



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

**Citation:** Diakiw v Montano, 2026 ONLTB 44068

**Date:** 2026-06-08

**File Number:** LTB-T-079131-25

**In the matter of:** 606, 7711 GREEN VISTA GATE  
NIAGARA FALLS ON L2G0Y9

**Between:** Peter Diakiw Tenant

**And**

Sergio Eduardo Montano Landlords  
Natalia Kirillova

Peter Diakiw (the 'Tenant') applied for an order determining that Sergio Eduardo Montano and Natalia Kirillova (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on March 16, 2026.

The Landlord, the Tenant and the Tenant's legal representative, S. Anderson, attended the hearing.

### **Determinations:**

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities.
2. I find, on a balance of probabilities, that the Landlord collected rent in excess of the amount allowed by the *Residential Tenancies Act, 2006* (the 'Act') for the following reasons.

### **Background:**

3. The Tenant moved into the rental unit on October 15, 2024, and he vacated the rental unit on August 1, 2025.
4. The undisputed evidence is that the parties signed an N11 agreement to terminate the tenancy on August 1, 2025. The N11 agreement to terminate the tenancy also had a

signed addendum with further terms. It is also undisputed that the Landlord served the Tenant with an N5 notice of termination containing three allegations about the Tenant's occupants creating a substantial interference to others, about the behaviour of the Tenant and his guests leading to police complaints, and it also alleges that there were complaints received about the Tenant's smoking in the rental unit and on the balcony.

5. The tenancy began pursuant to a lease agreement that commenced the tenancy on October 15, 2024, for a period of 11.5 months, or 11 months and 15 days. The only rent amount mentioned was \$25,000.00 for the entire term of 11.5 months. Although the documentary evidence showed the lease commenced on October 17, 2024, it was uncontested that the tenancy began on October 15, 2024, and I heard no evidence to the contrary.
6. Both parties provided testimony about how the lease agreement came about, and who chose to make the rent \$25,000.00 for 11.5 months. However, that evidence was largely irrelevant to this matter. What is undisputed is that the Tenant paid \$25,000.00 in total, up front to the Landlord for the 11.5 month lease.
7. The parties did not completely agree about the circumstances of how the tenancy terminated, either. However, they essentially agreed that they both decided to sign an N11 agreement to terminate on August 1, 2025, with its addendum, because it was quicker, easier and more amicable, rather than have to come before the Board to determine the merits of the Landlord's N5 notice of termination.
8. The addendum to the N11 agreement to terminate states that the Landlord will refund the Tenant's 61 days of unused rent (by leaving August 1, 2025 rather than September 30, 2025), or a total of \$4,357.23 if the Tenant leaves the "property as of August 1<sup>st</sup> in rentable/marketable condition. In other words, property is vacated with only normal wear/tear." The addendum further states that 50% of refund will be issued after inspection last week of July 2025, and the other 50% when the property is vacated. The addendum concludes with the statement, "Both parties confirm this refund is agreed upon voluntarily and complies with the Residential Tenancies Act, 2006."
9. The Tenant wrote to request his refund of \$4,357.23 after he vacated on July 28, 2025. The parties had a series of text messages in evidence that show that the Landlord advised the Tenant that he did not believe that the rental unit had been left in "marketable condition", and that he was going to subtract the repair costs from the money owed.
10. It is undisputed that the Landlord did not reimburse the Tenant the \$4,357.23 owed. It is also undisputed that the Tenant cancelled any inspections that were scheduled prior to moving out.
11. The Tenant submits that he left the rental unit in marketable condition, and he is seeking the refund of the \$4,357.23. He is not seeking the further three days of rent owed because he moved out on July 28, 2025, three days earlier than August 1, 2025.

#### Reasons and Analysis:

12. I find that the Landlord shall reimburse the Tenant the \$4,357.23, equivalent to 61 days of unused rent after the Tenant moved out for the following reasons.

13. The N11 agreement to terminate on August 1, 2025, signed by the parties is a contract agreed to by the parties upon their mutual decision to terminate the tenancy. However, in this case, the addendum to the N11 takes it out of the jurisdiction of the Board. By virtue of sections 37, 77, and 134(1.1) of the Act, taken together, the “conditions” in the addendum for the Landlord to refund the \$4,357.23 of unused rent, render unenforceable the parties’ N11, taken as a whole together with the addendum. With the addendum, the apparent N11 agreement to terminate is not, in fact, what was intended by the Board’s N11 form. As a whole document it is not what was contemplated by an N11 agreement, and it would not have supported a valid N3 application for an *ex parte* eviction pursuant to subsection 77(1) of the Act. Merely because the parties agreed that the addendum “complies with the *Residential Tenancies Act, 2006*,” does not make it so.
14. Consequently, I find that the Landlord is liable to reimburse the \$4,357.23 to the Tenant for a different reason than the N11 agreement.
15. Pursuant to subsection 202(1) of the Act, the directive to “ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants....”, I find, on a balance of probabilities, that the preponderance of the evidence demonstrates that the Tenant vacated the rental unit pursuant to receiving the N5 notice of termination. The termination date on the N5 notice of termination was August 1, 2025.
16. The Landlord served the Tenant with an N5 notice which instructed him to vacate the rental unit by the termination date of August 1, 2025. According to subsection 134(1.1)(a), the Landlord is not entitled to rent payment past the termination date of August 1, 2025. The Tenant is therefore entitled to the *per diem* amount of rent that he overpaid the Landlord by paying the \$25,000.00 for 11.5 months up front at the commencement of the tenancy.
17. The Landlord is not entitled to deduct from the amount that he owes the Tenant as a result of my finding above in paragraph #16, any amount owed for damage or any other illegal deposit amount. If the Landlord believes that he can prove negligent or wilful damage on the part of the Tenant, he can file the appropriate application with the Board in order to reclaim the amount owed.

**It is ordered that:**

1. The total amount the Landlord shall pay the Tenant is \$4,405.23. This amount represents:
  - \$4,357.23 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 19, 2026.
3. If the Landlord does not pay the Tenant the full amount owing by June 19, 2026, the Landlord will owe interest. This will be simple interest calculated from June 20, 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.

**June 8, 2026**  
**Date Issued**

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**Nancy Morris**  
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor  
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.