



## Order under Section 135 Residential Tenancies Act, 2006

**Citation:** Hudema v Miedema, 2024 ONLTB 61887

**Date:** 2024-08-22

**File Number:** LTB-T-049027-23

**In the matter of:** 1, 230 Marks Street South  
Thunder Bay Ontario P7E1M1

Tenants

**Between:** Sandra Hudema  
Michael Montgomery

**And**

Peter Miedema

Landlord

Sandra Hudema and Michael Montgomery (the 'Tenants') applied for an order determining that Peter Miedema (the 'Landlord') collected or retained money illegally ('T4 application').

This application was heard by videoconference on August 7, 2024. Only the Tenants attended the hearing.

As of 9:29 AM, the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB. The hearing proceeded with only the Tenants evidence.

### Determinations:

1. Section 121(1) of the Act stipulates:

Agreement

**121 (1)** A landlord and a tenant may agree to increase the rent charged to the tenant for a rental unit above the guideline if,

- (a) the landlord has carried out or undertakes to carry out a specified capital expenditure in exchange for the rent increase; or
- (b) the landlord has provided or undertakes to provide a new or additional service in exchange for the rent increase.



2. Section 122(1) and (2) of the Act stipulates:

Tenant application

- (a) (1) A tenant or former tenant may apply to the Board for relief if the landlord and the tenant or former tenant agreed to an increase in rent under section 121 and,
- (a) the landlord has failed in whole or in part to carry out an undertaking under the agreement;
  - (b) the agreement was based on work that the landlord claimed to have done but did not do; or
  - (c) the agreement was based on services that the landlord claimed to have provided but did not do so.

Time limitation

- (2) No application may be made under this section more than two years after the rent increase becomes effective.

3. The T4 application ('application') was filed more than two years after the date the Landlord increased the rent above the guideline. This is not in accordance with the requirements set out within section 122(2) of the *Residential Tenancies Act, 2006* ('the Act'). Therefore, the application is statute barred and must be dismissed.
4. The rent was increased above the guideline on May 1, 2021 as claimed in the application and confirmed at the hearing but the Board's record confirm that the application was received by the Board on June 12, 2023. As a result, more than two years have lapsed since the effective date of the rent increase above the guideline.
5. The residential complex is a house with four separate rental units. The Tenant Sandra Hudema (Ms. Hudema) testified that her and her son Michael Montgomery have lived in the rental unit since 1997. She states that the Landlord's property manager, Nancy Sullivan presented them with an N10 Agreement to Increase the Rent Above the Guideline ('N10 Agreement'). This N10 Agreement notes that capital expenditure work is to be completed at the rental unit and the monthly rent will increase to \$950.00 per month on May 1, 2021. The N10 Agreement is dated March 1, 2021 and was signed by Nancy Sullivan and both Tenants.
6. The capital expenditure work in the N10 Agreement includes the following:
- Renovation of the bathroom; including gut and install of new tub and tub surround, reseal existing toilet, new flooring, installation of bathroom fan and GFI receptacles, and updating the plumbing and electrical;
  - Renovation to the smaller bedroom to remove water damaged walls and ceiling, installation of new drywall, painting bedroom, and replacement of the flooring;

- Work in bathroom and smaller bedroom commenced in February 2021 and work is to be completed by April 2021;
  - Kitchen renovations to commence in the late spring with an anticipated two-week duration. Renovations to include removing kitchen closet, repairing water damaged ceiling, repair counter tops and install new flooring, and painting kitchen walls; and
  - Renovations to the larger bedroom to include installation of drywall on the bedroom and closet ceiling, and painting.
7. Ms. Hudema stated that the renovation work on the bathroom and the smaller bedroom was completed in April 2021 but to date, no renovations have been completed for the kitchen or the larger bedroom.
  8. Ms. Hudema testified that on May 1, 2021, the monthly rent increased from \$666.00 to \$950.00 and the Tenants paid this rent increase.
  9. Based on Ms. Hudema's testimony, I accept that the Landlord increased the monthly rent to \$950.00 per month effective May 1, 2021. The application was received by the Board on June 12, 2023.
  10. The Board has no jurisdiction to consider this application, which was filed more than two years from the date the monthly rent increased above the guideline. If there are ongoing maintenance issues that have not been addressed by the Landlord, the Tenants may consider filing their own application to address this.

**It is ordered that:**

1. The Tenants application is dismissed.

**August 22, 2024**  
**Date Issued**

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Kimberly Parish  
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.