) on August 31, 2025, and continuing up to September 5, 2025;
 - vii. the Tenant told the Landlord of her final decision to not continue with the tenancy on September 4, 2025; and
 - viii. the Landlord made an offer to the Tenant on March 19, 2025, to reimburse the Tenant the \$2,800.00 LMR deposit, which the Tenant declined to accept.
3. ANN's testimony focused specifically on four maintenance issues which she stated led to her decision to not continue with the tenancy. The first was a mouldy/strong mildew odour in the unit. The second was the presence of screws in certain walls likely left behind by previous tenants. The third was three of the windows did not have screens. The final issue was the absence of a smoke/CO detector that was supposed to be mounted on the ceiling.
 4. ANN agreed that BD did remedy the screws/wall issue on September 3, 2025.. ANN also stated that BD also saw to fitting two of the three windows with screens, but that one window had still remained screenless. ANN testified that BD told her the musty smell might have come from the heat pumps in the building and that he would look into that issue, but she believed this was not remedied by BD or the Landlord.
 5. ANN testified she asked BD and the Landlord if the unit had been cleaned and whether the unit was in compliance with building code standards. She was not satisfied with the Landlord's response to her concerns, and it was ANN's position the rental unit was not habitable in the sense that it was not up to health and safety standards.
 6. When she told the Landlord of her decision to not continue with the tenancy, ANN asserted that BD and the Landlord refused to return her September 2025 rent and her LMR deposit. ANN did confirm the Landlord indicated that if the unit could be re-rented for October 1, 2025, then at least the LMR deposit could be returned. She also confirmed that she received a copy of the LTB's N9 form from BD, which BD asked her to fill in and serve if she truly intended not to continue with the tenancy. ANN stated she decided not to fill in/sign the N9 form. ANN submitted 13 pages of text messages (from August 31, 2025 to September 5, 2025) as exhibit TT#1 in support of her testimony.
 7. As part of ANN's testimony, I must note she made a very brief statement that she had felt uncomfortable with BD in that on September 3, 2025, BD had been "intrusive" because questions he asked of her about her partner made her feel she was under "surveillance". However, this allegation went no further as nothing was presented in any substantive fashion by the Tenant, and certainly not in respect of the section 135 claim. As such, I gave no weight to this statement other than noting it for the record.

8. BD identified himself as the Landlord's son, who was/is the property manager for the rental unit building. He described the rental unit building as comprising two storeys of residential and commercial spaces. Specifically, he said the lower level is a commercial unit and the upper level has two units, unit 1 being the rental unit in question and unit 2 being the unit that BD lives in.
9. BD testified that he had a contracted cleaner attend the rental unit on August 27, 2025 to clean the unit. He stated that on August 27, 2025, ANN had asked for permission to paint one of the rooms an "off-white" colour to which he consented. On August 31, 2025, BD stated ANN asked to get early access and he placed a lockbox at the door so ANN could take possession on August 31, 2025.
10. BD testified that on September 2, 2025, he had a heat pump technician attend the unit who inspected and confirmed the system was in proper order and there was no mould present anywhere.
11. BD stated his belief that the mouldy/mildew odour might have been some odour left behind by the previous tenant (who had an infant child in her care), but in truth BD was unable to say where the odour had come from. He was only able to state that there was no evidence of any actual mould found in the unit.
12. Also on September 2, 2025, BD stated he was able to pop out two of the window screens from his own unit to install them over two of the identical windows in the rental unit. The third window, however, required a measurement to be taken as he had to order a custom-sized screen from a Canadian Tire store, which was to be delivered in due course around September 4/5, 2025.
13. Finally, BD testified that on September 4, 2025, he found the rental unit smoke/CO detector sitting in a kitchen cabinet drawer; he surmised it was placed there by the previous tenant. BD affirmed he placed new batteries into the detector and installed it immediately onto the ceiling fixture that was there for the detector.
14. When ANN told him on September 4, 2025 of her decision to not continue with the tenancy, BD testified he alerted ANN to her obligations under the lease. If she was intent on breaking her lease, has said the Landlord would try to re-rent it if the Tenant would release the Landlord of the Landlord's obligations by signing an N9 notice. BD said he told ANN that if the unit could be advertised and re-rented say for October 1, 2025, then the Landlord could return \$2,800.00 (the LMR deposit) of the \$5,600.00 paid.
15. Under cross-examination, BD rejected the Tenant's suggestion that the Landlord failed to undertake a "health and safety" inspection of the unit. BD stated no such inspection was ever needed because there have been no health or safety issues.
16. BD testified the Landlord nonetheless went promptly about minimizing losses by finding new tenants for the unit. He confirmed that three students currently live in the rental unit as of October 1, 2025. When asked whether the new tenants have complained of any maintenance issue to date, BD responded that "yes", the tenants did complain once about the electric baseboards, which needed some minor repair.

17. IF was cross-examined with one question posed by the Tenant. IF stated that as far as she was aware, the rental unit was fully “up to code” so there were no health or safety issues with the unit.

