



Order under Section 135 Residential Tenancies Act, 2006

Citation: THOMAS v Iwaniuk, 2026 ONLTB 34370

Date: 2026-04-30

File Number: LTB-T-076137-25

In the matter of: 39 CARDIGAN RD
ETOBICOKE ON M8Z2W1

Between: Ryan Thomas Tenant

And

Sebastian Iwaniuk
Elizabeth Duncan Landlords

Ryan Thomas (the 'Tenant') applied for an order determining that Sebastian Iwaniuk and Elizabeth Duncan (the 'Landlords') collected or retained money illegally.

This application was heard by videoconference on March 25, 2026.

The Landlord Sebastian Iwaniuk and the Tenant attended the hearing.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay to the Tenant \$10,048.00 on or before May 11, 2026.

Illegal Deposit Collected

2. The Tenant's application was filed on the basis of illegal rent collected however, it was clear from the Tenant's application and submissions that they were requesting the return of a security deposit the Landlord illegally collected or retained pursuant to section 135 of the Act. The hearing proceeded in relation to the allegation that the Landlord illegally collected or retained a damage deposit in contravention of the Act.
3. The underlying facts in this matter are largely undisputed. The Tenant moved into the rental unit on or around July 1, 2024, and vacated the rental unit in August 2025. The parties signed a written lease that sets out a monthly rent of \$18,000.00 per month for the first 12 months of the tenancy.
4. The Tenant paid the Landlord \$90,000.00 at the commencement of the tenancy consisting of rent for the first and last two months, and a security/damage deposit of \$18,000.00.

5. The parties agreed that some of the deposit paid would be applied to rent owing during the tenancy and the balance of the deposit after the allocation of rent is \$10,000.00. The Tenant requests the return of the \$10,000.00 damage deposit being retained by the Landlord.
6. The Landlord's position is that there was damage to the stairs and a mirror in the rental unit disentitling the Tenant to the return of their deposit. The Landlord further asserts that the parties entered into a voluntary agreement for the Tenant to provide the damage deposit.

Analysis

Limitation

7. The damage deposit was collected by the Landlord at the commencement of the tenancy on or around July 2024, and the Tenant vacated the rental unit on August 31, 2025. The Tenant filed their T1 application on September 11, 2025.
8. Section 135(4) of the Act provides that a person has one year from the time money was illegally collected or retained to file an application. The issue of when the one-year limitation starts to run depends on when the money was "collected or retained".
9. In *Dollimore v. Azuria Group Inc.*, [2001] O.J. No. 4408, the Court supported the proposition that there is a distinction between collecting and retaining. For example, the last month's rent deposit is collected for the purpose of applying it at a later date, the last month of the tenancy, so the illegal retention starts on the date the landlord fails to apply the deposit to the rent.
10. When considering *Dollimore* in this case, the illegal charge is a damage deposit refundable at the end of the tenancy. A damage deposit is it intended to be applied to a future obligation so, in the context of an unlawful damage deposit there are two limitation periods: the date when the landlord collects the illegal damage deposit, and the date the Landlord retains the deposit at the end of the tenancy.
11. Accordingly, I find that the Tenant filed their application within one year of the Landlord retaining the Tenants' damage deposit.

Damage Deposit

12. Section 105(1) of the Act provides that the only security deposit permitted is a rent deposit collected in accordance with s.106.
13. Section 105(2) defines a security deposit as:

money, property or a right paid or given by, or on behalf of, a tenant of a rental unit to a landlord or to anyone on the landlord's behalf to be held by or for the account of the landlord as security for the performance of an obligation or the payment of a liability of the tenant or to be returned to the tenant upon the happening of a condition.

14. Pursuant to section 106(2) of the Act the amount of a rent deposit shall not be more than the amount of rent for one month.

15. Further, subsection 134(1)(a) says:

Unless otherwise prescribed, no landlord shall, directly or indirectly, with respect to any rental unit,

(a) collect or require or attempt to collect or require from a tenant, prospective tenant or former tenant of the rental unit a fee, premium, commission, bonus, penalty, key deposit or other like amount of money whether or not the money is refundable;

16. "Unless otherwise prescribed" is a reference to section 17 of Ontario Regulation 516/06 which lists permissible fees and deposits. Section 17 does not list damage deposits.

17. Despite the Landlord's position that the Tenant voluntarily agreed to provide the damage deposit, section 4(1) of the Act provides that a provision in a tenancy agreement that is inconsistent with the Act or regulations is void:

4 (1) Subject to subsection 12.1 (11) and section 194, a provision in a tenancy agreement that is inconsistent with this Act or the regulations is void.

18. Therefore, the parties were not entitled to agree to an illegal damage deposit pursuant to section 4(1).

19. The Landlords further assert that the Tenant caused damage in the rental unit. There was no application filed by the Landlord and I make no determination in relation to any damage alleged by the Landlords.

20. Based on the evidence before me, I am satisfied that the Landlord collected a \$18,000.00 damage deposit from the Tenant in July 2024, and the deposit was collected in contravention of the Act. The Landlords shall pay to the Tenant \$10,000.00 for the balance of the damage deposit that was not refunded to the Tenant at the end of the tenancy.

It is ordered that:

1. The total amount the Landlords shall pay the Tenant is \$10,048.00. This amount represents:

- \$10,000.00 for excess rent collected.
- \$48.00 for the cost of filing the application.

2. The Landlords shall pay the Tenant the full amount owing by May 11, 2026.

3. If the Landlords do not pay the Tenant the full amount owing by May 11, 2026, the Landlord will owe interest. This will be simple interest calculated from May 12, 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 30, 2026
Date Issued

Kyle McGraw
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.