



Order under Section 135 Residential Tenancies Act, 2006

File Number: LTB-T-077724-25

In the matter of: 626, 1 JARVIS ST
HAMILTON ON L8R0A8

Between: Adedeji Alabi Tenant

And

Saleem-Uz-Zaman Farooqui Landlord
Ramesh Agarwalla

Adedeji Alabi (the 'Tenant') applied for an order determining that Saleem-Uz-Zaman Farooqui and Ramesh Agarwalla (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on March 31, 2026.

The Landlords and the Tenant attended the hearing.

On consent, the parties agreed to amend the application to remove EXP Realty and replace with Ramesh Agarwalla as Landlord.

Agreed Facts:

1. The parties agree that the Tenant vacated the rental unit on September 30, 2025. Prior to vacating, the parties agreed that the Tenant paid an illegal rent increase. Mr. Farooqui agreed to pay the Tenant the amount sought of \$255.00 as a result.
2. The parties also agreed that the Tenant paid the Landlord last month's rent deposit on May 1, 2024 in the amount of \$1,699.00. The Landlord agrees they did not pay the Tenant interest on this deposit. Interest on the deposit from May 1, 2024 to September 30, 2025 is \$57.36.

Determinations:

3. The only remaining issue for the Board to determine is whether the Landlord owes the Tenant the return of last month's rent deposit. The Board is tasked with determining whether the tenancy terminated on September 30, 2025 or October 31, 2025.

Testimony of the Adedeji Alabi

4. The Tenant testified that on September 2, 2025, he served the Landlord with an N9 Notice with a termination date of October 31, 2025. The Tenant further testified that he had previously sent the Landlord a text message on September 1, 2025, advising of his intention to vacate the rental unit. Both the N9 Notice and the text message were entered into evidence.

5. On September 6, 2025, Mr. Agarwalla, who is Mr. Farooqui's real estate agent, sent a text message to the Tenant, which was entered into evidence. The message stated as follows:

"Good evening Deji, hope you are doing very well. Couple of people who saw the unit. They have asked me if it is possible to move on October 1 so I just wanted to double check with you that you have an option to move out early or October 31 is the earliest you can move out. Please let me know so that I can respond back to these potential tenants."

6. On September 7, 2025, the Tenant replied to Mr. Agarwalla by text message, which was entered into evidence. The Tenant wrote:

"Hi Ramesh, I'm good thanks. So I'm still closing on my new place & was working towards moving on Oct 31. There's a small possibility I might be able to move on October 1. I will let you know if that's possible before Friday. Thanks."

7. On September 15, 2025, the Tenant informed Mr. Agarwalla by text message that he would be vacating the rental unit on October 1, 2025. In response, on September 16, 2025, Mr. Agarwalla sent a text message to the Tenant, which was entered into evidence, stating:

"Good morning Deji, I hope you're doing very well. Tried calling you, but your phone did not go through. As I had communicated to you before, we did not find anybody for October 1 as of now and you have this unit until October 31 with you. So you are free to either give the keys on October 1 or hold it with you until October 31. There will be no rent adjustment until October 31. Please let us know about your move accordingly. Thank you."

8. The Tenant testified that he had paid rent for September 2025. The Tenant committed to moving out by October 1, 2025 and had found a new unit to rent. On September 27, 2025, the Tenant sent a text message to Mr. Farooqui, which was entered into evidence, stating:

"I've paid for the unit till October 31st, and I plan to sublease it for October to recover my last month's rent. So let's hope you can rent the place out for Oct 1st."

9. On September 28, 2025, Mr. Farooqui responded to the Tenant by text message, which was entered into evidence, stating:

"Just to clarify Deji... sublease is not deemed possible or a viable option... Please let me know if you're handing over the keys on Oct 1st or want to keep until Oct 31st... thanks."

10. The Tenant testified that he understood from the September 28, 2025 text message that the Landlord was refusing to permit a sublet. As a result, the Tenant vacated the rental unit on September 30, 2025, and returned the keys to the Landlord.
11. The Tenant's position is that the tenancy terminated on September 30, 2025, and that he is therefore entitled to the return of his last month's rent deposit, having already paid for the month of September.

Testimony of Saleem-Uz-Zaman Farooqui

12. The Landlord does not dispute the sequence of events as described by the Tenant. However, the Landlord takes issue with the Tenant's ability to sublet the rental unit and testified that the tenancy agreement does not permit subletting. The Landlord further submitted that he never requested that the Tenant vacate the rental unit and never agreed to an early termination of the tenancy.
13. Finally, the Landlord testified that Mr. Agarwalla is his real estate agent and should not be named as a Landlord in this application.

Testimony of Ramesh Agarwalla

14. Mr. Agarwalla testified that at all material times he was acting as a real estate agent only and did not have the ability to agree to terminate the tenancy. He had helped secure the Tenant prior to the tenancy.

Analysis

Is Mr. Agarwalla a proper party?

