



**Order under Subsection 135  
Residential Tenancies Act, 2006**

**Citation:** He v Hu, 2024 ONLTB 16340

**Date:** 2024-04-15

**File Number:** LTB-T-074249-23

**In the matter of:** Basement, 143 MUNICIPAL ST GUELPH  
ON N1G4R2

Tenant

**Between:** Zimo He

**And**

Landlord

YiFan Rich Hu

Zimo He (the 'Tenant') applied for an order determining that YiFan Rich Hu (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on January 8, 2024.

The Landlord and the Tenant and the Tenant's Legal Representative, Jessica Gu, attended 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 return the rent deposit taken from the Tenant.
2. The Tenant and Landlord conducted conversations via messaging app in Chinese. A translation of the messages, by a certified translator, was provided by the Landlord and submitted as evidence.
3. The following facts are not in dispute between the parties:

- a. That on June 30, 2023, the parties entered into a tenancy agreement. The agreement was for a fixed term of September 1, 2023 to August 31, 2024. The lawful monthly rent was \$1,350.00.
- b. The Landlord collected a rent deposit of \$5,050.00. This amount consisted of 3 months of rent of \$1,350.00. A further \$1,000.00 was collected for damages. This was given to the Landlord via e-transfer on July 7 and July 10.
- c. On August 25, 2023, the Tenant inquired about the condition of the rental unit. On that day, the Landlord indicated that the rental unit was not ready for the Tenant's

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inspection. On that day, the Tenant stated she could move her possessions into the unit earlier prior to occupancy.

- d. On August 26, 2023, the Tenant inquired about the condition of the rental unit. On that day, the Landlord indicated that the rental unit was not ready for the Tenant's inspection. The Landlord indicated via messaging app, that he was awaiting an electrician to install something in the rental unit.
- e. On August 28, 2023, the Landlord asked the Tenant when she planned to move in her possessions. The Tenant replied that she would move her possessions into the rental unit at 9PM that same day.
- f. On August 29, 2023, the Tenant inquired about the condition of the rental unit. On that day, the Landlord indicated that the rental unit was not ready for the Tenant's inspection. The Landlord explained in that message that the electrician who was scheduled to perform the service was unavailable. The earliest the electrician could perform the service was the upcoming weekend. Afterward, the City would then be able to conduct an inspection of the rental unit. The Landlord offered a daily rebate since the Tenant could not occupy the unit.
- g. On August 30, 2023, the Tenant messaged the Landlord stating that she had a change of heart and decided against taking possession of the rental unit. She stated that, because the rental unit was not ready by the beginning of the lease, she wanted to cancel it and move on, along with her friend who was also a tenant of the residential complex. The Landlord stated that he would consider it.
- h. On August 31, 2023, the Tenant messaged the Landlord to inquire about the rent deposit sent. The Landlord replied that the deposit would be refunded per the lease. The Tenant noted that no early termination was contemplated in the lease agreement.

- i. On September 1, 2023, the Landlord messaged the Tenant to inform her that a bank draft was ready for pick up. A bank draft was prepared in the amount of \$5,050.00 by the Landlord. On that day, the parties met at the residential complex. However, the draft was not given to the Tenant.

### *Submissions*

4. The Tenant's position was that the rental unit was unfit for residential habitation. In support of this, the Tenant testified that she had reached out to the city to inquire about the status of the rental unit. Upon contacting the authorities, she learned that the rental unit was not approved by the city. This fact, along with the fact that the electrical work was not completed by the start of the tenancy and she perceived the rental unit to be less than ideal condition, meant that she did not agree to take possession.
5. As there was a disagreement on September 1, 2023 between the parties, the day the bank draft was to be refunded, the bank draft was not picked up by the Tenant. The Tenant had to hastily hire a moving truck that she paid for herself, to remove all her possessions on the same day. The Tenant submitted she should be compensated for this expense as it was due to the actions of the Landlord that she could not take possession.
6. The Landlord's position was that the Tenant had moved in her possessions on August 28<sup>th</sup>. These included her pet rabbit, which the Landlord testified had made a mess in the rental unit. The Landlord testified that on the day the bank draft was to be refunded, he demanded a storage fee to reflect the days that the Tenant stored her possessions in the rental unit. The Landlord demanded this when the parties met in person on September 1, and which was the source of the dispute.

