



## Order under Subsection 135 Residential Tenancies Act, 2006

**Citation:** KEOUGH v GRECO, 2024 ONLTB 2300

**Date:** 2024-01-02

**File Number:** LTB-T-036374-22

<b>In the matter of:</b>	818 FINLAYSON THUNDER BAY THUNDER BAY P7C2L2	Tenant
<b>Between:</b>	LORRAINE KEOUGH	
	<b>And</b>	
	FRANK GRECO	Landlord

LORRAINE KEOUGH (the 'Tenant') applied for an order determining that FRANK GRECO (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on December 11, 2023.

Only the Tenant attended the hearing. As of 9:45am 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:**

1. As explained below, the Tenant substantially proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenant \$2,950.00.

#### *Evidence*

2. The Tenant testified that the parties entered into a tenancy agreement on October 28, 2021.
3. On October 28, 2021 the Tenant met with the Landlord to view the rental unit. The unit required some work and the parties agreed that the Tenant will move into the rental unit on January 1, 2022 after the Landlord completes the work. The monthly rent was set at \$1,475.00. The Tenant then gave the Landlord \$2,950.00 representing first and last month's rent. No lease was signed but the Tenant submitted a handwritten note given to her by the Landlord on that date confirming receipt of the funds. The *Residential Tenancies Act, 2006* defines "tenancy agreement" to include an oral agreement between a tenant and a landlord for occupancy of a rental unit.



4. The Tenant was never able to get a hold of the Landlord again. She called him multiple times but he didn't pick up. She went to the rental unit in late December 2021/early January 2022 and discovered that there were other people already living in the rental unit.
5. The Tenant was never given the key to the rental unit, nor was she permitted to move into the unit as the Landlord allowed someone else to occupy the rental unit instead.
6. The Landlord did not return the money the Tenant paid.
7. The Tenant is requesting an Order requiring the Landlord to return \$2,950 to the Tenant.

#### *Law and Analysis*

8. Pursuant to subsection 135 (1) of the *Residential Tenancies Act, 2006, S.O. 2006, c17* (the 'Act'), "a tenant or former tenant of a rental unit may apply to the Board for an order that the landlord, superintendent or agent of the landlord pay to the tenant any money the person collected or retained in contravention of this Act..."
9. Subsection 13(2) of the Act states that a tenancy agreement takes effect when the tenant is entitled to occupy the rental unit, whether or not the tenant actually occupies it. In this case, the Tenant was entitled to occupy the rental unit on January 1, 2022. Subsection 37(1) of the Act states that a tenancy may be terminated only in accordance with the Act. In this case, the Landlord effectively terminated the tenancy unilaterally in contravention of the Act. Therefore, the Landlord must repay the Tenant any rent the Tenant paid in respect of the rental unit.
10. In addition, subsection 107(1) of the Act provides that "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. The Landlord collected a rent deposit but did not give the prospective Tenant vacant possession of the rental unit. Therefore, the Landlord must repay the rent deposit.
12. Based on the Tenant's uncontradicted evidence I find that the parties entered into an agreement to lease the rental unit, that the Landlord collected \$2,950 from the Tenant, and that the Landlord never provided the Tenant with vacant possession of the rental unit.
13. The Landlord must repay the rent deposit and prepaid first month's rent.

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

1. The total amount the shall pay the Tenant is \$2,950.00. This amount represents:
  - \$1,475.00 representing rent prepaid for January 2022; and
  - \$1,475.00 representing last month's rent deposit.
2. The Landlord shall pay the Tenant the full amount owing by March 5, 2024.

3. If the Landlord does not pay the Tenant the full amount owing by March 16, 2024, the Landlord will owe interest. This will be simple interest calculated from March 17, 2024 at 7.00% annually on the balance outstanding.
4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

**March 5, 2024**

**Date Issued**

\_\_\_\_\_  
Vladimir Nikitin

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.