



Order under Section 135 Residential Tenancies Act, 2006

File Number: LTB-T-096622-25

In the matter of: 204, 55 Talos
Ottawa ON K0A2Z0

Between: Pamela Wilvers
Paul Wilvers
Tenants

And

B. Riley Farber Inc in its capacity as court appointed
receiver of 9114785 Canada Inc. -carrying on business
as Silver Maple Developments – care of Sleepwell
Property Management
Landlord

Pamela Wilvers and Paul Wilvers ('MsPW' and 'MrPW' or collectively, the 'Tenants') applied for an order determining that Victoria Meekin (the 'Landlord') collected or retained money illegally. (T1 application)

This T1 application was heard by videoconference on March 31, 2026.

The Tenants, the Landlord's Legal Representative, Anne Skelly ('LLR'), and the Landlord's Agent, Victoria Meekin ('LLA'), attended the hearing.

As a preliminary matter, LLR submitted that LLA is not the Landlord as named in the T1 application. LLR stated LLA is an employee of Sleepwell Property Management, which is the Landlord's acting property manager company. LLR then explained that the rental unit property is the subject of bankruptcy proceedings, which have placed the property under the care of the court appointed receiver, B. Riley Farber Inc. I find it is B. Riely Farber Inc and its property management company who are the landlords under this tenancy at bar. LLR sent the LTB a copy of the full name of the current landlord and sent a copy to the Tenants. With no objections being raised for consideration, I accepted the corrected name of the Landlord who should be the one named under this application, and have amended the title of proceedings above to reflect this change.

Determinations:

1. As explained below, the Tenant proved one of two allegations contained in the T1 application on a balance of probabilities. Therefore, the claim for the \$1,750.00 rent deposit is denied but the claim for the \$50.00 key deposit is successful. The order below reflects this result and includes the reimbursement of the \$48.00 filing fee.

2. The parties agreed that the Tenants made their payments in respect of the rental unit to Sleepwell Property Manager who manages the rental unit property. They also agreed the Tenants paid a rent deposit of \$1,750.00 and a key deposit of \$50.00 to the Landlord. Documents submitted into evidence to support these facts were TT#1 (Sept 25/2026 text messages exchange) and TT#2 (Sept 26/2026 e-transfer confirmation and application approval).
3. LLR submitted that the \$50.00 key deposit claim is not in dispute as the Landlord agrees that deposit needs to be returned; she added the Landlord is fully prepared to return that deposit to the Tenants.
4. MsPW provided most of the testimony for the Tenants. She was cross-examined by LLR.
5. MsPW testified that the Tenants viewed the rental unit before applying for a tenancy agreement. The Tenants submitted a rental application online on September 24, 2025 when they were informed (orally, not in writing) they would get extra storage as part of their tenancy. MsPW stated they told LLA that storage was a very important requirement for the Tenants if they were to live there.
6. When they were told their rental application was approved/accepted, MsPW said the Tenants were required to pay the two deposits in order for a lease to be drawn up and forwarded to them. MsPW confirmed that they were aware of the Landlord's position that the rent deposit was not refundable.
7. MsPW also confirmed that in her discussions with LLA, LLA gave the Tenants an option to accommodate their storage needs, because the underground parking lot did not currently have any vacancy.
8. When they received the lease, the Tenants found that no extra storage was included. MsPW testified the Tenants then promptly informed LLA they were not going to sign the lease and requested their deposits be paid back to them. This decision was made and communicated on or about September 25, 2025. MsPW stated she viewed online advertisements for rentals in the complex on September 25th and found the rental unit was still advertised for rent (exhibit TT#3), thus leading her to conclude that the rental unit was still up for possible renting.
9. LLA's testimony confirmed some of MsPW's testimony. LLA was cross-examined by MsPW.
10. LLA stated that after the Tenants viewed the rental unit and asked for a rental application. They were sent two applications (one for each tenant) and the terms in the applications clearly set out the rent deposit requirement and how it would be treated (exhibit LL#2- MsPW's filed-in/signed application). LLA confirmed that MsPW did text-message LLA three concerns about renting, as shown in exhibit TT#1. The three issues were: (i) keys; (ii) cleaning and (iii) storage. LLA referred to the reply she gave the Tenants, also set out in part in TT#1.
11. LLA said the Tenants wanted two sets of keys, not one, and LLA told them the Landlord would give them two sets. LLA informed the Tenants the Landlord has a dedicated cleaning staff that would attend the unit before the tenancy commenced. LLA then informed the Tenants that the only storage available would be in the underground parking

lot where some parking spots had wider/larger physical space for some storage by residents. LLA informed the Tenants that no underground spots were available at that time but she would place them on a waiting list for underground parking. In the meantime, LLA indicated the Tenants could be assigned an above-ground parking spot at a discounted rate.

