



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

Citation: Wakeling v
Woodrow, 2023 ONLTB
77289

2023 ONLTB 77289 (CanLII)
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File Number:
LTB-T-010752-
23

In the matter of: 68 Townline Road
Orangeville Ontario L9W1V6

Between: Alyssa Wakeling Tenant

And

Melissa Woodrow (also known as Melissa Chaulk) Landlords
David Chaulk

Alyssa Wakeling (the 'Tenant') applied for an order determining that Melissa Woodrow (also known as Melissa Chaulk) and David Chaulk (the 'Landlords') collected or retained money illegally.

This application was heard by videoconference on November 1, 2023.

Only the Tenant attended the hearing.

As of 2:11 p.m., the Landlords were 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. **Preliminary**

Issues:

1. A preliminary issue was raised with the Tenant with respect to the “reasons” section of her T1 application and how some of her description was cut off at the end of page 5 of 7. The Tenant stated that she had intended for a lengthier description to have been submitted online, and that she didn’t realize a portion of her reasons were cut off. Despite this, the hearing proceeded, as I was satisfied that sufficient reasons and details were outlined on the application to allow the respondents to understand the case to be met, and that the application involved the return of a deposit to a prospective tenant. The Tenant included the essential facts of her claim in the description on page 5 of 7 including the amount paid towards her deposit, the intended start date of the lease, the attempts she made to move into the unit and on what dates, as well as a statement about why she asked for the return of it after she was not provided with vacant possession. Moreover, the respondents were not at the hearing to say why this prejudiced them, if at all.
2. The second issue raised with the Tenant involved what the legal name is of the respondent “Melissa”. The Tenant stated that it was her understanding that the respondent may have

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recently undergone a name change. The Tenant was unsure of what the respondent’s current legal name is, given that “Melissa Chaulk” accepted a \$1,000.00 rental deposit from the Tenant, but that “Melissa Woodrow” had been corresponding with the Tenant and the Board through email. The Tenant submitted a banking receipt into evidence which shows “Melissa Chaulk” accepting funds from the Tenant, but her email on the same banking receipt being one which included the last name “Woodrow”. As such, I am satisfied that Melissa Woodrow and Melissa Chaulk are one and the same person. For the purposes of enforcing this order, the application is amended to reflect both names.

Determinations:

3. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlords must compensate the Tenant in the amount of \$250.00 plus the \$53.00 application fee.
4. The parties entered into a tenancy agreement for a six-month term commencing December 1, 2022 to June 1, 2023, with rent being \$1,000.00 per month. The Tenant admitted a copy of this lease into evidence. Melissa Chaulk is listed as the Landlord on the Tenant's lease, and the Tenant stated at the hearing, that Ms. Chaulk had indicated that David Chaulk was the legal owner of the property.
5. The Tenant sent the Landlord Melissa Chaulk a \$1,000.00 deposit as last month's rent on October 23, 2022 by e-transfer. The Tenant submitted a banking receipt into evidence which shows this transaction.
6. The Tenant testified that it was her intention to move into the rental unit on December 1, 2022 but that she never actually moved in. The Tenant testified that her move in date was first shifted by agreement of the parties to December 4, 2022, but that on December 2, 2022 the Landlord Melissa Chaulk reached out by text message to let the Tenant know that the unit was still undergoing repairs and renovations and would be ready sometime in the coming week. The Tenant submitted a text message dated December 2, 2022 into evidence from Ms. Chaulk which reflects this.
7. The Tenant further testified that she allowed the Landlords additional time to get the rental unit ready, and rescheduled her moving day to December 7, 2022. The Tenant stated that on the morning of December 7, 2022 she received a further text message from Ms. Chaulk indicating that the unit was still not ready. The Tenant submitted a text message dated December 7, 2022 into evidence which reflects this, and which shows Ms. Chaulk stating that "...The remaining things that have to be completed are the washroom, the kitchen ceiling and the closet rod. He said that you can move your stuff in today but unfortunately won't have a functional bathroom until he is off on the weekend [...]". In response to receiving this message, the Tenant indicated that she then, on December 10, 2022 asked to be let out of the lease, given that she was not prepared to move into an unfinished unit, and that she asked the Landlords to return her \$1,000.00 deposit.
8. In addition, the Tenant testified that the Landlords agreed to return her \$1,000.00 deposit once they had secured a new tenant, as her deposit had already been spent on improvements to the unit. I note that the Landlord Melissa Woodrow did communicate with the Board on October 26, 2023 by sending in an email which stated that the Landlords had

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reimbursed the Tenant in the amount of \$750.00. The Tenant acknowledges this amount was paid to her.

9. Based on the uncontradicted evidence of the Tenant, I find that the Landlords failed to provide her with vacant possession of the rental unit on two occasions, and frustrated the contract by suggesting that the Tenant should occupy the unit while the bathroom and other sections of it remained unfinished. The Tenant should not have been expected to wait an unspecified amount of time before being able to comfortably occupy the unit. Accordingly, she was entitled to ask for the return of her deposit pursuant to section 107 of the *Residential Tenancies Act, 2006* (the 'Act') which states:

Rent deposit, prospective tenant

107 (1) 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.

10. As is required under section 135(4) of the Act, the Tenant filed her T1 application within one year of the date that the funds were retained in contravention of the Act, by filing her application on December 21, 2022.
11. Given that the Landlords have already reimbursed the Tenant in the amount of \$750.00, the Tenant is owed a remaining \$250.00, plus the \$53.00 application fee.

It is ordered that:

1. The total amount the Landlords shall pay the Tenant is \$303.00. This amount represents:
 - o \$250.00 for the balance of her last month's rental deposit. o
 - \$53.00 for the cost of filing the application.
2. The Landlords shall pay the Tenant the full amount owing by December 15, 2023.
3. If the Landlords do not pay the Tenant the full amount owing by December 15, 2023, the Landlords will owe interest. This will be simple interest calculated from December 16, 2023 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.

December 4, 2023

Date Issued

 Madeline Ntoukas
 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.

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