Analysis

(i) Landlord did not give vacant possession claim

18. For quick reference, 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”.

19. The case authority for this part of the Act comes from *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.
20. Based on the foregoing, I find that the parties had mutually entered into a one-year lease for the rental unit, with the rental term starting on September 1, 2025 and with September 2025 rent being paid and with an LMR deposit being collected by the Landlord.
21. I also find the Landlord indeed gave vacant possession of the rental unit to the Tenant and the Tenant indeed took possession of the unit on August 31, 2025, when keys were made available to her (upon the Tenant’s request for early entry).
22. It was clear, therefore, that T1 claim of the Landlord refusing to allow the Tenant to move in, or the Landlord interfering or preventing her from moving in, was simply not the case at all. This means BD’s and the Landlord’s actions did/do not fall subject to subsection 107(1) of the Act.
23. Instead, I find it was the Tenant who decided not to proceed with the tenancy after the tenancy agreement was mutually reached, after she gained vacant possession to start the tenancy and after she had begun to move a few of her things into the rental unit.
24. In effect, I find the Tenant tried to rescind or repudiate her one-year lease/tenancy agreement unilaterally, based on minor maintenance issues which I find were addressed and resolved by the Landlord in a reasonable and timely fashion. To be clear, the Landlord had the rental unit cleaned, had repaired the screw/wall issue, had a heat pump technician verify the heat/air-conditioning system was working properly and that there was no mould, and had installed a properly working smoke/CO alarm. This was all done within about one week of the Tenant first raising these issues as concerns.
25. None of the maintenance issues raised was proven on a balance of probabilities to be a serious health or safety issue that could come close to the threshold of a serious breach of the Landlord’s responsibilities under the Act or of any material covenant under the tenancy agreement/lease the parties had entered into. This means that these maintenance issues

were minor and not substantive or serious enough for the Tenant to claim the tenancy she had entered into could no longer continue.

26. Going further, I must also note that under basic contract law, one party cannot unilaterally change any material element of a mutually entered into agreement.
27. I refer to the Tenant's own exhibit TT#1, which provided me good evidence of the professional demeanor and responsiveness that BD showed in trying to deal with, and to accommodate, ANN's decision to leave. BD was clear that the Landlord was not in favour of terminating the tenancy but if the Tenant really wanted to leave, the Landlord indicated they would try to re-rent the unit as soon as possible, and minimize the Landlord's losses.
28. I find Landlord acted properly and reasonably in my view. I make reference to sections 43 & 47 (relating to termination notices), subsection 88(1)(1) (relating to the absence of a valid notice to terminate) and section 16 (about minimizing losses) of the Act, which are the statutory provisions to apply in this case. As the Tenant did not give proper notice to terminate in accordance with the Act, the rent for the month of September 2025 is not refundable to the Tenant, as the Landlord was only able to re-rent the unit for October 1, 2025.

(ii) LMR deposit claim

29. The LMR deposit, on the other hand, is refundable based on the facts given above for this case. This will be ordered to be paid back to the Tenant, as set out below.
30. I see that the Landlord's stated position all along was to refund the LMR deposit. This was expressed by BD to ANN in TT#1 (pg 12 therein) when he assured her the Landlord would refund her LMR deposit if they could re-rent the unit for October 1, 2025 and then again by the Landlord (via LLR) on March 19, 2025 when they offered to refund the LMR deposit (which the Tenant refused to accept).
31. In accordance with the LTB's Rule 23.1 and the LTB's Interpretation Guideline no. 3, I believe the Tenant is entitled to be reimbursed of the \$48.00 filing fee.
32. I say this because the Tenant filed her T1 application when it was not clear she would be paid her LMR deposit back. The T1 was filed on September 5, 2025. In my view, this was a legitimate claim to make at that time.
33. I understand that BD said the LMR deposit would be paid back if the Landlord had been successful in renting the unit by October 1, 2025. Well, the Landlord was successful in this regard, but nothing from the Landlord was submitted to show any real attempt to pay back the LMR deposit occurred, not until five days before this hearing took place, presumably as an offer to settle or resolve the T1.
34. A late offer to pay what could have been paid much earlier should not be held against the Tenant at this juncture, as I see it. Had the Landlord shown me that a proper attempt to pay the LMR deposit was made say in October 2025, then I might have seen this reimbursement of the filing fee differently.

35. As a result, the T1 application was properly brought before me, and since the Tenant was successful on one of her two claims, the filing fee should be paid back to her by the respondent, the Landlord.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$2,048.00. This amount represents:
 - \$2,800.00 for the last month's rent deposit; and
 - \$48.00 for the cost of filing the T1 application.
2. The Landlord shall pay the Tenant the full amount owing by April 25, 2026.
3. If the Landlord does not pay the Tenant the full amount owing by April 25, 2026, the Landlord will owe interest. This will be simple interest calculated from April 26, 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.

April 14, 2026
Date Issued

Alex Brkic
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.