



Order under Section 135 Residential Tenancies Act, 2006

File Number: LTB-T-017037-26

In the matter of: 6, 385 CONCESSION ST
HAMILTON ON L9A1B8

Between: Megan Heather Schultz Tenant

And

Berkley Property Management INC. Landlord

Megan Heather Schultz (the 'Tenant') applied for an order determining that Berkley Property Management INC. (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on June 3, 2026.

Only the Tenant attended the hearing.

As of 9:22am, the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB. 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 proved some of the allegations contained in the application on a balance of probabilities.
2. This application is about an allegation that the Tenant paid a rent deposit in the amount of \$3,600.00 to the Landlord and the deposit was not returned as the Tenant did not take possession of the rental unit.
3. The Tenant submitted evidence consisting of the rental application (DOC-7438204), and the proof of payment for the deposit (DOC-7438206).

Rent deposit

4. The Tenant stated that she applied for a rental unit and filled out an offer to lease application with the Landlord. The application signed and dated by the Tenant indicates the Landlord and the Tenant agreed to terms for the rental unit as follows:

- Rental unit address 6, 385 Concession Street, Hamilton, ON;
 - Commencement of tenancy January 1, 2026 for a fixed term of one year ending December 31, 2026;
 - Lawful rent \$1,750.00 due on the first of each month;
 - A first and last month rent deposit required in the amount of \$3,500.00; and
 - Utilities to be paid by the Tenant.
5. The Tenant stated that she handed her application to the super intendent, Joseph along with her deposit cheque. The cheque in the amount of \$3,600.00 was for a first and last month rent deposit (\$1,750.00 X 2) and a \$100.00 key deposit.
 6. The Landlord cashed the cheque and accepted the Tenant's application for the rental unit.
 7. The Tenant stated that after the Landlord approved her application and acceptance for the tenancy, her mother suffered an injury and fell ill on December 2, 2025.
 8. The Tenant texted Joseph on December 23, 2025 and requested to withdraw her application. Joseph responded by instructing the Tenant to email Christopher the Landlord agent. The Tenant emailed Christopher on December 24, 2025 and stated she did not get a response back from Christopher until January 2, 2026 informing the Tenant she was legally responsible for the rental unit for a fixed term.
 9. The Tenant holds the position that no tenancy agreement was signed and the Landlord failed to follow through on a condition in the application allowing the Tenant to review the tenancy agreement before taking possession of the rental unit.
 10. The Tenant requested an order from the Board for the Landlord to return the first and last month rent deposit of \$3,500.00 and the \$100.00 key deposit.

Analysis

Was there a tenancy in place?

11. In *Musilla v. Avcan Management* [2010] ONSC 5425 the court found a tenancy agreement had been entered into when the rental application was accepted by the Landlord. The essential terms of the agreement were set out in the rental application. The *Musilla v. Avcan Management* case resembles the decision of the court in *Opara v. Cook* [2008] O.J. No. 1934 (Div Ct). There the Court upheld a decision of the Board dismissing a tenant's application for a refund because the Court observed that the tenancy agreement came into effect the day the parties reached an agreement on the rental unit and the deposit being paid.
12. The issue to be determined before me is whether the parties had entered into a tenancy agreement at the time that the Tenant informed the Landlord that she no longer required the rental unit and whether the Tenant is entitled to the return of the deposit pursuant to section 107 of the Act.

13. Once a tenancy agreement is made, whether pursuant to the terms of a rental application (as in *Musilla*, supra) or in some other unspecified form (as in *Opara v. Cook*, supra), neither party may unilaterally break the agreement, and a tenant who does so is not entitled, under subsection 107(1) of the Act, to the return of the rent deposit.
14. In this case I find the essential terms of a tenancy agreement were agreed upon by the Landlord and the Tenant in the rental agreement such as the rental unit address, the monthly rent, the day of the commencement of the tenancy, and defining additional terms such as parking and utilities.

Did the Landlord provide vacant possession?

15. Section 107 of the Residential Tenancies Act , 2006, (the 'Act') provides:

“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.”

[emphasis added]

16. The decision of the Ontario Court of Appeal in *Musilla v. Avcan Management Inc.* further provides the Board with guidance, regarding s. 107 of the *Residential Tenancies Act*, 2006 (the “Act”), stating the Act should not apply where a landlord has done everything to provide possession, but the tenant refuses to move in.
17. The Divisional Court, in *Opara v. Cook*, [2008], O.J. No. 1934 (Ont.Div.Ct.), also deals with the issue currently before the Board. The court held that a tenancy agreement is a contract and once the parties have entered into a tenancy agreement, unless the Landlord agrees, the Tenant cannot decide to break the agreement.
18. With the totality of the evidence and submissions before me and on a balance of probabilities I find that the Landlord intended to make the rental unit identified in the application available for the Tenant commencing in January 1, 2026.
19. The actions of the Tenant was the cause for the Tenant not taking possession of the rental unit.

