



Order under Section 135 Residential Tenancies Act, 2006

File Number: LTB-T-093424-25

In the matter of: 10 REID AVE N
HAMILTON ON L8H6 C9

Between: Blessing Ose Isokpan Tenant

and

Rishi Arora Landlord

Blessing Ose Isokpan (the 'Tenant') applied for an order determining that Rishi Arora (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on April 27, 2026.

Only Tenant and her support person, Enoma Isokpan, attended the hearing.

As of 9:35 a.m., the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the Board. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Tenant's evidence.

Determinations:

1. The Tenant's application claims that the Landlord collected a rent deposit of \$2,650.00 which should be returned. At the hearing, the Tenant requested that I amend the application to include an additional \$2,650.00 collected by the Landlord.
2. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.

Whether the Landlords collected or retained money illegally

3. The Tenant signed a lease agreement on December 4, 2024. The tenancy was to begin on January 1, 2025 for a fixed term of one year. The Tenant testified that she paid a total of \$5,300.00 to the Landlord which is for the first and last month of the tenancy.
4. The Tenant never moved into the rental unit. On December 12, 2024, she contacted the Landlord and told him she would not be moving into the unit because of safety concerns in connection to the location in which the property was located.

5. The Tenant testified that the Landlord initially agreed to return the money but later told her he would only provide her with a refund after he finds a new prospective tenant. The Tenant assisted the Landlord by advertising the unit for rent.
6. The Tenant was informed by a neighbour (residing near the rental property) that someone moved into the rental unit.
7. On February 22, 2025, the Tenant testified that she spoke with the new occupant who confirmed their tenancy commenced in January 2026. The Tenant did not know this individual's name and they did not attend the hearing to testify.

Analysis and Findings

8. Subsection 107(1) of the *Residential Tenancies Act, 2006* (the 'Act') states "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."
9. In *Musilla v. Avcan Management Inc.*, 2010 ONSC 542, para 22, the Divisional Court held:

"When one looks at the words of s. 107(1), it is notable that the landlord is to return the deposit if vacant possession is "not given" to the prospective tenant. The words "not given" suggest that it is the refusal or inability of the landlord to provide the premises that triggers the obligation to return the deposit to the prospective Tenant."
10. In this case, a binding tenancy agreement was formed between the parties on December 4, 2024. The Tenant's decision on December 12, 2024 not to proceed with the tenancy agreement constitutes a unilateral repudiation of the agreement before the tenancy began. In addition, there is no evidence before me that the Landlord refused or was unable to provide vacant possession. To the contrary, the Tenant's own evidence was that she chose not to move in due to personal safety concerns.
11. Consistent with the reasoning provided in *Opara v. Cook*, [2008] O.J. No. 1934 (Div. Ct.) and *Musilla v. Avcan Management Inc.*, 2010 ONSC 542, where the tenant repudiates a binding tenancy agreement prior to taking possession, the tenant is not entitled to return of the rent deposit because it was their own actions, not the Landlords, that prevented possession from being taken. Therefore, s.107(1) of the Act does not apply on these facts because the Landlord was prepared to provide vacant possession of the rental unit but it was declined by the Tenant.
12. However, the Landlord has a duty to mitigate losses in accordance with sections 16 and 88(4) of the Act by attempting to re-rent the unit once informed that the Tenant would not be taking possession. If the Landlord enters into a new tenancy agreement with a new tenant with respect to the rental unit, then the Tenant who failed to take possession of the rental unit is not liable to pay an amount of arrears of rent owing for the period that ends on the date the new Tenant is entitled to occupy the rental unit per to s. 88(3)(2) of the Act.
13. In this case, while the Tenant believes a new Tenant moved in, there is insufficient evidence establishing when the tenancy began. In the absence of reliable evidence, either direct or documentary, I am unable to determine that the Landlord has illegally retained the Applicant's rent deposit.

It is ordered that:

1. The Tenant's application is dismissed.

May 5, 2026
Date Issued

Adeela Alvez
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.