



Order under Section 135 Residential Tenancies Act, 2006

File Number: LTB-T-017087-26

In the matter of: 62 SEMINOLE AVE
SCARBOROUGH ON M1J1N4

Between: LeRoy Simon Fortunato Tenant

And

Dhruv Sawhney Landlord
Arjun Sawhney

LeRoy Simon Fortunato (the 'Tenant') applied for an order determining that Dhruv Sawhney and Arjun Sawhney (the 'Landlord') collected or retained money illegally.

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

The Tenant and the Landlord attended the hearing.

Preliminary:

Is the rental unit exempt under the Act

1. The rental unit is a six room, rooming house.
2. The Landlord made submissions during the hearing that he occupied one of the rooms in the residential complex and was required to share a kitchen and bathroom with the Tenant.
3. The Landlord filed evidence (DOC-8025891) consisting of the Whatsapp communication between the parties on April 27, 2023 where details of the tenancy are discussed including that the Landlord occupies one of the rooms in the residential complex.

(Landlord text to Tenant)

I live in the other room so you'll be sharing the kitchen and the washroom with me (your landlord) and the other tenants.

4. The position of the Tenant is although the Landlord informed him that he resided in one of the rooms of the residential complex the Tenant stated that the Landlord never lived in the room.

5. The Tenant stated that when he moved in the Landlord was not occupying the room and throughout his tenancy the Landlord never stayed in the room. The Tenant also stated that other “guests” were occupying the room for various short stays.
6. The Landlord’s position is he kept items in the rental unit and was occupying the rental unit when the Tenant moved in.
7. The Landlord stated he travelled extensively to go back to India where his partner was still residing.
8. The Landlord stated he left Canada sometime in early May 2023 and did not return until April 2024.
9. The Landlord stated while he was in India he let members of his community and friends stay in the rental unit in his absence and sometimes he would accept rent and other times he would allow his friends to stay for free.
10. Upon his return in April 2024 the Landlord stated he did not return to the rental unit but took up occupancy living with his partner at another property the Landlord owned. The Landlord stated as of the day of the hearing the Landlord still resides with his partner and had not occupied the rental unit.

Analysis

11. For the following reasons I find the rental unit is not exempt pursuant to the *Residential Tenancies Act*, 2006 (the “Act”).
12. Section 5(i) of the Act states:

This Act does not apply with respect to,

- (i) living accommodation whose occupant or occupants are required to share a bathroom or kitchen facility with the owner, the owner’s spouse, child or parent or the spouse’s child or parent, and where the owner, spouse, child or parent **lives** in the building in which the living accommodation is located;

[emphasis added]

13. There is no dispute the Landlord indicated in his April 27, 2023 text that he lived in the rental unit however, the dispute is whether the Landlord actually lived in the rental unit.
14. The Landlord testified that from May 2023 to April 2024 he was in India and was not residing in the rental unit, and instead let friends stay in the rental unit.
15. The Landlord also stated that upon his return to Canada in April 2024 he immediately moved into another residence he owned with his partner and still resides there as of the day of the hearing and has not occupied the rental unit.

16. The leading case law with similar facts was addressed in *Wong v. Hsiao*, 2022 ONSC 3253 in which it was questioned if occasional use of a rooming house by a landlord gave rise to the exemption from the Residential Tenancies Act.
17. This matter involves a dispute between a landlord and tenants over whether the Residential Tenancies Act, 2006 (RTA) applies to their tenancy arrangement. In August 2017, the tenants entered into a lease for long-term occupancy of a room in a rooming house owned by the landlord. Although the landlord occasionally occupied vacant rooms on the property, she did not have a specific designated space until later, when she moved into the premises after selling her primary residence. The landlord contended that the RTA was inapplicable on the basis that the tenants shared facilities with her, relying on the exemption set out in section 5(i) of the RTA.
18. The court found that the determination of whether the RTA applies must be based on the circumstances at the time the tenancy relationship commenced. The landlord's later decision to reside at the property could not retroactively alter the nature of the tenancy. The court agreed with the LTB's interpretation that "living in the building" under s.5(i) of the RTA requires the property to be the owner's **principal residence**. That occasional stays in unoccupied rooms did not meet this threshold.

[emphasis added]

19. The Landlord makes the claim that he was occupying a specific room in the rental unit, however the Landlord led with insufficient evidence that this room was his primary residence.
20. In my view, the Landlord's claim he had personal possessions in the rental does not define principal residence and I am not satisfied that the rental unit was the Landlord's primary residence given he returned to Canada to reside full time in his other owned property.
21. In my view what has happened here is the Landlord has attempted to circumvent the Act with the Whatsapp communication and in fact did not reside or intend to reside in the rental unit.
22. The Landlord provided inconsistent and shifting testimony when asked to provide specific details regarding his travels and if, and when he resided in the rental unit.
23. I prefer the testimony of the Tenant and I find him credible regarding his submissions the Landlord was not occupying the rental unit when the Tenant moved in.
24. Based on the evidence before me, on a balance of probabilities, I find that the Landlord has not provided sufficient evidence to establish that the rental unit was his primary residence and he was required to share kitchen and bathroom facilities of rental unit with the Tenant.
25. Given the above I find pursuant to subsection 5(i) of the Act the rental unit is not exempt, the Act applies.

Determinations:

26. As explained below, the Tenant proved some of the allegations contained in the application on balance of probabilities.
27. This Tenant's T1 application alleges the Landlord collected an illegal rent charge and an illegal damage deposit and did not use the last month rent deposit for the last month of the tenancy.

