



**Order under Section 135
Residential Tenancies Act, 2006**

File Number: LTB-T-100381-25

In the matter of: 2, 139 BLOOR STREET
SUDBURY ON P3C 2K8

Between: Ishmael John Lakpab Tenant

and

Brett Dillman Landlord
1000649167 Ontario Inc

and

Paulina Lubian Landlord's Agent

Ishmael John Lakpab (the 'Tenant') applied for an order determining that Brett Dillman and 1000649167 Ontario Inc (the 'Landlord') and Paulina Lubian (the 'Landlord's Agent') collected or retained money illegally.

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

Only the Tenant and his representative, Neto Naniwambote, attended the hearing.

As of 10:04 a.m. the Landlord and the Landlord's agent 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. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.

Submission and Evidence

2. The Tenant referred to the written tenancy agreement mutually signed on May 6, 2025. He testified that he viewed the rental unit on or about April 13, 2025, and he signed the

tenancy agreement on April 16, 2025. The tenancy agreement sets out a fixed term of one year, starting June 1, 2025 and ending on May 31, 2026. The lawful rent is \$2,450.00.

3. The Tenant referred to email transfers confirming that he paid on April 18, 2025 and April 19, 2025, to the Landlord's agent, the first month and last months' rent deposit (\$2,450.00 x2 = \$4,900.00). The lease confirms that \$2,450.00 is being held by the Landlord.
4. Prior to entering into the tenancy agreement, the Tenant saw an online advertisement indicating that the "exterior of the building will be getting redone." The Tenant also had verbal discussions with the Landlord's agent regarding the condition of the exterior.
5. In the weeks leading up to June 1, 2025, the Tenant attended the property and observed that the exterior work had not been completed. The Tenant communicated with the Landlord's agent expressing concerns about the safety and requesting for the work to be completed before moving in.
6. On June 1, 2025, the Landlord's agent communicated with the Tenant via text message, "so you are not going to move in until the exterior is finished? Because the interior is completely fine and ready to go." The Tenant responded, "yes please." He explained at the hearing that "yes please" means that he will not be moving in until the exterior was completed because that was the agreement between the parties.
7. The Tenant met with the Landlord on June 10, 2025, he was provided with the keys to the unit which he retained but never took possession of or occupied the unit. The Tenant also claims that another individual is occupying the unit.

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 May 6, 2025. 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 he chose not to move in on June 1, 2025. The evidence establishes that the Landlord, through the agent arranged to provide the keys to the Tenant at the start of the tenancy. While the keys were physically handed over shortly after June 1, 2025, I find that the unit was available for occupancy on June 1 and the Landlord was ready and willing to provide possession. However, the Tenant declined to attend to receive the keys and made it clear that he would not move into the unit unless the exterior work was completed.

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 Landlord's, 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. Further, I find that the completion of the exterior work was not a term of the tenancy agreement that would justify the Tenant's repudiation. The Tenant relies on the initial advertisement which provides "*exterior of the building will be getting redone*" and his verbal discussions with the Landlord's agent as the condition that he will not take possession until the Landlord completes the exterior. However, as indicated at the hearing, this condition was not incorporated into the written lease agreement and does not constitute a binding term of the tenancy. Therefore, the Tenant's refusal to take possession "unless new conditions are met" amounts to a unilateral refusal to perform the tenancy agreement.
13. 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.
14. 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 4, 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.