



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Shanaa Property Investment Inc. v Villena, 2023 ONLTB 22374

**Date:** 2023-03-10

**File Number:** LTB-L-043059-22

**In the matter of:** 786 LINDSAY BLVD  
OSHAWA ON L1K1Z2

**Between:** Shanaa Property Investment Inc. Landlord

**And**

Christopher Villena Tenants  
Jennifer Voung

Shanaa Property Investment Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Christopher Villena and Jennifer Voung (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on February 14, 2023. The Landlord's agent, Kirupakaran Namasivayam, and the Landlord's representative, Mohavarothayarajah Subramaniyam, attended the hearing. One Tenant, Christopher Villena, also attended the hearing.

**Determinations:**

1. As explained below, the tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order. If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before March 21, 2023.
2. As explained below, the Landlord has proven that the Tenants owe the Landlord \$25,686.00, representing \$25,500.00 in rent arrears, and \$186.00 in costs for the application fee.
3. As explained below, the Tenants have proven that the Landlord collected an illegal water deposit of \$500.00; however, the Tenants have not proven that the Landlord collected an illegal key deposit of \$100.00. The Tenants also have not proven that the Landlord coerced them, substantially interfered with their reasonable enjoyment of the unit, or that their tenancy agreement is void.
4. As explained below, the Tenants' request for the return of their \$500.00 water deposit is granted and will be deducted from the Tenants' rent arrears owing.

### Rent Arrears

5. On June 16, 2022 the Landlord served the Tenants with a valid Notice to End the Tenancy Early on June 30, 2022 for Non-payment of Rent (N4 Notice). The Tenants did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed on August 1, 2022.
6. As provided in the Tenancy Agreement, the term of the lease is for a period of one year commencing on February 15, 2022. The lawful rent is \$3,000.00, and is payable in advance, on the 15<sup>th</sup> day of each month. I therefore find that the rental period commences on the 15<sup>th</sup> day of each month, and ends on the 14<sup>th</sup> day of the following month.
7. The Landlord's N4 Notice and L1 Application identify the rental period as commencing on the 16<sup>th</sup> day of each month and ending on the 15<sup>th</sup> day of the following month. I am satisfied that despite this error, pursuant to s. 212 of the *Residential Tenancies Act, 2006* (the "Act"), the Landlord's N4 substantially complies with the requirements of s. 59(2) and s. 43(2) of the Act. The N4 sets out the amount of rent due, as well as the reasons and details respecting the termination. Accordingly, I find that the Landlord's N4 is valid.
8. As of the hearing date, the Tenants were still in possession of the rental unit.
9. Based on the monthly rent, the daily rent/compensation is \$98.63. This amount is calculated as follows: \$3,000.00 x 12, divided by 365 days.
10. Both the Landlord and the Tenant agreed that the Tenants have not made any rent payments since the application was filed.
11. Both the Landlord and the Tenant agreed that the rent arrears owing to February 14, 2023 are \$25,500.00.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
13. The Landlord collected a rent deposit of \$3,000.00 from the Tenants and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
14. Interest on the rent deposit, in the amount of \$75.00 is owing to the Tenants for the period from February 15, 2022 to February 14, 2023.

### Tenancy Issues

15. On February 7, 2023, as required pursuant to s. 82 of the Act, the Tenants notified the Landlord and the Board in writing that they intended to raise tenancy issues during the hearing for the Landlord's L1 application. Specifically, the Tenants intended to raise allegations under s. 105, s. 134, s. 22, s. 23, and s. 17 of the Act.
16. At the hearing, the Tenant raised the following allegations:

- (a) On February 17, 2022 the Landlord collected an illegal water deposit and key deposit from the Tenants, substantially interfering with their reasonable enjoyment of the rental unit, and breaching the original tenancy agreement; and
- (b) On February 17, 2022 that Landlord coerced the Tenants into signing an illegal tenancy agreement.

### Tenants' Evidence

17. The Tenant testified that on February 12, 2022 the Tenants signed an OREA Agreement to Lease with the Landlord requiring a one month rent deposit. The tenancy commenced on February 15, 2022. The Tenant testified further that on February 17, 2022 the Landlord required the Tenants to sign an Ontario Standard Form of Lease for the tenancy, but this second lease included a requirement to pay a \$500.00 water deposit and a \$100.00 key deposit.
18. The Tenant asserted that they signed the second lease and paid the Landlord the additional \$600.00 dollar deposit on February 17, 2022 feeling coerced that if they did not sign the lease and provide the payment of the additional deposits, they would not be able to retain the rental unit. The Tenant explained that the Landlord inappropriately relied on a clause in original OREA Agreement to Lease, that made the tenancy conditional upon the Tenants' credit worthiness; however, the Tenants' credit worthiness was not in question. The Tenants submitted both the OREA Agreement to Lease and the Ontario Standard Form of Lease as evidence.
19. The Tenant stated that on February 17, 2022 he received an email from the Landlord's representative advising the Tenants that February 17, 2022 was the last day for them to sign the Ontario Standard Form of Lease, or the Landlord would have "no choice". The Tenants submitted a copy of this email as evidence.
20. The Tenant testified further that they paid \$1,500.00 in rent for the rental period from mid May 2022 to mid June 2022, but they did not pay any rent thereafter as a result of the Landlord's retention of the illegal deposits. The Tenant argued that the illegal deposits were breaches of the tenancy agreement, and therefore rendered the agreement void. The Tenant remarked that he asked the Landlord for a return of his water and key deposit on March 15, 2022; however, the Landlord never responded to his request. The Tenant agreed that the rent arrears owed to the Landlord as of the day of the hearing are \$25,500.00.
21. The Tenant stated that he is healthy, employed and is able to pay the rent. He noted that he has two young children attending a neighbourhood school, and for this reason, he would like to retain the tenancy.
22. The Tenant acknowledged that he did not communicate to the Landlord that he would stop paying rent as a result of the additional rent deposits, nor did he propose an arrears repayment plan to the Landlord.
23. The Tenant noted that he seeks a return of his water and key deposit, retention of his tenancy, and an administrative fine issued to the Landlord.