15. Section 2(1) of the *Residential Tenancies Act* (the Act) defines the term landlord as follows:

"landlord" includes,

 - (a) the owner of a rental unit or any other person who permits occupancy of a rental unit, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit,
 - (b) the heirs, assigns, personal representatives and successors in title of a person referred to in clause (a), and
 - (c) a person, other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent
16. Based on the evidence before the Board, I am not satisfied that Mr. Agarwalla permitted occupancy of the rental unit. Having considered the evidence as a whole, including the relevant text messages, I find on a balance of probabilities that Mr. Agarwalla was merely relaying information between Mr. Farooqui and the Tenant.

17. I further find that showing the unit to the Tenant prior to the commencement of the tenancy and preparing the lease agreement, both of which are routine functions of a real estate agent, do not constitute permitting occupancy within the meaning of the Act.
18. As a result, I do not find that Mr. Agarwalla is a landlord in this application.

When did the tenancy end?

19. The Tenant submits that the tenancy should terminate on September 30, 2025, for two reasons: first, that the Landlord agreed to an early termination of the tenancy based on the text message exchanges involving Mr. Agarwalla, and second, that the Landlord failed to permit the Tenant to sublet the rental unit.
20. With respect to the first ground, I am not persuaded that the Landlord agreed to an early termination of the tenancy. The text message evidence demonstrates that the Tenant himself did not believe the tenancy had been terminated. In particular, in his September 27, 2025 text message to the Landlord, the Tenant acknowledged that he had paid rent until October 31, 2025 and stated that he intended to sublet the rental unit for October. This communication suggests that the Tenant understood there was no agreement to terminate the tenancy and that he retained possession of the rental unit until October 31, 2025.
21. With respect to the second ground, it is well established that a landlord cannot contract out of the Act. Section 4(1) of the Act provides that a provision in a tenancy agreement that is inconsistent with the Act is void.
22. Section 97 of the Act states:

97 (1) A tenant may sublet a rental unit to another person with the consent of the landlord.
23. Section 97(2) of the Act states:

97(2) A landlord shall not arbitrarily or unreasonably withhold consent to the sublet of a rental unit to a potential subtenant.
24. Based on the evidence, I am satisfied that the Tenant sought to sublet the rental unit and that the Landlord generally refused to permit said sublet. While the lease agreement prohibits subletting, the Act permits a tenant to sublet the rental unit. Accordingly, the provision of the lease prohibiting subletting is inconsistent with the Act and is therefore void.
25. Where a tenant believes that a landlord has arbitrarily withheld consent to a request to sublet a rental unit, the Act provides specific rights and remedies to a tenant pursuant to subsection 98.

26. Section 98 of the Act states:

98 (1) A tenant or former tenant of a rental unit may apply to the Board for an order determining that the landlord has arbitrarily or unreasonably withheld consent to the assignment or sublet of a rental unit to a potential assignee or subtenant.

27. Section 98(3) of the Act states:

98 (3) If the Board determines that a landlord has unlawfully withheld consent to an assignment or sublet in an application under subsection (1), the Board may do one or more of the following:

1. Order that the assignment or sublet is authorized.
2. Where appropriate, by order authorize another assignment or sublet proposed by the tenant.
3. Order that the tenancy be terminated.
4. Order an abatement of the tenant's or former tenant's rent.

28. The Tenant did not file an A2 application seeking a determination as to whether the Landlord arbitrarily or unreasonably withheld consent to the proposed sublet. Filing such an application is a procedural step that must be taken before the Board can determine whether the tenancy should be terminated as of an earlier date.

29. Despite the Tenant's failure to file an A2 application, I am not satisfied that the Tenant intended to sublet the rental unit for the period of October 1 to 31, 2025. Section 2(2) of the Act provides that a sublet occurs only where:

2 (2) For the purposes of this Act, a reference to subletting a rental unit refers to the situation in which,

- (a) the tenant vacates the rental unit;
- (b) the tenant gives one or more other persons the right to occupy the rental unit for a term ending on a specified date before the end of the tenant's term or period; and
- (c) the tenant has the right to resume occupancy of the rental unit after that specified date.

30. Having regard to the totality of the evidence, I find that the Tenant did not intend to resume occupancy of the rental unit after vacating on September 30, 2025. The Tenant led no evidence at the hearing to establish that, had a suitable subtenant been found, they would have moved back into the rental unit prior to October 31, 2025, or that they even contemplated doing so. Accordingly, even if the Landlord generally withheld consent to the proposed sublet, I find that the Tenant did not genuinely intend to sublet the rental unit within the meaning of the Act.

31. As a result, the tenancy terminated on October 31, 2025, and the last month's rent deposit in the amount of \$1,699.00 shall be applied to the rental period from October 1 to October 31, 2025.

It is ordered that:

1. Mr. Agarwalla is removed as a landlord in the application.
2. The total amount the Landlord Mr. Farooqui shall pay the Tenant is \$360.36. This amount represents:
 - \$255.00 for excess rent collected.
 - \$57.36 for interest on the last month's rent deposit.
 - \$48.00 for the cost of filing the application.
3. The Landlord shall pay the Tenant the full amount owing by April 19, 2026.
4. If the Landlord does not pay the Tenant the full amount owing by April 19, 2026, the Landlord will owe interest. This will be simple interest calculated from April 20, 2026 at 4.00% annually on the balance outstanding.

April 8, 2026
Date Issued

Brett Lockwood
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.