



Order under Section 135 Residential Tenancies Act, 2006

File Number: LTB-T-025443-26

In the matter of: 83 ECCLES ST N
BARRIE ON L4N 1Y5

Between: Aidan Vietmeier-Cook Tenant

And

Cheryl Carpenter Landlord

Aidan Vietmeier-Cook (the 'Tenant') applied for an order determining that Cheryl Carpenter (the 'Landlord') collected or retained money illegally.

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

The Landlord, the Tenant, the Tenant's support, Arielle Vietmeier and the Tenant's witness, Hector Soler attended the hearing.

Determinations:

Preliminary Issue:

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

1. For the reasons set out below, I find, the *Residential Tenancies Act, 2006* (the 'Act') does apply to this tenancy. While the Landlord asserts that the Tenant was required to share the bathroom facility, I do not find there was genuine living situation captured by the exemption contained in s. 5(i) of the Act.
2. While the rental unit listing stated that the washroom facilities would be shared, it did not state that it would be shared with the Landlord. Further, the tenancy agreement signed by the parties did not state the Tenant would be required to share the bathroom facilities with the Landlord. While it stated that the rental unit would not be subject to the Landlord and Tenant Board; it did not state for what reason. In addition, the Landlord has her own bathroom on a separate floor that she utilized daily. Furthermore she stated that her use of the Tenant's lower-level bathroom was occasional and only when required.
3. Section 5(i) of the Act 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

4. It was undisputed that the Landlord is the owner of the residential complex which is a bungalow. The Landlord lives on the upper floor of the residential complex and has her own bathroom on that floor that she uses on a daily basis. The Tenant's rental unit is on the lower level which contains a kitchenette, bedroom and bathroom.
5. It was undisputed that the advertisement for the rental unit which the Tenant responded to included "shared access to 3pc bathroom". With this said, the advertisement does not state that it is required to be shared with the Landlord.
6. It was further undisputed that the Landlord and Tenant completed and signed a rental application ('agreement') on August 16, 2025. The agreement does not state that the Landlord and Tenant would be sharing the washroom facilities (DOC-8017400).
7. The dispute between the parties revolves around whether the Tenant was required to share the washroom facilities during the pivotal period when tenancy began.
8. The Landlord submits that s. 5(i) of the Act is applicable in this case as the advertisement for the rental unit expressly stated that the Tenant would be required to share the washroom which was supported through documentary evidence. Further, the Landlord stated that when the Tenant viewed the rental unit, she reinforced that the bathroom would be shared. The Landlord testified that she required the use of the bathroom due to physical health needs. She stated that she utilized the bathroom sometimes weekly and others monthly, it was dependant on her needs during the month.
9. The Tenant's representative submits that s. 5(i) does not apply in this case as the Tenant was not required to share the washroom and did not share the washroom at the commencement of the tenancy.
10. The Tenant testified that during two walkthroughs of the rental unit prior to the tenancy beginning the Landlord stated that the bathroom would be private.

Analysis

11. 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. The Court 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

12. The Landlord relies on the advertisement with respect to the rental unit being exempt under s. 5(i) of the Act. However, as per *Cowie v. Bindlish*, I must focus on whether the Landlord actually lived in the rental unit when the tenancy began in determining whether the Tenant was required to share the kitchen or bathroom. In this case it was undisputed that the Landlord resides within the residential complex and has a separate washroom that she used on daily basis. The Landlord acknowledged that she did not use the Tenant’s bathroom on a daily basis and only used the bathroom as required, on occasion.
13. The Tenant’s evidence was that he was not required to share the washroom facilities at the commencement of the tenancy and did not share the washroom on a day-to-day basis.
14. Looking to s. 202 of the Act, it requires the Board to ascertain the substance of the agreement between the parties, and in doing so it may disregard the outward forms of a transaction and have regard to the parties’ pattern of activities. In this case I find that the true substance of the tenancy is that the Tenant was not required to share a bathroom with the owner at the beginning of the tenancy as the Landlord use of the washroom was only occasional.
15. 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 and has not established that the tenancy falls under the exemption in section 5(i) of the *Residential Tenancies Act, 2006*.

T1 Application

16. As explained below, the Tenant proved part of the allegations contained in the application on a balance of probabilities. Therefore, the Landlord shall pay \$150.00 to the Tenant.

Illegal Charge

17. Section 134 of the Act prohibits landlords from charging tenants’ fees that are in addition to rent. That section 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;
18. Section 17 of O. Reg. 516/06 under the Act provides that certain payments are exempt from subsections 134 (1) of the Act, including “Payment of a refundable key, remote entry

device or card deposit, not greater than the expected direct replacement costs.” There is no exception for a damage deposit.