12. LLA confirmed the Landlord sent written confirmation that the Tenants had been accepted to become tenants of the rental unit (exhibit LL#1 – September 24/2026 email message).
13. LLA confirmed the Tenants paid the two deposits and asked for a lease. LLA confirmed the Tenants then requested a return of their deposits as they had decided they would not sign the lease and not move into the rental unit on October 1, 2025. LLA testified she did not know or was able to forecast that there would be a loss of income for the rental unit. She confirmed that when a unit is rented, it takes more than 24 hours to be able to remove rental ads from “RentSync” including all other advertisement platforms the Landlord advertises over. LLA stated she is generally aware of statutory requirements and limitations respecting deposits. LLA confirmed that the Landlord was unable to re-rent the unit for October 2025, finding new tenants only afterward.
14. In final arguments/submissions, LLR provided a couple of prior LTB orders and a case law citation in support of the Landlord’s position that the claim respecting the \$1,750.00 deposit be denied. I noted that I am not bound by any prior LTB order but I do rely upon the Act and court decisions to provide authoritative direction on residential tenancy claims.

Analysis

15. The T1 application claims “Reason 2” -- i.e. the Tenants paid an illegal charge to the Landlord, the total amount of that charge being \$1,800.00 (\$1,750.00 rent deposit and \$50.00 key deposit).
16. The key deposit claim was not disputed by the Landlord and so the Tenants are successful with that claim.
17. With regard to the \$1,750.00 rent deposit, I find that first, the deposit itself which was collected by the Landlord on September 24, 2025, was lawful.
18. To be clear, sections 105 and 106 of the *Residential Tenancies Act, 2006* (the ‘Act’) confirm that the Landlord’s collection of a rent deposit was lawful. For easy reference, those sections are reproduced below.

“105 (1) The only security deposit that a landlord may collect is a rent deposit collected in accordance with section 106.

106 (1) A landlord may require a tenant to pay a rent deposit with respect to a tenancy if the landlord does so on or before entering into the tenancy agreement.

(2) The amount of a rent deposit shall not be more than the lesser of the amount of rent for one rent period and the amount of rent for one month.”
19. The only question left to be addressed/determined under the T1 claim, then, is whether the \$1,750.00 rent deposit collected by the Landlord was retained by the Landlord unlawfully.

20. On a balance of probabilities, I find that the answer is “no”, and thus I deny the T1 claim in respect of the rent deposit being retained unlawfully by the Landlord.
21. For an agreement to be a legally binding contract, it generally requires an offer and acceptance, an intention to create a legal relationship, and an exchange of consideration
22. Here, I was satisfied from the parties’ evidence that a binding tenancy agreement was indeed reached. This agreement started with the rental application that was filled in and signed by the Tenants after viewing the rental unit (LL#2). That rental application contained terms and conditions which the Tenants agreed with. The rental application in effect represented the offer by the Tenants to have them considered for a tenancy. The Landlord’s approval/acceptance of the Tenants’ rental application was communicated to them by email (LL#1 and TT#2), which September 24/2025 email contained specific rent-terms information about the rental unit the Tenants wanted to rent. For example, the monthly rent was \$1,750.00 for the rental unit. After being accepted for tenancy, but certainly before they were able to move in, the Tenants paid a rent deposit of \$1,750.00 which signified something of value being exchanged between the parties (i.e. consideration). Finally, it was clear both parties had the legal capacity to enter into the tenancy agreement (i.e. they both met landlord and tenant definitions, respectively, under the Act).
23. Concurrently, the Tenants raised three issues with the Landlord, which I find were reasonably and timely addressed by the Landlord so as to confirm the agreement that had been reached. With specific regard to the third storage issue, I am of the view that placing the Tenants on a waiting list for underground parking and the Landlord’s offer to give the Tenants discounted outside parking were good faith, successful efforts to help the Tenants realize a move-in on October 1, 2025 and to deal reasonably with their storage needs temporarily.
24. I was also satisfied that the Landlord was quite prepared to give vacant possession to the Tenants for their October 1, 2025 move-in.
25. To be clear, the Landlord did not, at any time, consent to cancelling the tenancy agreement the parties had reached. 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.
26. Subsection 107(1) of the Act sets out a 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”.
27. Nothing in the hearing was submitted to suggest that the Tenants were unable to move into the rental unit because the Landlord denied the Tenants vacant possession or that the Landlord interfered with, or prevented, the Tenants’ ability to move in. Instead, I find it was the Tenants who decided not to proceed with the tenancy five days before the tenancy was supposed to begin.

