



## Order under Subsection 135 Residential Tenancies Act, 2006

**Citation:** Deo v Chanchal, 2024 ONLTB 3522

**Date:** 2024-01-10

**File Number:** LTB-T-001196-23

**In the matter of:** BASEMENT, 8 PRISCILLA CRT  
BRAMPTON ON L6S5C9

Tenant

**Between:** Gurbind Deo

**And**

Landlords

Tyrone Chanchal  
Jennifer Lazo

Gurbind Deo (the 'Tenant') applied for an order determining that Tyrone Chanchal and Jennifer Lazo (the 'Landlords') collected or retained money illegally.

This application was heard by videoconference on May 2, 2023.

The Landlords and the Tenant attended the hearing. The Tenant spoke to Tenant Duty Counsel prior to the hearing.

### **Determinations:**

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay to the Tenant \$999.80.
2. In his testimony, the Tenant stated he moved into the rental unit on July 30, 2021. During his tenancy, the Landlords expressed to him that the cooking smells emanating from his basement unit were bothering them. He stated the Landlords closed off two floor vents in the upper level of the dwelling to lessen the odours coming from the basement. He stated the Landlords also requested he cook outside, limit his cooking to only a few times a week, and open the windows when cooking in the unit.
3. The Tenant testified because of the Landlords' behaviour, he decided to vacate the rental unit. He stated he provided the Landlords with an N11 Agreement to End the Tenancy form ('N11') on September 12, 2021 with a termination date of November 12, 2021 to which they agreed.
4. There was no dispute between the parties that the Tenant paid the full monthly rent to the Landlords for November, in the amount of \$1,600.00, on October 31, 2021 despite the Tenant knowing he would be vacating the unit on November 12, 2021. As his circumstances



changed with his new accommodation, the Tenant vacated the rental unit on the earlier date of November 3, 2021.

5. The Tenant testified that on November 3, 2021 after a phone conversation. he and the Landlords met in the rental unit for a move out inspection and upon completion of the inspection, he provided the Landlords with the keys to the rental unit.
6. The Tenant is seeking compensation in the amount of \$1,440.00 for the overcharge of rent for the period of November 3, 2021 to November 30, 2021.
7. In his testimony, the Landlords testified it was their understanding that although the Tenant provided a termination date of November 12, 2021, they did not reimburse him for the period of November 12, 2021 to November 30, 2021.
8. The Landlords contradicted the Tenant's submission with respect to the move out inspection on November 3, 2021. They testified they did not meet with the Tenant and did not learn that he had vacated the rental unit until they performed their own inspection on November 13, 2021. They further stated they do not recall having any conversations with the Tenant with respect to the Tenant vacating the rental unit on November 3, 2021.
9. The Landlords also testified that after the Tenant vacated the rental unit, they incurred cleaning costs in the amount of \$508.50 and sought to be reimbursed for these costs. The Landlords submitted the cleaning invoice as evidence however no photographs of the rental unit were provided as evidence. As the Landlords did not provide sufficient evidence to support their claim for cleaning costs, this claim is denied.

### Analysis and Legislation

10. The issues before me are; when did the Tenant vacate the rental unit and is the Tenant entitled to reimbursement of the November rent paid from the date he vacated the unit or from the termination date on the N11.
11. Section 135(1) of the *Residential Tenancies Act, 2006* ('the Act') sets out the following:
 

135 (1) 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 or the *Tenant Protection Act, 1997*.
12. Section 37(1) of the Act states:
 

37 (1) A tenancy may be terminated only in accordance with this Act.
13. Section 37(3), Termination by agreement, states:
 

(3) A notice of termination need not be given if a landlord and a tenant have agreed to terminate a tenancy.

14. In the case before me, the Landlords and the Tenant entered into an agreement to terminate the tenancy on November 12, 2021 meaning the Landlords cannot take back possession of the rental unit before the termination date on the N11 in accordance with the Act.
15. The Tenant alleges he vacated the rental unit on November 3, 2021 and notified the Landlords by participating in a move out inspection and leaving the keys with the Landlords however, the Tenant could not recall if he physically handed the keys to the Landlords or left them in the rental unit. The Landlords testified that no such inspection took place on November 3, 2021 and it was not until they entered the unit on November 13, 2021 they were able to confirm that the Tenant was no longer in possession of the unit.
16. The evidence from both parties is contradictory regarding exactly when the Tenant vacated. There was insufficient evidence provided by the Tenant to establish that a meeting between himself and the Landlords took place however, there is no dispute that the Tenant was no longer in possession of the unit after November 12, 2021.
17. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
18. Based on the evidence before me and considering all the circumstances, I find it more likely than not it was both parties understanding that the tenancy would terminate by November 12, 2021. The Landlords must therefore return to the Tenant the monies collected for the period of November 12, 2021 to November 30, 2021.
19. Based on the monthly rent, the daily rent/compensation is \$52.60. This amount is calculated as follows:  $\$1,600.00 \times 12$ , divided by 365 days.
20. As the Tenant was successful in his application, he is also entitled to the cost of filing the application in the amount of \$53.00.
21. This order contains all the reasons within it and no further reasons will be issued.

**It is ordered that:**

1. The total amount the Landlords shall pay the Tenant is \$999.80 This amount represents:
  - \$946.80 for excess rent collected; and
  - \$53.00 for the cost of filing the application.
2. The Landlords shall pay the Tenant the full amount owing by January 21, 2024.
3. If the Landlords do not pay the Tenant the full amount owing by January 21, 2024, the Landlord will owe interest. This will be simple interest calculated from January 22, 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.

**January 10, 2024**  
**Date Issued**

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Susan Priest  
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.