



## Order under Sections 31 and 135 Residential Tenancies Act, 2006

**Citation:** Ali v Ballam, 2023 ONLTB 64568

**Date:** 2023-10-05

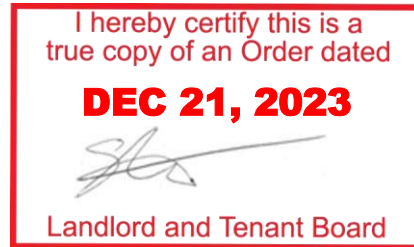
**File Numbers:** LTB-T-073578-22 and LTB-T-073616-22

**In the matter of:** 122 Room 1, 326 Major Mackenzie Drive  
Richmond Hill Ontario L4C2B7

**Between:** Omar Ali

**And**

Dianne Ballam



Tenant

Landlord

2023 ONLTB 64568 (CanLII)

Omar Ali (the 'Tenant') applied for an order determining that Dianne Ballam (the 'Landlord') has collected or retained money illegally (the 'T1 application') LTB-T-073616-22.

The Tenant also applied for an order determining that the Landlord harassed, obstructed, coerced, threatened or interfered with the Tenant, entered the rental unit illegally, altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys and substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household (the 'T2 application') LTB-T-073578-22.

The applications were heard by videoconference on May 17, 2021, where the Tenant, the Tenant's Legal Representative, Chris Surowiak and the Landlord attended the hearing. The matter was adjourned to allow more time for testimony, as the Landlord began her cross-examination of the Tenant but did not finish. The Landlord also wished to testify and call witnesses. During this portion of the hearing, the Tenant was able to finish his examination and begin his cross-examination by the Landlord.

The matter was then heard by telephone and videoconference on June 14, 2021, where the Tenant, and the Tenant's Legal Representative, attended the hearing. The matter was adjourned to ensure that the Landlord received proper service of the Notice of Hearing ('Notice of Hearing'), as the Tenant's Legal Representative and the Landlord Tenant Board (the 'Board') had longstanding issues reaching the Landlord.

The matter was then heard by videoconference on October 12, 2021, where the matter was adjourned on consent as the Landlord had just received the Notice of Hearing on October 6, 2021.

The matter was then again heard on March 17, 2022, where again, only the Tenant and the Tenant's Legal Representative appeared. The Tenant's Legal Representative again requested an adjournment, to allow the Landlord one final opportunity to conclude the hearing. The Board

ordered that the matter would proceed with or without the Landlord's attendance, given the history of the file.

The hearing was concluded on September 15, 2023, where only the Tenant appeared. The Tenant confirmed he was no longer represented by his legal representative and wished to proceed without the Landlord. Given the length of time that has passed, and my previous order, I proceeded without the Landlord.

## **Determinations:**

### ***Jurisdiction***

1. The Landlord submitted that the Board did not have jurisdiction to hear this matter based on section 5(i) of the *Residential Tenancies Act, 2006* (the "Act"). Section 5(i) of the *Act* provides that parties are exempt from the jurisdiction of the Board, when: "living accommodation whose occupant or occupants are required to share a bathroom or kitchen facility with the owner, the owner's spouse, child or parent or the spouse's child or parent, and where the owner, spouse, child or parent lives in the building in which the living accommodation is located;"
2. The Landlord submitted she shared the rental unit with the Tenant, and that the rental unit is not under the jurisdiction of the *Act*. The Landlord did not provide the Tenant nor the Board with a copy of the lease.
3. The Landlord did not participate in the entirety of the matter and failed to attend the adjourned hearings to provide evidence supporting her position, despite the Board's orders.
4. The Tenant presented evidence via his testimony that he did not share the rental unit with the Landlord.
5. Since the Landlord is the party raising the issue of jurisdiction, she must provide evidence to support her position. As she has failed to do so, I find that she has not shown, based on a balance of probabilities, that the Board does not have jurisdiction to hear the matter. Therefore, the matter shall be heard by the Board.