28. 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.
29. For the sake of completeness in my analysis, I also considered the Tenants' communicated decision of not moving in as a "notice" of tenancy termination (the actual lease was not adduced by either party at the hearing.)
30. Sections 44 and 47 of the Act do allow a tenant to terminate a tenancy at the end of a period of the tenancy or at the end of the fixed term by giving 60 days' notice to a landlord.
31. As no fixed-term was identified for me to review, I assumed the tenancy at bar was going to be at least a month-to-month tenancy. I find the Tenants' texted "notice" of termination, dated September 25, 2025, did not comply with the Act. To be clear, under month-to-month tenancies, a minimum of 60 days' prior notice is a strict statutory requirement.
32. As the Tenants' texted "notice" was not in compliance with the Act and the Landlord did not agree to terminate the tenancy, subsection 88(1)1. of the Act would apply.
33. Section 88 of the Act states:

"88 (1) If a tenant abandons or vacates a rental unit without giving notice of termination in accordance with this Act and no agreement to terminate has been made or the landlord has not given notice to terminate the tenancy, a determination of the amount of arrears of rent owing by the tenant shall be made in accordance with the following rules:

 - 1. If the tenant vacated the rental unit after giving notice that was not in accordance with this Act, arrears of rent are owing for the period that ends on the earliest termination date that could have been specified in the notice, had the notice been given in accordance with section 47, 96 or 145, as the case may be.*
 - 2. If the tenant abandoned or vacated the rental unit without giving any notice, arrears of rent are owing for the period that ends on the earliest termination date that could have been specified in a notice of termination had the tenant, on the date that the landlord knew or ought to have known that the tenant had abandoned or vacated the rental unit, given notice of termination in accordance with section 47, 96 or 145, as the case may be."*
34. For clarity, the references to section 96 and 145 of the Act above do not apply to this case. Section 96 of the Act relates to a tenant who attempts to assign a tenancy. Section 145 of the Act relates to a tenant living in a care home who wishes to terminate a care home tenancy. Subsection 88(1)2. of the Act (as set out above) does not apply to this case because that subsection only applies when a tenant does not give any notice at all to terminate a tenancy.
35. In the matter before me, the Tenants' "notice" falls under subsection 88(1)1. of the Act. As such, arrears are calculated to the earliest date that proper notice could have been given. This was at least a monthly tenancy running from the first day of each month to the last day of each month. So, the termination date must be the last day of a month and at least 60 days after notice was given. Therefore, the earliest termination date that could have properly been listed on a notice of termination that was served/given on September 25, 2025 would have been November 30, 2025.

36. In parallel with subsection 88(1)1., subsection 88(4) and section 16 of the Act also require the LTB to consider whether the Landlord took reasonable steps to mitigate their losses. I was satisfied that the Landlord attempted to mitigate losses by trying to re-rent the rental unit after the Tenants made their unilateral decision. (I also note as an aside that the Landlord even tried to offer the Tenants another unit to rent in another one of the Landlord's buildings that had better storage facilities immediately available.)
37. Given that the tenancy was not lawfully terminated, the Tenants remained liable for rent up to the earliest proper termination date.
38. With the Tenants not paying anything more to the Landlord, such as rent on October 1, 2025, the Landlord lawfully was permitted to use the \$1,750.00 rent deposit to cover October 2025 rent. And this is in fact what the Landlord ended up doing.
39. As the Tenants were successful in part with their T1 application, they are entitled to a reimbursement of their \$48.00 filing fee. Reference is made to the LTB's Interpretation Guideline no. 3.

It is ordered that:

1. The total amount the Landlord shall pay the Tenants is \$98.00. This amount represents:
 - \$50.00 for the key deposit collected but not returned; and
 - \$48.00 for the T1 application filing fee.
2. The Landlord shall pay the Tenants the full amount of \$98.00 owing by May 1, 2026.
3. If the Landlord does not pay the Tenants the full amount owing by May 1, 2026, the Landlord will owe interest. This will be simple interest calculated from May 2, 2026 at 4.00% annually on the balance outstanding.
4. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

April 20, 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.