### *Analysis*

7. The rules regarding rent deposits can be found in subsection 106(2) of the *Residential Tenancies Act, 2006* (the 'Act'):  
  
(2)The amount of the rent deposit **shall not be more than** the lesser of the amount of rent for one rent period and **the amount of rent for one month**. [Emphasis Mine]
8. In reviewing the facts, I first note that the lawful monthly rent is \$1,350.00. Two months would have been \$2,700.00. The first month of rent would immediately have come due at the beginning of the tenancy on September 1. The remaining amount would be held in deposit. However, Landlord took a total rent deposit of \$5,050.00, or \$2,350.00 in excess of two months or rent. Were this offered by the Tenant voluntarily, it would not be an illegal charge, but rather a pre-payment. In any case, as the tenancy has ended, it needs to be returned. I find that the Landlord has illegally retained \$2,350.00 of the Tenant's monies. This needs to be returned.
9. Subsection 13(2) of the Act reads as follows:

“(2) A tenancy agreement takes effect when the tenant is entitled to occupy the rental unit, whether or not the tenant actually occupies it.”

10. On August 28, 2023, the Landlord asked the Tenant if she wanted to move in her possessions. Based on the Tenant’s testimony that she had to hire a truck to move her possessions *out* of the rental unit, it is clear that, at some point, she did in fact move her possessions into it. In light of subsection 13(2), and taking into consideration the Landlord’s testimony, I find that the tenancy began on August 28<sup>th</sup>.
11. The Landlord is thus entitled to daily compensation for the days the Tenant was in possession. This is calculated at a rate of  $(\$1,350 \times 12 \text{ months}) / 365 \text{ days} = \$44.38$  per day.
12. A tenancy can terminate in any one of three ways: notice of termination, agreement to terminate or by an order of the Board. Pursuant to section 37 of the Act a tenancy can only be terminated in accordance with the Act.
13. On August 30, 2023, the Tenant contacted the Landlord stating that she did not want to move into the rental unit and to cancel the lease. On September 1, 2023, the Landlord reached out to the Tenant stating that the bank draft for all the monies she had given to him for the rent deposit and security deposit was ready for pick up. In my view, the parties agreed to terminate the lease prior to the start tenancy.
14. As the tenancy ended on September 1, 2024, the Landlord’s entitlement to daily compensation ends. The Landlord has illegally retained the Tenant’s funds. Therefore, the Landlord must repay the rent deposits, less four days of daily compensation. The calculation for this is as follows  $\$2,700.00 - (\$44.38 \times 4 \text{ days}) = \$2,522.48$ .
15. The Tenant incurred costs of \$53.00 for filing the application and is entitled to reimbursement of those costs.
16. With regard to the Tenant’s submission that she should be compensated for having to hire a truck to move her positions, I make no findings. This would not be the correct application to make such a claim.
17. With regard to the Landlord’s submission that he should be compensated for providing storage to the Tenant, I make no findings. This would not be the correct application to make such a claim.

**It is ordered that:**

1. The total amount the Landlord shall pay the Tenant is \$4,925.48. This amount represents: the first and last month of rent, along with the one month of rent and safety deposit illegally retained and costs.
2. The Landlord shall pay the Tenant the full amount owing by April 26, 2024.

3. If the Landlord does not pay the Tenant the full amount owing by April 26, 2024, the Landlord will owe interest. This will be simple interest calculated from April 27, 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.

**April 15, 2024**

**Date Issued**

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Henry Yeung

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.