



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

**Citation:** Parker v Ball, 2023 ONLTB 37371

**Date:** 2023-05-18

**File Number:** LTB-T-050527-22

**In the matter of:** 169A CEDAR STREET  
KESWICK ONTARIO L4P2J4

**Between:** Chadwick Parker Tenant

**And**

Lidia Ball Landlord

Chadwick Parker (the 'Tenant') applied for an order because Lidia Ball (the 'Landlord'): (a) did not return the unused portion of the Tenant's rent deposit; (b) did not pay interest owing on the Tenant's rent deposit; and (c) did not provide the compensation to which the Tenant was entitled under section 48.1 of the *Residential Tenancies Act, 2006* (the 'RTA')

This application was heard by videoconference on April 3, 2023. The Landlord and the Tenant attended the hearing, and I heard evidence from both the Landlord and the Tenant.

**Determinations:**

1. This is a T1 application brought under section 135 of the RTA, which provides, in part

***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.*

*(1.1) Without limiting the generality of subsection (1), a landlord is deemed to have retained money in contravention of this Act, if the landlord is required to compensate a tenant under section 48.1, 49.1, 52, 54 or 55 and fails to compensate the tenant as required.*

2. The tenancy commenced in October or September 15, 2020 and ran from the 15<sup>th</sup> day of the month to the 14<sup>th</sup> day of the following month.
3. The lawful monthly rent was \$2,850.00.
4. The Landlord was holding a rent deposit of \$2,850.00.

5. The Landlord, relying on section 48 of the RTA, served an N12 notice with a termination date of July 14, 2022 so that she could retake possession of the unit for residential occupation.

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6. After receiving the N12, the Tenant signed an N11 agreement to terminate the tenancy on July 1, 2022.
7. The Tenant vacated the rental unit on July 1, 2022 as contemplated by the N11.
8. The Tenant filed this application on July 7, 2022 and claimed: (a) ½ of the rent deposit paid to the Landlord (\$1,425.00); (b) \$256.50 in interest; and (c) \$10,121.00 broken down as follows: (i) one month of rent (\$2,850.00); (ii) moving expenses (\$1,871.00); and (iii) compensation for time spent on property maintenance (\$300.00X18 months=\$5,400.00).
9. The Tenant withdrew his claim for interest at the hearing when I explained how much interest the RTA required the Landlord to pay.
10. Concerning the Tenant's claim for moving expenses and compensation for his time spent maintaining the unit, neither is recoverable on a T1 application under section 135. Section 135 provides for the recovery of amounts collected or retained by a landlord, and this is clear from the options available to a tenant when completing a T1 application.<sup>1</sup>
11. There is no dispute that the Landlord did not provide to the Tenant the compensation required by section 48.1 of the RTA. The Landlord testified that she did not provide the compensation based on her understanding that the N11 superseded the N12 such that once the N11 was signed she no longer had to provide the compensation required by section 48.1.
12. Concerning the rent deposit, the Landlord conceded that she owed the Tenant money because he vacated on July 1, 2022. The Landlord asserted, however, that the Tenant owes her utilities and compensation for damages to the rental unit. The Landlord offered to return to the Tenant \$700.00, but the Tenant refused. The Landlord has yet to commence any proceedings to establish a claim against the Tenant.
13. I find that the Landlord must provide the Tenant compensation equal to one month of rent as required by section 48.1 of the RTA.

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<sup>1</sup> The Tenant has one year from the date he vacated to bring an application asserting that the Landlord delivered the N12 in bad faith: RTA, s. 57(2). However, the fact that the Landlord moved into the unit does not bode well for such an application. Any application based on the failure of the Landlord to maintain the rental unit would have to be commenced within one year after the day the alleged conduct giving rise to the application occurred: RTA, s. 29(2).

14. This is not a case like *TST-98948-18 (Re)* [2019 CanLII 87028 (ON LTB)], where the N11 was signed before the N12 was delivered. This situation has arisen because an N11 agreement was used instead of an N9 form.
15. The RTA contemplates that where a landlord has delivered an N12, the tenant may unilaterally terminate the tenancy earlier than the termination date on the N12. [RTA, ss. 48(3) and (4)] The LTB form for doing that is an N9. The N11 form is intended to be used where the parties agree to terminate a tenancy consensually.
16. While an N11 agreement can be used to terminate a tenancy where an N12 is delivered, the use of an N11 in those circumstances does not, in my view, result in the landlord not being required to provide the compensation required by section 48.1 of the RTA. It is not possible to contract out of or waive section 48.1 of the RTA [RTA, s. 3(1)] and the LTB has

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demonstrated a reluctance to permit the use of an N11 to defeat a tenant's rights in circumstances where a landlord is exercising rights under section 48. [See, for example, *Easton v Hoang*, 2021 CanLII 144577 (ON LTB)]

17. In many cases, N11 agreements are used after an N12 is delivered to document what is referred to as a 'cash for keys' arrangement whereby a tenant agrees to vacate in return for compensation in addition to what is required by section 48.1.
18. I also find that the Tenant is entitled to the return of ½ of his deposit—\$1,425.00. As noted above, subsections 48(3) and (4) of the RTA permitted the Tenant to terminate the tenancy on a date earlier than the termination date specified on the N12. In this case, the Tenant's obligation to pay rent ended on July 1, 2022, when the tenancy terminated and he vacated the rental unit. [See *Valdivieso v Farrah*, 2020 CanLII 123103 (ON LTB)]
19. The Landlord may have a claim against the Tenant for utilities, but the Landlord cannot unilaterally set off against the Tenant's deposit an amount she claims is owed by the Tenant. The Landlord must commence a proceeding to establish that she is entitled to a claim against the Tenant.<sup>2</sup>
20. While not directly relevant as a result of the application of subsection 3(1), I also note that the form of N11 signed by the Tenant indicated that the compensation required by section 48.1 would be paid and ½ of the Tenant's deposit would be returned. When she signed back the N11, the Landlord purported to amend the document to, among other things: (a) cross out this language; and (b) add wording to the effect that the N11 was a mutual agreement to end the tenancy and the amount payable to the Tenant would be reduced by

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<sup>2</sup> The Landlord has until one year after the Tenant vacated the rental unit to apply for compensation: RTA, ss. 88.2(2) and 89(1.1).

what the Landlord indicated was owing for utilities. The Tenant did not agree to this amendment to the N11, which is why he filed this application.

**It is ordered that:**

1. The Landlord shall pay to the Tenant: (a) \$1,425.00; (b) \$2,850.00; and (c) the filing fee of \$53.00, for a total of \$4,328.00
2. If the Landlord does not pay the Tenant the full amount owing on or before May 29, 2023, the Landlord will start to owe interest. This will be simple interest calculated from May 30, 2023 at 6.00% annually on the balance outstanding.

**May 18, 2023**

\_\_\_\_\_ **Date Issued**

E. Patrick Shea

Vice Chair, Landlord and Tenant Board

15 Grosvenor St, 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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