Was the tenancy lawfully terminated?

20. Section 88 of the Act states:

Arrears of rent when tenant abandons or vacates without notice

88 (1) If a tenant abandons or vacates a rental unit without giving notice of termination in accordance with this Act and no agreement to terminate has

been made or the landlord has not given notice to terminate the tenancy, a determination of the amount of arrears of rent owing by the tenant shall be made in accordance with the following rules:

1. If the tenant vacated the rental unit after giving notice that was not in accordance with this Act, arrears of rent are owing for the period that ends on the earliest termination date that could have been specified in the notice, had the notice been given in accordance with section 47, 96 or 145, as the case may be.
21. The rental application indicates the Tenant made a payment of \$1,750.00 for the first month's rent and \$1,750.00 to be held as the last month rent deposit upon acceptance of the application.
22. As stated above I find a tenancy agreement was in place pursuant to the Landlord's acceptance of the Tenant's rental application. The term was for a fixed term of one year.
23. Although the Tenant claims she never accepted keys to the rental unit, the rental unit application shows the Landlord's intent to provide vacant possession of the rental unit upon commencement of the tenancy January 1, 2026.
24. The tenancy was not terminated in accordance with the Act, or by the Landlord providing a notice or on agreement between the parties.
25. The Tenant's email evidence indicates the Landlord agent did not accept the Tenant's request to terminate the tenancy and informs the Tenant of her legal obligation for the fixed term.
26. The Tenant stated that in communication with the Landlord agent she was informed that the Landlord would attempt to re-rent the rental unit and if the Landlord found a new tenant the Landlord would waive any further fees (rent). The Tenant stated the Landlord agent also informed her that she may be liable for further fees (rent) if the Landlord could not re-rent the rental unit. The Tenant stated she was never contacted by the Landlord agent again.
27. With the totality of the evidence and submissions before me and on a balance of probabilities I find the tenancy was not terminated in accordance with the Act.
28. Pursuant to section 16 of the Act the Landlord has a duty to mitigate their losses and try to find replacement tenants however there is inconclusive evidence before me to find the Landlord is in breach of section 16 of the Act and when or if the Landlord re-rented the rental unit to a new tenant.
29. Based on my knowledge of similar like cases, in my view the reasonable amount of rent under section 88 of the Act the Landlord is entitled to when a Tenant vacates or abandons a rental unit, and if the rental unit was not re-rented would be two months rent. This amount is the amount the Tenant paid in the first months rent \$1,750.00 and last month rent deposit \$1,750.00 and I find the Landlord is not in breach of the Act.
30. The Tenant's position is the Landlord failed to provide the Tenant with a tenancy agreement for her review pursuant to the rental application and therefore, this entitles the Tenant to withdraw her application.

31. I do not find that the Tenant's submission is supported by relevant sections of the Act or is supported by the case law for such applications.
32. Therefore, this portion of the Tenant's application is dismissed.

Key deposit

33. The Tenant submitted evidence as proof of payment for a \$100.00 key deposit.
34. The Tenant stated she never took possession of the rental unit and did not receive keys from the Landlord.
35. Section 134(1)(a) of the Act states that "Unless otherwise prescribed, no landlord shall, directly or indirectly, with respect to any rental unit, (a) collect or require or attempt to collect or require from a tenant, prospective tenant or former tenant of the rental unit a fee, premium, commission, bonus, penalty, key deposit or other like amount of money whether or not the money is refundable."
36. With the totality of the uncontested evidence and submissions before me and on a balance of probabilities I find the Landlord failed to return the full rent deposit to the Tenant which is in contravention of section 134(1)(a) of the Act. Furthermore, the Landlord's requirement of an additional deposit from the Tenant was also in contravention of the Act.
37. Therefore, this portion of the Tenant's application is granted and the Landlord owes the Tenant \$100.00.
38. Although this order does not specifically address each piece of evidence individually or reference all the testimony, I have considered all of the evidence presented at the hearing and all of the oral testimony when making my determinations.
39. This order contains all reasons for the determinations and order made. No further reasons will be issued.

It is ordered that:

1. The total amount the Landlord shall pay to the Tenant is \$148.00. This amount represents:
 - \$100.00 for the illegal charge collected.
 - \$48.00 application fee.
2. The Landlord shall pay the Tenant the full amount owing by June 22, 2026.
3. If the Landlord does not pay the Tenant the full amount owing by June 22, 2026, the Landlord will owe interest. This will be simple interest calculated from June 23, 2026 at 4.00% annually on the balance outstanding.

June 11, 2026
Date Issued

Greg Brocanier
Member, Landlord and Tenant Board

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