



Order under Section 135 Residential Tenancies Act, 2006

Citation: Kurti v Royal York Property Management, 2026 ONLTB 6865

Date: 2026-04-27

File Number: LTB-T-077681-24

In the matter of: 501, 1040 THE QUEENSWAY
ETOBICOKE ON M8Z0A7

Between: Marina Kurti Tenant

And

Royal York Property Management Landlord

Marina Kurti (the 'Tenant') applied for an order determining that Royal York Property Management (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on May 12, December 1, December 10, 2025 and March 4, 2026. The Tenant and the Landlord's Representative, Brittney-Rose Ward, attended the hearings.

Determinations:

1. Marina Kurti ('MK') brings forth this application pursuant to section 135 of the *Residential Tenancies Act, 2006* (the 'Act'), which reads as follows:

135 (1) A tenant or former tenant of a rental unit may apply to the Board for an order that the landlord, superintendent or agent of the landlord pay to the tenant any money the person collected or retained in contravention of this Act or the *Tenant Protection Act, 1997*. 2006, c. 17, s. 135 (1). [emphasis added]

2. The first issue to be determined is whether MK is a tenant or former as defined by the Act. The Act defines a "tenant" as follows:

"tenant" includes a person who pays rent in return for the right to occupy a rental unit and includes the tenant's heirs, assigns and personal representatives, but "tenant" does not include a person who has the right to occupy a rental unit by virtue of being,

(a) a co-owner of the residential complex in which the rental unit is located, or

(b) a shareholder of a corporation that owns the residential complex; (“locataire”)

3. The rental unit is owned by Martin Pesek and managed by Royal York Property Management. As previously determined in LTB-T-077681-24-IN, issued on December 3, 2025, Royal York Property Management meets the definition of “landlord” and is properly named in this matter.
4. On August 30, 2024, MK signed the Offer to Lease Agreement (‘Agreement’), which was signed and accepted by the owner on September 1, 2024. The tenancy was to commence on October 2, 2024 for a fixed term ending on September 30, 2025.
5. On September 5, 2024, the Tenant paid the Landlord \$2,755.00 in a last month’s rent deposit, \$2,666.13 towards the first month’s rent, a \$250.00 for a key deposit, and \$145.77 for a verification fee.
6. Based on the evidence before me, I am satisfied MK was a “tenant” as of the date the Agreement was signed.
7. It was the evidence of the Tenant that despite her outreach, she heard nothing from the Landlord for approximately two weeks. She was then advised that the owner decided not to proceed with the tenancy. The Landlord refused to return the funds paid by the Tenant.
8. The Landlord submitted that the Tenant breached the Agreement because she failed to provide required documentation (employment letter, banking records, and proof of tenant insurance), a point the Tenant vehemently denied. The Landlord indicated that there are funds in the Tenant’s account which are available upon completion of a claim form.

Analysis:

9. Subsection 107(1) requires that a landlord repay the amount received as a rent deposit if vacant possession of the rental unit is not given to the prospective tenant. In *Musilla v. Avcan Management Inc.*, 2010 ONSC 5425 (CanLII), the Court found that the word “not given” suggests that it is the refusal or inability of a landlord to provide the premises that triggers the obligation to return the deposit to the prospective tenant.
10. It is the Landlord who refused to provide the premises to the Tenant. As such, the Landlord was required to return the deposits to the Tenant. Requiring the Tenant to complete a request form for the return of any funds in my view is unreasonable. Even if I were to consider the reasons behind the Landlord’s refusal, I would still find the Landlord is required to repay the amounts received.
11. I found the Tenant to be a credible witness. She provided her evidence in a straightforward, concise manner and consistent with communication between the parties. On August 30, 2024, the Landlord congratulated the Tenant on the approval of her application. I accept the Tenant provided all the documentation as required.

12. The Act applies with respect to rental units in residential complexes, despite any other Act and despite any agreement or waiver to the contrary. This mean, that despite any agreement to the contrary, the Landlord is legally required to return the last month's rent deposit in the amount of \$2,755.00 and the key deposit in the amount of \$250.00.
13. Even if I were to accept it was the Tenant's failure to provide documentation that resulted in the Landlord's refusal, I would still find the Landlord is not entitled to retain any portion of the first month's rent. The Landlord was given the opportunity to make submissions and present evidence as to any loss. No evidence was admitted indicating the Landlord was unable to re-lease the rental unit prior to the date the Tenant was entitled to take possession.
14. The Landlord also failed to make any submissions or present any evidence as to any costs they would have incurred to mitigate their losses. Owning rental properties is a commercial enterprise and if a landlord chooses to use the services of a property management company that is a cost of doing business. As such, I find the verification fee to be unreasonable.
15. Based on the evidence before me, I am satisfied the Landlord has illegally retained funds from the Tenant and shall be ordered to pay the Tenant \$5,816.90.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$5,816.90.
2. If the Landlord does not pay the Tenant the full amount owing by May 8, 2026, the Landlord will owe interest. This will be simple interest calculated from May 9, 2026 at 4.00% annually on the balance outstanding.

April 27, 2026
Date Issued

Douglas Malanka
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.