



Order under Section 135 Residential Tenancies Act, 2006

File Number: LTB-T-026434-26

In the matter of: 4102, 30 NELSON ST
TORONTO ON M5V 0H5

Between: Jianyuan Kuang Tenant

And

Xiaoying Tan Landlords
Zhiyi Jiang

Jianyuan Kuang (the 'Tenant') applied for an order determining that Xiaoying Tan and Zhiyi Jiang (the 'Landlords') collected or retained money illegally.

This application was heard by videoconference on June 15, 2026.

The Landlords 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 Landlords shall pay to the Tenant \$1,398.00 on or before July 10, 2026.

Does the Landlord and Tenant Board have jurisdiction to hear this application?

2. For the reasons set out below, I find, *the Residential Tenancies Act, 2006* (the 'Act') does apply to the relationship between the parties. While the Landlords asserts that the Tenant was required to share both the bathroom and kitchen facilities, this is insufficient to establish a genuine living situation that is captured by the exemption contained in section 5(i) of the Act which states:

5 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 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;

The Facts

3. It was undisputed that the Landlords are the owner of the residential complex. It was also undisputed that the Tenant paid rent to the Landlords in exchange for use and occupation of the rental unit.
4. The parties agree there is a formal OSL that was executed on August 13, 2024 (DOC-8162686). Neither the OSL nor additional terms outline state that the Tenants will be required to share facilities with the Landlords. The dispute between the parties revolves around whether the Landlords resided in the rental unit during the pivotal period when tenancy began and whether the Landlords and the Tenant were required at that time to share a kitchen and washroom with each other.
5. It was undisputed that at the commencement of the tenancy neither Landlord lived at the rental unit.
6. The Landlord, Zhiyi Jiang ('ZJ') submits that section 5(i) of the Act is applicable in this case for 2 reasons 1) the rental unit is the Landlords primary residence which is supported through documentary evidence which included the Landlord's driver's licenses being registered to the address of the rental unit, utility bills and a bank statement; and, 2) the Tenant knew that she would be required to share the kitchen and bathroom facilities when they returned from overseas.
7. ZJ referred to the Landlord's evidence package (DOC-8093321) in support of their submission that the rental unit is exempt under s. 5(i) of the Act. ZJ referred to page 2 of the evidence package which showed her and her mother's driver's licenses which were registered to the rental unit. Further she referred to page 3-4, which showed bills from Metergy, the electricity provider with Xiaoying Tan's ('XT') on the bill. Further, ZJ stated that the Landlords had one property registered with this company, further supporting their submission. Furthermore, ZJ referred to page 6 of the package, showing an aerial view of the layout of the rental unit. ZJ submitted that the location of the bathroom and one kitchen that was to be shared by the Landlords and Tenant.
8. The Tenant submits that 5(i) does not apply in this case as she was not informed that she would be required to share the facilities, did not share the facilities at the commencement of the tenancy as neither Landlord was present in the rental unit for over 6-months. The signed OSL and additional terms referred to her as a Tenant and she submits that she ought to have the protections and rights of a tenant per the Act. Furthermore, the Tenant submits that she had not seen ZJ at the rental unit during the entire tenancy. Regarding the Landlord, XT, she arrived at the rental unit without notice 6-months after the tenancy commenced and stayed in a bedroom for approximately 1-2 months and then left; she stated that she did not agree to this arrangement.

Analysis

9. In *Cowie v. Bindlish*, 2010 ONSC 2628, the Divisional Court held that the Board must examine the situation between the parties at the commencement of the lease when determining whether the exemption in section 5(i) of the Act applies, it found that the Act:

. . . explicitly creates an exemption from the general application of the Act only if the person in the category of the respondent “lives in the building in which the living accommodation is located”. That means that the respondent was required to live in the building at the time when she rented the room to the appellant in order for the exemption to apply. It was not sufficient that she merely intended to move in at some subsequent time. Nor was it sufficient that she actually did move in at a subsequent time
10. The evidence from both parties establishes that neither Landlord was living in the residential complex at the commencement of the tenancy. For over 6-months the Tenant was alone within the rental unit until the Landlord, XT arrived at the rental unit unannounced and stayed in one of the bedrooms for approximately 1-2 months and then left. Therefore, applying *Cowie v. Bindlish* to these facts, I find the rental unit does not fall within the exemption contained in section 5(i) of the Act.
11. In addition, while the Landlords assert that the Tenant was aware that she would be sharing facilities with the Landlord, there is no mention of that requirement in the lease. Therefore, I prefer the Tenant's evidence that she was not informed that she would be required to share the facilities.
12. As a result, the Landlords did not meet the onus of establishing on a balance of probabilities that they shared a bathroom and/or kitchen with the Tenant at the commencement of the tenancy and has not established that the tenancy falls under the exemption in section 5(i) of the *Residential Tenancies Act, 2006*.

T1 Application

13. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord shall pay \$1,350.00 to the Tenant.
14. This application is about the return of a last month's rent deposit. The Tenant paid the Landlords a rent deposit of \$1,350.00 on August 31, 2024.
15. Pursuant to s. 106(10) of the Act a landlord must apply a last month's rent deposit to the last month of the tenancy. This mean the first question I must determine is when did the tenancy terminate?
16. The parties agree that they had a written tenancy agreement with a fixed term of 12 months commencing on September 1, 2024, and ending on August 31, 2025. They also agree that the Tenant moved out of the rental unit and returned the keys to the Landlords on July 31, 2025. The Tenant had paid the rent for July 2025.

