



**Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006**

**Citation:** Dimitropoulos v Yazdi, 2024 ONLTB 19588

**Date:** 2024-03-27 **File Number:**  
LTB-T-009195-23-RV

**In the matter of:** 492 Briston Private Ottawa  
ON K1G5R5

**Between:** George Dimitropoulos Tenant

**And**

Fatemeh Yazdi Landlord

**Review Order**

George Dimitropoulos (the 'Tenant') applied for an order determining that Fatemeh Yazdi (the 'Landlord') has collected or retained money illegally.

This application was resolved by order LTB-T-009195-23 issued on November 29, 2023.

On December 7, 2023, the Tenant requested a review of the order.

On December 8, 2022 interim order LTB-T-009195-23-RV-IN was issued, with the parties being directed to exchange evidence.

This application was heard in by videoconference on February 7, 2024.

Only the Tenant attended the hearing.

As of 11:28 am, the Landlord was not in attendance, though served with notice of these proceedings.

**Determinations:**

**Review Hearing**

1. The Member who heard the Tenant's application found that the Landlord applied the Last Month's Rent deposit to the last month's rent, which was in October 2022.

2. She also found that the Tenant did not pay the rent for October 2022 and thus, the LMR Deposit was rightly applied to the October 2022 rent.
3. The Tenant alleges on review essentially that the Landlord did send the transfer of the LMR Deposit to the Tenant, supporting evidence of which was submitted at the hearing, but shortly thereafter, cancelled it, evidence of which the Landlord did *not* submit supporting evidence.
4. The Tenant produced text messages between the Landlord and Tenant, which were before the Member at the hearing.
5. On October 20, 2022, the Tenant wrote to the Landlord, saying, “*I need you to e-transfer me my last month’s deposit to pay down payment on new (sic) tonight*”.
6. The Landlord replied: “*you get it when you are out*”. “*E-transfer when I have the keys in the (sic) spot*”.
7. The Tenant replied: “*ok*”.
8. On October 26, 2022, the Landlord texted the Tenant: “*are you done moving?*”
9. The Tenant replied “*late evening*” and then “*you can come in 25 minutes*”.
10. The Landlord texted back: “*at door*”. The Tenant then texted, “*Where are u I’m ready*”.
11. Next was a screen shot of a bank transfer. It reads:

Sent  
george dimitropoulos  
-\$1,210.00  
From  
Chequing – Ultimate Package (5088) Date.  
Thu. Oct 27, 2022  
Reference number

12. The Member noted that this screen shot raised the question of why the Tenant would pay the October 2022 rent on October 27, 2022, after he moved out of the unit on October 26, 2022.
13. However, as part of his review application, the Tenant submitted new evidence, which was not before the Member hearing the claim.
14. This new document was a bank slip that supported his claim that he did pay the rent for October 2022 to the Landlord. The Tenant claimed that he did testify to this at the hearing.
15. In relation to that new document, it could have been produced at the original hearing, as it was available then. The Board’s expectation is generally that parties gather and rely upon any relevant evidence that is available to them. However, in the circumstance of this case, I am prepared to admit the evidence for this review hearing. It is highly relevant and material to this dispute, and its consideration would change the result. In my view it is appropriate to consider this evidence in order to avoid an unjust result, and to cure a serious error in the Board’s underlying decision. As a result, I will allow it into evidence on

the basis that the Tenant did provide oral evidence to the same effect, which was not accepted by the Member hearing the original claim.

16. This newly revealed banking slip, demonstrates that on October 5, 2022, the Tenant paid \$1,210.00 to "10426045865 Yazı", as the Tenant testified.
17. In my view, this is clear evidence that the Tenant did pay his October rent to the Landlord on October 5, 2022.
18. I accept the Tenant's evidence that the screen shot of the bank transfer dated October 27 is proof that the Landlord sent the e-transfer to him for the LMR Deposit, and then cancelled it, once she had the keys in her hand, owing to the presence of the negative sign in front of the amount stated on the document.
19. The text messages make clear that as of October 20, 2022, the Landlord planned to return the LMR Deposit once the Tenant was "out". By that date, according to the new evidence, he had already paid his October rent.
20. I am satisfied that Board order discloses a serious error, namely that the Tenant had not paid the October rent when in fact he had.
21. To be clear, I was only able to come to this conclusion with help from Tenant Duty Counsel, who appeared with the Tenant, and also based on the new evidence of the rent payment on October 5, 2022 from the Tenant to the Landlord, which the hearing Member did not have sight of.
22. I will therefore grant the review, and the matter will be re-heard.

### **Re-Hearing**

23. Pursuant to Rules 26.16 of the LTB Rules of Procedure, a re-hearing was held.
24. As a result, on the basis of the evidence before me, discussed above, I am satisfied, on a balance of probabilities, that the Landlord owes the Tenant the Last Month's Rent Deposit in the amount of \$1,210.00.
25. The Landlord herself indicated by text message that she would pay the amount once the Tenant vacated, and gave no reason for her failure to do so.
26. The Tenant is also entitled to a refund of the \$58.00 which he paid for this review, as he has succeeded on the review, pursuant to s. 182 of the *Residential Tenancies Act, 2006*.
27. The Tenant is also entitled to the costs of his original application, in the amount of the \$53.00, to be paid by the Landlord to the Tenant.

### **It is ordered that:**

1. The request to review order LTB-T-009195-23 issued on November 27, 2022 is granted. That order is cancelled and replaced with this order.
2. The interim order issued on December 8, 2022 is cancelled.

3. The Landlord shall pay to the Tenant the costs of the original application in the amount of \$53.00.
4. The LTB shall refund the costs of this review application in the amount of \$58.00 to the Tenant.
5. The Landlord shall pay to the Tenant the total amount of \$1,263.00, which represents the unlawfully retained LMR Deposit and costs, on or before April 5, 2024.
6. If the Landlord does not pay the full amount owing by April 5, 2024, commencing April 6, 2024, the amount owing will bear interest at 7% annually.

**March 27, 2024**

**Date Issued**

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James Campbell  
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.