### ***T1 and T2 Applications***

6. The parties agreed with the following facts:
  1. That the residential complex consists of a residential home with shared accommodations, also known as a rooming house.
  2. That the Tenant's monthly rent was \$1,350.00.
  3. That the Tenant moved in on approximately March 1, 2021.

4. That the Tenant no longer had access to the rental unit as of March 16, 2021, because of the Landlord's actions.
7. The Tenant submitted that the Landlord collected a rent deposit of \$4,050.00 or 3 months of rent, in advance of renting the rental unit. The Tenant testified that he provided the Landlord with a cheque in that amount before moving into his rental unit.
8. The Tenant also sought costs associated with moving out of the rental unit, including higher rent, and moving and storage expenses.
9. The Tenant testified that the Landlord illegally locked him out of the rental unit on March 16, 2021, as a reprisal for having a guest in the rental unit.
10. When the hearing began, the Landlord had refused to provide the Tenant with his personal effects. However, this issue was sorted before a Board decision could be issued. Therefore, the Tenant withdrew this issue.
11. The Tenant requested that the Board order the Landlord to refund the Tenant's rent deposit and find that he was not able to use the rental unit without being harassed, threatened and was substantially interfered with by the Landlord. He requested compensation for his moving expenses, higher rent, and costs.
12. The Landlord did not lead any evidence with respect to this issue.
13. During the hearing, I asked the Tenant and the Tenant's Legal Representative if they had any documentary evidence to support the Tenant's argument regarding the rent deposit. The Tenant's Legal Representative confirmed that he would be relying solely on his client's testimony.
14. Section 135 of the *Act* states that a tenant or former tenant of a rental unit may apply to the Board for an order determining 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,
15. Section 23 of the *Act* states that a landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.
16. Section 24 of the *Act* states that a landlord shall not alter the locking system on a door giving entry to a rental unit or residential complex or cause the locking system to be altered during the tenant's occupancy of the rental unit without giving the tenant replacement keys. 2006, c. 17, s. 24.
17. After considering the submissions and evidence, based on a balance of probabilities, I find that the Landlord did illegally enter, lock out and interfere with the Tenant by forcing him to leave the rental unit. I agree with the Tenant's argument that a landlord may not simply, unilaterally end a Tenant's tenancy. There are proper channels to do so via the Board and in compliant with section 24 of the *Act*, and those were not exercised.

18. I found the Tenant's testimony persuasive and was generally not contradicted on cross examination. Moreover, the Landlord did not lead any evidence to dispute this position, and generally agreed with the statement of fact.
19. However, I will not order the Landlord to return the rent deposit requested by the Tenant. I was not convinced that the Tenant paid the full amount he claimed or three months of rent.
20. Though I agree that the Tenant presented evidence of this through his testimony, I was surprised that he chose to include evidence to address the issue of jurisdiction, but not provide any proof of the method, date or amount he allegedly paid the Landlord. Given his meticulous record keeping related to his new rental, I was unable to resolve this contradiction.
21. I also specifically addressed this with the Tenant's Legal Representative during the hearing, which was acknowledged. Without persuasive evidence that the Tenant paid this amount in advance, I will not order the Landlord to return the rental deposit, The Tenant has not shown, based on a balance of probabilities, the necessary details regarding his payment.
22. In light of the illegal acts of the Landlord, I find that the Tenant is entitled to \$5,000.00 to compensate him for his new, higher rent, storage, moving costs, the permanent loss of the Tenant's rental unit, and his lack of enjoyment of the rental unit for the end of March 2021. I base myself on the parties' arguments and evidence, as well as my knowledge of similar cases.

**It is ordered that:**

1. The total amount the Landlord shall pay the Tenant \$5,048.00. This amount represents:
  - \$675.00 for a rent abatement.
  - \$4,325.00 for the reasonable out-of-pocket expenses the Tenant has incurred, including his new, higher rent.
  - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by December 31, 2023.
3. If the Landlord does not pay the Tenant the full amount owing by December 31, 2023, the Landlord will owe interest. This will be simple interest calculated from January 1, 2024 at 6.00% 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 21, 2023**  
**Date Issued**



---

Stephanie Kepman  
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.