17. The difficulty here is that a tenancy is not legally terminated simply by the tenant vacating. Under the Act a tenancy is terminated by Board order, by valid notice to terminate or by agreement.
18. The Tenant testified that on May 27, 2025, she sent a text via WeChat to XT with an N9 Notice to Terminate the Tenancy ('N9 notice') as of July 31, 2025 (DOC – 7636090). The Tenant stated that the Landlord responded with the 🙌 ('OK') emoji which she took to mean that XT was agreeing to the Tenant's termination date.
19. ZJ first testified that the Tenant's last month deposit was withheld due to the damage within the rental unit. ZJ further testified the Tenant failed to provide appropriate notice per the Act as she attempted to terminate the tenancy prior to the end of the fixed term using an N9 Notice to Terminate the Tenancy ('N9 notice') via WeChat, which is not valid notice. Finally, ZJ stated that the Landlords use of the OK emoji was not an agreement or acceptance of the Tenant's notice to terminate. She stated that emoji meant only that she understood she was moving from the rental unit, not an acceptance of the early termination.
20. It was undisputed that the Landlords re-rented the unit for September 1, 2025.

Analysis

21. Section 37(1) of the Act states that a tenancy can only be terminated in accordance with the Act. This means to terminate the obligation to pay rent the tenancy must be terminated by proper notice, by agreement, or by Board order.

In order for a tenant's N9 notice of termination to be valid where there is a fixed-term one year leased, the termination date cannot be prior to the last day of the lease. In addition, the N9 Notice must be given to the landlord at least 60 days before the termination date: sections 44(4) and 47 of the RTA/

22. Here, the N9 notice the Tenant gave the Landlord on May 27, 2025 was not valid as the earliest date the Tenant could have given as a date of termination would have been August 31, 2025, in accordance with s. 44(4).
23. However, I must also consider whether the parties entered into an agreement to terminate the tenancy effective July 31, 2026, Section 37(3) of the Act provides that "A notice of termination need not be given if a landlord and a tenant have agreed to terminate a tenancy".
24. The Landlord's testimony on this issue was contradictory. At first, the ZJ stated the last months deposit was being held due to the damage within the rental unit, then she stated that it was due to the Tenant's non-compliance of the Act. Where the Landlord's testimony is contradictory, I rely on the documentary evidence before me. I find that XT responded to the Tenant's stated intention to terminate the tenancy effective July 31, 2026 using the OK emoji which is commonly understood to mean "that's correct" or "sounds good" and is commonly used to express approval, agreement or perfection when responding to a text message.

25. On the issue of whether a emoji can be a sufficient basis for a finding that parties have entered into a binding agreement I am guided by the persuasive case Saskatchewan case of *South West Terminal Ltd. v Achter Land*, 2023 SKKB 116 at paragraphs 36 to 38:

[36] I am satisfied on the balance of probabilities that Chris okayed or approved the contract just like he had done before except this time he used a 👍 emoji. In my opinion, when considering all of the circumstances that meant approval of the flax contract and not simply that he had received the contract and was going to think about it. In my view a reasonable bystander knowing all of the background would come to the objective understanding that the parties had reached consensus ad item – a meeting of the minds – just like they had done on numerous other occasions.

[37] Additionally, I find under these circumstances a 👍 emoji is “an action in electronic form” that can be used to allow to express acceptance as contemplated under The *Electronic Information and Documents Act, 2000, SS 2000, c E-7.22 [EIDA]* as per s. 18:

18(1) Unless the parties agree otherwise, an offer or the acceptance of an offer, or any other matter that is material to the formation or operation of a contract, may be expressed:

(a) by means of information or a document in an electronic form; or

(b) by an action in an electronic form, including touching or clicking on an appropriately designated icon or place on a computer screen or otherwise communicating electronically in a manner that is intended to express the offer, acceptance or other matter.

(2) A contract shall not be denied legal effect or enforceability solely by reason that information or a document in an electronic form was used in its formation

[38] I note Justice Scherman in *Quilichini v Wilson's Greenhouse*, 2017 SKQB 10, [2017] 8 WWR 375 [Quilichini] interpreted this provision of the EIDA as follows:

[10] The legislation is clear. Agreement to contractual terms can be expressed by touching or clicking on an appropriately designated icon or place on a computer screen. The fact that the contract could have alternatively been executed by printing a hard copy and having a participant sign a hard copy form does not detract from the foregoing. The fact that there are optional ways to execute the contract does not lead to the conclusion that using only one of those options does not constitute agreement.

26. I find the tenancy in this instance was terminated by agreement on May 27, 2026 when XT acknowledged the Tenant's intention to terminate the tenancy effective July 31, 2026, by providing a response which is widely understood to communicate acceptance or agreement. So, the Tenant was liable for the rent up until July 31, 2025, the date the tenancy terminated.

27. As a result of the agreement to terminate the tenancy on July 31, 2026, I find that the Landlord is retaining the deposit in contravention of the Act and therefore the \$1,350.00 deposit paid by the Tenant on August 31, 2024 must be returned.
28. The Landlord is not entitled to use a rent deposit to cover any alleged damage caused by the Tenant. The Landlord must file an application at the LTB seeking an order requiring the Tenant to pay compensation for damages.
29. This order contains all of the reasons for my decision within it. No further reasons shall be issued.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$1,398.00. This amount represents:
 - \$1,350.00 for the last month's rent deposit.
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by July 10, 2026.
3. If the Landlord does not pay the Tenant the full amount owing by July 10, 2026, the Landlord will owe interest. This will be simple interest calculated from July 11, 2026 at 4.00% annually on the balance outstanding.

June 30, 2026
Date Issued

Angela Smith
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.\