



Order under Section 135 Residential Tenancies Act, 2006

Citation: Fox v Johnston, 2026 ONLTB 36737

Date: 2026-05-28

File Number: LTB-T-091667-25

In the matter of: Unit 1, 792 Forks of the Credit Rd
Belfountain ON L7K0E7

Between: Kindra Michelle Fox Tenant

And

DMJ Holdings Inc. Landlord

Kindra Michelle Fox (the 'Tenant') applied for an order determining that DMJ Holdings Inc. (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on April 9, 2026.

The Landlord's Agent, David Johnston, the Landlord's Legal Representative, David Borrie, 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 \$1,356.36.

Illegal rent collected

2. The Tenant testified that the Landlord increased the rent twice in a 12 month period, and the second increase was above the guideline amount. The Tenant testified that the rent increased on February 1, 2024 from \$2,810.00 to \$2,880.97 based on a verbal agreement. The Tenant submitted supporting documents that showed that she paid \$2,810.00 in January 2024, and that she paid \$2,880.97 from February 2024 until October 2024.
3. The Landlord's Agent, David Johnston (DJ) testified that he served a N1 notice of rent increase and the increase went into effect on November 1, 2023. DJ submitted the N1 notice as a supporting document. DJ also submitted a text message from the Tenant dated October 18, 2023 where the message from the Tenant states that the increase would not go into effect until February 1, 2024, based on counting from October 1, 2023. The Tenant also testified that she never received an N1 notice.

4. The Tenant further testified that on November 1, 2024 that rent increased to \$2,990.00 based on a verbal conversation. The Tenant testified the lease includes utilities in the rent amount and the Landlord wanted to increase rent to reflect an increase in the utilities. DJ testified that the Tenant agreed to pay \$2,990.00 even though that was above the guideline rent increase, and he submitted text messages as evidence. The Tenant testified that she felt pressured into agreeing to pay the increase of 3.82%. The Tenant further testified that she never received an N1 notice for the November 1, 2024 increase. DJ submitted a copy of an N1 notice that he testified was served on the Tenant. The copy had a handwritten note that states the increase “started November 1, 2024”, and there was no signature page included.
5. Based on the evidence provided by the parties, I am not satisfied that the Landlord has established on a balance of probabilities that a notice of rent increase was served. The start date on the first page provided was indicated to be incorrect through a hand-written note written in the past tense, implying this was not an actual copy of the potential version served. In addition, no signature page was provided, though the Landlord had provided the complete N1 notice for the 2023 rent increase. I am not satisfied that the Landlord’s supporting evidence established that an N1 notice was served when the Tenant testified she never received an N1 notice.
6. DJ also testified that the increase was lawful as the Tenant voluntarily agreed to increase the rent above the guideline amount. The Tenant testified that she was not aware at the time that because utilities are included in her rent that she did not have to agree when the Landlord wanted to increase the rent due to the utilities.
7. DJ also testified that the Tenant paid the rent increase for 12 consecutive months, therefore the lawful rent became \$2,990.00 pursuant to section 136(1) of the *Residential Tenancies Act, 2006* (the ‘Act’). However, the Landlord cannot rely upon section 136 because of the Ontario Court of Appeal’s reasoning in *Price v. Turnbull’s Grove*, 2007 ONCA 408.
8. In any event, section 136(1) of the Act does not apply because the Tenant filed their T1 application challenging the lawfulness of the rent increase on October 28, 2025, which is within one year from November 1, 2024, the date the unlawful rent increase was first “charged”. As a result, neither section 136(1) nor 136(2) would apply due to their terms:

136 (1) Rent charged one or more years earlier shall be deemed to be lawful rent unless an application has been made within one year after the date that amount was first charged and the lawfulness of the rent charged is in issue in the application.

(2) An increase in rent shall be deemed to be lawful unless an application has been made within one year after the date the increase was first charged and the lawfulness of the rent increase is in issue in the application. [Emphasis added]

9. While the Tenant testified she paid the 12 consecutive months of the unlawful rent, just like the deeming provisions in section 136, section 135.1(1) of the Act would not apply because section 135.1(2) states as follows:

135.1 (2) Subsection (1) does not apply with respect to an increase in rent if the tenant has, within one year after the date the increase was first charged, made an application in which the validity of the rent increase is in issue. [Emphasis added]

10. As noted above, the Tenant filed their T1 application challenging the lawfulness of the rent increase on October 28, 2025, which was within one year of the date that the unlawful increase was first charged (November 1, 2024). As a result, neither section 136 nor 135.1 deem the increase as lawful, even if I was satisfied that the Landlord had served an N1 notice and could therefore rely upon section 136.
11. I am satisfied that the Tenant has established on a balance of probabilities that the Landlord did unlawfully increase the rent above the guideline amount on November 1, 2024 and that the Tenant filed her T1 application prior to October 31, 2025. Section 110 of the Act prohibits a landlord from increasing rent except in accordance with the Act, and there is no exception for consent and parties cannot contract out of the Act. Even if the Tenant had voluntarily agreed to the increase with no pressure, the consent is void unless it can be saved by sections 135.1 or 136, which it cannot be saved by in these circumstances.
12. I am therefore satisfied that the Landlord collected rent in excess of the amount allowed by the Act.
13. I find that the lawful monthly rent is \$2,880.97, and the Landlord illegally collected and retained \$1,308.36. This amount is determined based on \$109.03 per month illegally collected for 12 months.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$1,356.36. This amount represents:
 - \$1,308.36 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 June 8, 2026.
3. If the Landlord does not pay the Tenant the full amount owing by June 8, 2026, the Landlord will owe interest. This will be simple interest calculated from June 9, 2026 at 4.00% annually on the balance outstanding.
4. If the Landlord does not pay the Tenant the full amount owing by June 8, 2026, the Tenant may recover this amount by deducting \$109.03 from the rent each month from July 1, 2026 to June 1, 2027.
5. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

May 28, 2026
Date Issued

 Allana McComb
 , 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.