Illegal rent

28. The Tenant and the Landlord entered into a tenancy agreement commencing on May 1, 2023. The tenancy agreement was completed via the parties agreeing the terms and conditions through Whatsapp text messages.
29. The Tenant relies on the Landlord's evidence (DOC-8025891) consisting of a Whatsapp communication between the parties on April 27, 2023 where details of the tenancy are discussed as follow:
 - The lawful rent is \$750.00 due on the 30th of each month (28th day in the case of February);
 - The tenancy is for a fixed term of 6 months; and
 - The Landlord also indicates that no overnight guests are allowed.
30. The Tenant stated that he was forced to rent the rental unit because he was going through a divorce with his wife and was forced out of his matrimonial home with short notice. The Tenant stated he has an autistic son that he had to care for on Sundays and Mondays and his son would occupy the rental unit room with the Tenant on those days.
31. The Tenant alleges the Landlord raised the rent from \$750.00 to \$825.00 and the \$75.00 increase was to compensate for his son's stay to cover additional costs of having another occupant.
32. The Tenant stated he initially agreed however was later made aware the Landlord is not allowed to do that.
33. The Tenant is seeking remedy for the additional charge of \$75.00 from November 1, 2023 to February 1, 2026.

Analysis

34. The Tenant filed this application on February 25, 2026.

35. It was undisputed that the Tenant paid the rent increase for a period longer than 12 consecutive months.

36. Section 136(1) of the Act states:

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.

37. Based on the evidence and submissions before me, the rent increase took effect 29 months prior to this application being filed. For the Board to be able to consider the legality of the rent increase, then as is stated in section 136(2) of the Act, an application would need to have been made by the Tenant prior to November 1, 2024.

38. Furthermore, pursuant to section 135(4) of the Act, the Board does not have the jurisdiction to make an order under section 135 of the Act with respect to an application filed more than one year after the person collected or retained money in contravention of the Act.

39. For the reasons above this claim in the Tenant's application must be dismissed.

Illegal Charge

40. The Tenant alleges the Landlord collected a charge which is not allowed by the *Residential Tenancies Act, 2006* (the 'Act').

41. The Tenant claims the Landlord collected a damage deposit in the amount of \$300.00.

42. As of the day of the hearing the parties agree the Landlord had returned \$100.00 of the illegal charge.

43. The Landlord does not dispute he owes the balance of the illegal charge in the amount of \$200.00.

44. Based on the evidence and submissions before me I find the Tenant has proved the allegations the Landlord has collected an illegal charge and the Landlord owes the Tenant \$200.00.

Last month rent deposit not applied to last month

45. The Tenant claims the Landlord did not use the Tenant's rent deposit to pay for the last rental period of the tenancy and did not return the deposit to the Tenant.

46. It was undisputed the Tenant paid a last month rent deposit to the Landlord when he took possession of the rental unit May 1, 2023 in the amount of \$750.00.

47. It is also undisputed the Tenant vacated the rental unit on January 10, 2026 and provided vacant possession of the rental unit by returning the keys to the rental unit to the Landlord on February 1, 2026.
48. The position of the Tenant is the Landlord informed the Tenant and the other tenants in the rooming house they had to vacate the residential complex because the Landlord was going to be performing renovations in the residential complex and they would be forced to leave while the renovations were performed.
49. The Tenant stated he was not served with an N13 notice.
50. The Tenant stated the Landlord's family member owned a residential complex and the Landlord offered to move the Tenant into that residential complex. The Landlord showed the Tenant the new rental unit sometime in January 2026 and told the Tenant to provide vacant possession of his current rental unit immediately.
51. The Tenant stated he paid cash for his January 2026 rent before vacating the rental unit.
52. The Landlord does not dispute that he asked the Tenant to leave and offered to move him to his family member's residential complex, however the Landlord holds the position the Tenant did not provide notice of when he was vacating the rental unit.

Analysis

53. A landlord and tenant may terminate a tenancy by providing notice or on an agreement to terminate the tenancy.
54. There is no dispute that the Landlord asked the Tenant to vacate the rental unit, and facilitated providing a new rental unit for the Tenant and that the Landlord is still holding the last month rent deposit.
55. I find his testimony credible and consistent regarding the details that the Landlord was aware the Tenant was vacating the rental unit at the Landlord's request, and I am satisfied the Landlord accepted vacant possession of the rental unit on February 1, 2026.
56. With the totality of the evidence and submissions before me and on a balance of probabilities I find that the Landlord and Tenant had entered into a mutual agreement to terminate the tenancy. I find the tenancy terminated on February 1, 2026 on an agreement between the parties.
57. Given the Landlord has received the rent for the month of January 2026 and has not returned the last month rent deposit the Landlord has illegally retained the Tenant's last month rent deposit.
58. Therefore, this portion of the Tenant's application is granted and the Landlord owes the Tenant the last month rent deposit in the amount of \$750.00.

Request to amend application to include interest on last month rent deposit

59. The Tenant requested to amend the application to add the remedy for the interest owing on the last month rent deposit.
60. The Landlord did not provide submissions regarding his objection to the amendment request.
61. The Landlord collected \$750.00 on May 1, 2023 and interest on the last month rent deposit is owing up to February 1, 2026 in the amount of \$51.52.
62. 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.
63. 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 the Tenant is \$1,049.52. This amount represents:
 - \$200.00 for the illegal charge collected.
 - \$750.00 for the last month's rent deposit.
 - \$51.52 for the last month rent deposit interest.
 - \$48.00 for the cost of filing the application.
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

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