19. It was undisputed that the Landlord collected a \$150.00 key deposit from the Tenant on September 1, 2025. The keys were returned by the Tenant on March 21, 2026 but the Landlord had failed to return deposit as of the date of the hearing.
20. As such, I find that the Landlord illegally retained this amount, and the Landlord shall pay the Tenants the amount of \$150.00 for the deposit.

Did the Landlord fail to apply the last months rent to the last month of the tenancy?

21. The Tenant also claims that the Landlord failed to return the last month’s rent deposit.
22. 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 before the Board here is: when did the tenancy terminate?
23. The parties agree that they had a written tenancy agreement with a fixed term of 8-months commencing on September 1, 2025 to April 30, 2026. It was further undisputed that the Tenant paid the Landlord a rent deposit of \$650.00 on September 1, 2025.
24. It was undisputed that the Tenant vacated the rental unit on March 21, 2026 and returned the keys to the Landlord.
25. The Tenant testified that he has a disability and his parents assist with certain aspects of his life which included his tenancy. The Tenant stated that the conversations surrounding the termination of the tenancy occurred with his father Hector Soler (‘HS’) and therefore the Tenant was not involved in the discussion regarding the termination of the tenancy or vacating the rental unit. Further, he stated that he could have been the individual the Landlord spoke to regarding her concerns and the termination of the tenancy.
26. HS testified that he is the Tenant’s father and he and his wife assist the Tenant with specific responsibilities regarding his day-to-day life, which included the Tenant’s tenancy. HS testified that on March 9, 2026, he and the Landlord had a phone call discussing the tenancy and her concerns regarding the Tenant’s behaviour. HS stated that during the call he suggested that the Tenant should move from the rental unit due to the late-night calls from the Landlord where she stated she would change the locks. Finally, HS testified that on March 19, 2026, he and the Landlord had a phone call where he informed the Landlord the Tenant would be vacating the rental unit on March 21, 2026. HS stated that he chose to terminate the tenancy quickly due to the statements made by the Landlord and his concerns the Tenant would be locked out of the rental unit.
27. The Landlord testified that she did not agree to terminate the tenancy prior to April 30, 2026, as such the Tenant did not terminate in accordance with the Act.

Analysis

28. Section 47 of the Act provides that a tenant may terminate a fixed-term tenancy by giving the landlord a notice of termination in accordance with s.44. Even if I accept the Tenant's testimony that they informed the Landlord that the Tenant was terminating their tenancy due to the concern that the Landlord would change the locks, the Tenant acknowledges they terminated the tenancy with 2-days notice. This notice does not comply with subsection 44(4) which states to terminate a tenancy for a fixed term the Tenant shall give at least 60 days before the expiration date specified in the tenancy agreement, which would mean that the earliest date the Tenant could terminate the tenancy would be May 31, 2026. Furthermore, there was no agreement with the Landlord to terminate the tenancy early.
29. Therefore, the tenancy did not lawfully terminate when the Tenant vacated on just a few days notice on March 19, 2026.
30. Pursuant to s. 88(1) of the Act, if a tenant provides a notice of termination 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 a valid notice. In this case, the earliest valid termination date the Tenant could have provided on March 19 was May 31, 2026, as the Tenant was required to terminate the tenancy in accordance with s. 44 of the Act.
31. However, the Landlords re-rented the unit for May 1, 2026, which means the Tenant's liability to pay rent ended on April 30, 2026 in accordance with s. 88(3) of the Act.
32. This means that the Landlord was entitled to apply the Tenant's deposit to the rent due under the Lease Agreement for the month of April 2026, unless the evidence establishes the Landlords failed to take reasonable steps to minimize their losses by re-renting the unit as soon as possible. (See ss. 88(4) and 16.)
33. I find that there is insufficient evidence to establish that the Landlord failed to reasonably mitigate their losses and could have found a new tenant to rent the unit earlier than May 1, 2026. In this case the unit was re-rented only one month after the Tenants vacated which seems reasonable in the circumstances.
34. As a result, and pursuant to s. 106(10) of the Act, the Landlord was correct in applying the deposit to the rent due for the month of April 2026. Therefore, they are not retaining the deposit in contravention of the Act and this part of the Tenant's application must be dismissed.
35. 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 \$198.00. This amount represents:

- \$150.00 for the illegal charge collected.
 - \$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.

June 30, 2026
Date Issued

Angela Smith
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.