



Order under Section 135 Residential Tenancies Act, 2006

File Number: LTB-T-059603-25

In the matter of: 561 SHERBOURNE
TORONTO ON M4X1W6

Between: Tuan Anh Nguyen Pham Tenant

And

Harrington Housing Inc. Landlord

Tuan Anh Nguyen Pham (the 'Tenant') applied for an order determining that Harrington Housing Inc. (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on May 21, 2026.

Only the Tenant and the Tenant's Legal Representative Reem Chansedine attended the hearing.

As of 9:35 a.m., 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:

Amendment to Application

1. At the commencement of the hearing the Tenant indicated that he wished to proceed on an amended application filed with the Board on March 5, 2026.
2. Rule 15 of the LTB's *Rules of Procedure* provides guidance on the Board's discretionary authority to amend an application. It says that a request to amend an application must be in writing, served with the amended application to all parties, and be filed with the LTB with the amended application and completed certificate of service. The LTB may exercise its discretion to grant a request to amend made at the hearing if satisfied the amendment is appropriate, would not prejudice any party and is consistent with a fair and expeditious proceeding. The request to amend will be decided considering:
 - a. whether the amendment was requested as soon as the need for it was known;
 - b. any prejudice a party may experience as a result of the amendment;
 - c. whether the amendment is significant enough to warrant any delay that may be caused by the amendment;

- d. whether the amendment is necessary and was requested in good faith; and
 - e. any other relevant factors.
3. The Tenant served the Landlord with the amended application. The Landlord did not attend the hearing to raise opposition to the amendment, and I am satisfied that the amendment will not prejudice the Landlord.

T1 Application

4. As explained below, the Tenant proved some of the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay to the Tenant \$412.00.
5. The Tenant testified that on June 10, 2025 he contacted a realtor for the Landlord via text and inquired about renting a unit within the residential complex.
6. The Tenant further testified that he advised the realtor he wished to rent unit 950 commencing September 4, 2025 at the residential complex and on June 11, 2025 transferred \$950.00 the equivalent of one month's rent and \$364.00 for a service to the Landlord.
7. The Tenant testified that they did not sign a tenancy agreement.
8. On June 13, 2025 the Tenant sent a message to the Landlord indicating that they wished to cancel the tenancy and sought the return of his rent deposit and service fee pursuant to the Landlord's cancellation policy.
9. The Tenant testified that the Landlord refused to return the rent deposit and service fee.

Analysis

10. With respect to a rent deposit s. 107(1) of the *Residential Tenancies Act, 2006* (the 'Act') says:

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.

11. This provision has been interpreted to mean that the deposit must be repaid if the landlord refuses to give possession to the tenant on the date set for commencement of the tenancy. But neither a landlord nor a tenant can unilaterally decide the tenancy is not going forward. In other words, a tenant cannot simply decide not to move in and expect the return of the deposit. (See: *Opara v. Cook*, 2008 CanLII 22923 (ON SCDC), [2008] O.J. No. 1934 (Ont. Div. Ct.) ('*Opara v. Cook*'), and *Musilla v. Avcan Management Inc.*, [2011] O.J. 3202 (Ont. C.A.).)
12. Additionally in *Opara v. Cook* the Court upheld a decision of the Board dismissing a tenant's application for a refund. The Court observed that a tenancy agreement came into effect the day the parties reached an agreement on the rental of a room and upon the rent deposit being paid.

13. Based on the text exchange between the Tenant and the Landlord's realtor and the payment of a rent deposit I am satisfied that a tenancy agreement came into affect pursuant to *Opara v. Cook* and the Tenant would not be entitled to the return of the rent deposit paid as it was the Tenant's act that prevented him from taking possession, not the action of the Landlord.
14. With respect to the service fee charged by the Landlord section 134(1)(a) of the Act states a landlord shall not:

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.

15. Based on the uncontested evidence before me I am satisfied on a balance of probabilities that the Landlord collected a charge which is not allowed by the Act when the Landlord collected a service fee from the Tenant.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$412.00. This amount represents:
 - \$364.00 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 11, 2026.
3. If the Landlord does not pay the Tenant the full amount owing by July 11, 2026, the Landlord will owe interest. This will be simple interest calculated from July 12, 2026 at 4.00% annually on the balance outstanding.

June 30, 2026
Date Issued

Sean Ramage
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.