



Order under Section 135 Residential Tenancies Act, 2006

Citation: Henry v John (75) Div., 2026 ONLTB 38212

Date: 2026-05-15

File Number: LTB-T-109579-25

In the matter of: 403, 75 JOHN ST W
WATERDOWN ON L8B1B8

Between: Patrick Henry Tenant

And

John (75) Div. Landlord

Patrick Henry (the 'Tenant') applied for an order determining that John (75) Div. (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on April 29, 2026.

The Landlord's Agent, April Weavers, the Landlord's Legal Representative, Renata Zafirovska, 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 the Tenant the amount of \$1,266.40.

Illegal rent collected

2. In their T1 application, the Tenant alleges that the Landlord charged an illegal rent. The Tenant alleges the illegal rent is based on two factors:
 - The City of Hamilton issued a notice of rent reduction by 0.80% to take effect on December 31, 2024, which to date has not been applied by the Landlord; and
 - The Landlord served the Tenant with an Above Guideline rent increase to increase the Tenants rent by 5.5% effective January 1, 2025.
3. The parties agree that the lawful monthly rent for the rental unit was \$1,993.62 in December 2024.

4. The parties further agree that the Tenant has paid \$2,103.26 in monthly rent for the rental unit effective January 1, 2025.

Municipal Rent Reduction

5. The parties agree that on November 4, 2024 the City of Hamilton sent a notice of rent reduction effective December 31, 2024 reducing the rent payable by the Tenant by 0.80%.
6. Pursuant to section 131 of *Residential Tenancies Act, 2006* (the 'Act'), if the municipal property tax for a residential complex is reduced by more than the prescribed percentage, the lawful rent for each of the rental units in the complex is reduced in accordance with the prescribed rules.
7. The parties further agree that the 0.80% rent reduction was to be applied to the monthly rent paid by the Tenant.
8. The Landlord admits that due to an error the reduction was not applied to the Tenant's monthly rent during this period and the Tenant is entitled to compensation.
9. Applying a 0.80% rent reduction to the lawful monthly rent of \$1,993.62 results in a reduction of \$15.95 per month.

Above Guideline Rent Increase

10. The Tenant pays his rent monthly to the Landlord via a pre-authorized automatic withdrawal from his bank account.
11. The Tenant asserts that beginning January 1, 2025 the Landlord began automatically withdrawing \$2,103.26 from his bank account for monthly rent.
12. The \$2,103.26 withdrawn from the Tenant's bank account represents the 5.50% (\$109.64) rent increase that the Landlord seeks as part of the Landlord's above guideline increase application under application LTB-L-027190-24.
13. There is no dispute between the parties that the Tenant has paid the Landlord \$2,103.26 per month during this time via an automatic withdrawal agreement between the parties.
14. The Tenant asserts that the Landlord is not entitled to automatically take the above guideline amount.
15. The Landlord asserts the Notice of Rent Increase served on the Tenant advised the Tenant that they were not required to pay more than the guideline increase 2.5% until an order on the Above Guideline amount was issued. The Landlord's Agent stated that although the Landlord increased the automatic withdrawal amount for rent commencing January 1, 2025 to the full 5.50% as claimed by the Landlord, the Tenant did not contact the Landlord and ask that this amount be reduced to the guideline increase of 2.5%.

Analysis

16. Section 126(5) and (6) of the *Residential Tenancies Act, 2006* (the 'Act') state:

(5) If an application is made under this section and the landlord has given a notice of rent increase as required, until an order authorizing the rent increase for the rental unit takes effect, the landlord shall not require the tenant to pay a rent that exceeds the lesser of,

- (a) the new rent specified in the notice; and
- (b) the greatest amount that the landlord could charge without applying for a rent increase.

(6) Despite subsection (5), the tenant may choose to pay the amount set out in the notice of rent increase pending the outcome of the landlord's application and, if the tenant does so, the landlord shall owe to the tenant any amount paid by the tenant exceeding the amount allowed by the order of the Board.

17. In the circumstances before me I am satisfied that the Landlord breached section 126(5) of the Act by unilaterally increasing the amount automatically withdrawn from the Tenant's bank account to include the full 5.50% above-guideline increase without the Tenants' consent. In doing so, the Landlord took away the Tenant's statutory right of choice provided under section 126(6) of the Act to voluntarily pay the above-guideline increase amount pending the outcome of the application.
18. Although the Tenant could have contacted the Landlord and requested the automatic withdrawal amount of rent be reduced to the guideline increase of 2.5%, the onus is not on the Tenant to make that request. Any payments to the Landlord above the guideline increase are optional. As such, the Tenant is entitled to reimbursement of all amounts collected above the lawful guideline increase of 2.5% for the period of January 1, 2025 to the date of the hearing.

Illegal Rent Collected

19. The lawful monthly rent for December, 2024 was \$1,993.62. The lawful monthly rent was to be decreased by 0.80% pursuant to the City of Hamilton's Notice of Rent Reduction issued pursuant to section 131 of the Act effective December 31, 2024. This would reduce the lawful monthly rent to \$1,977.67.
20. The Landlord is entitled to at 2.5% rent increase being the guideline portion of their Notice of Rent Increase dated September 24, 2024 effective January 1, 2025. This would make the Tenant's lawful monthly rent \$2,027.11.
21. Although an additional rent increase may have occurred effective January, 2026. This Order only deals with the Illegal Rent the Landlord has collected being the subject of the Tenant's application. The difference between \$2,103.26 per month and \$2,027.11 per month from January 1, 2025 to the date of the hearing, equals \$76.15 per month totalling \$1,218.40 during this period.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$1,266.40. This amount represents:

- \$1,218.40 for excess rent collected.
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by May 26, 2026.
 3. If the Landlord does not pay the Tenant the full amount owing by May 26, 2026, the Landlord will owe interest. This will be simple interest calculated from May 27, 2026 at 4.00% annually on the balance outstanding.
 4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

May 15, 2026
Date Issued

Sean Ramage
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.