### Landlord's Evidence

24. The Landlord's agent testified that the Landlord requested a water deposit of \$500.00, and a key deposit of \$100.00 from the Tenants as noted in the Ontario Standard Form of Lease signed by both parties on February 17, 2022. The agent acknowledged that the Landlord received \$600.00 in payment for these deposits from the Tenants on February 17, 2022. The agent testified further that the purpose of the water deposit was security for the Landlord in the event that the Tenants defaulted in paying their water bill.
25. The Landlord's representative submitted that it was not the intent of the Landlord to place any duress on the Tenants through the Landlord's request to have them sign the Ontario Standard Form of Lease for the tenancy.
26. The Landlord's agent testified that the Landlord sent emails to the Tenants at the end of April 2022 seeking payment of rent owing, and the Tenant responded via text message stating that he would pay the rent; however, the rent was never paid. The Landlord's agent remarked that the Tenant advised him that the Tenants had family issues, and he had difficulty paying the rent, but the Tenants never asked the Landlord about any rent relief through an arrears payment plan proposal. The agent asserted that the Tenants were not cooperative with the Landlord in establishing any repayment options.

### Analysis - Deposits

27. On the basis of the evidence provided, I am satisfied that the Landlord collected a \$500.00 water deposit, and a \$100.00 key deposit from the Tenants on February 17, 2022. I accept that the Tenants' allegations that these deposits are illegal were submitted to the Board on February 7, 2023, in compliance with s. 135(4) of the Act.
28. I find that the Landlord's collection of the \$500.00 water deposit is prohibited pursuant to s. 134(1)(a) and s. 105(1) of the Act. I therefore grant the Tenants' request for the Landlord to pay the Tenants \$500.00, pursuant to s. 135(1) of the Act.
29. Section 17, paragraph 3 of *Ontario Regulation 516/06* sets out exemptions to s.134(1)(a) of the Act with respect to key deposits. I am satisfied that the \$100.00 key deposit collected by the Landlord is appropriate and not greater than the expected direct replacement costs. Accordingly, I find that the \$100.00 key deposit is exempt from s. 134(1) of the Act, and the Tenants' request for a return of this deposit is denied.

### Analysis - Coercion

30. On the basis of the evidence provided, I am satisfied that the Landlord on February 17, 2022 was seeking the Tenants' signatures on the Ontario Standard Form of Lease, as dictated by paragraphs 12 and 13 of the OREA Agreement of Lease signed by both parties by February 13, 2022. On a balance of probabilities, I am satisfied that the Landlord pursued these signatures in a manner that was reasonable and appropriate, and not through the use of force or threats.
31. The Tenants have the burden of proving their s. 82 claims on a balance of probabilities. The Tenants did not establish, through sufficient evidence, that the Landlord's conduct was

forceful or threatening, or that the Landlord's intent was to place the Tenants under duress by adding an illegal deposit requirement to the Ontario Standard Form of Lease.

32. I am not satisfied that the Landlord's email to the Tenants on February 17, 2022 was coercive in nature. I am not satisfied that the Landlord intended, or reasonably ought to have known, that the email could be perceived by the Tenants as a risk to their tenancy. The email is general in nature with no specific link between the requirement to pay the illegal water deposit and a possible termination of the tenancy. The Tenants did not establish that the Landlord's use of words "no choice" represents a threat to their tenancy.
33. For the reasons provided in paragraphs 30 through 32 above, I find that that the Landlord did not breach their responsibilities pursuant to s. 23 of the Act.

#### Analysis – Substantial Interference

34. On the basis of the evidence provided, I am satisfied that the Tenants experienced some anxiety regarding their payment of the illegal water deposit, and this diminished their enjoyment of their rental unit. However, I find that this interference, as a result of the Landlord's illegal water deposit request, and its retention, was not substantial. The Tenants did not establish how the Landlord's request and retention of the water deposit substantially interfered with their reasonable enjoyment of the rental unit. Accordingly, I find that the Landlord did not breach their obligations pursuant to s. 22 of the Act.

#### Analysis - Breach of the Tenancy Agreement

35. Section 17 of the Act states:

Except as otherwise provided in this Act, the common law rules respecting the effect of a serious, substantial or fundamental breach of a material covenant by one party to a contract on the obligation to perform of the other party apply with respect to tenancy agreements.

36. The Tenant argued that he did not pay the rent, and was not required to pay the rent pursuant to s. 17 of the Act, because the Landlord retained an illegal \$500.00 water deposit and \$100.00 key deposit, and that this is a breach of a material covenant of the tenancy agreement, rendering the agreement void.
37. However, the opening words of s. 17 state "except as otherwise provided in this Act". Elsewhere, the Act sets out provisions relating to the obligation of tenants to pay rent and the rights of tenants to pursue claims where their landlord has not met its obligations.
38. Accordingly, the Tenant, as defined in s. 2(1) of the Act, is required to pay rent in return for the right to occupy the unit. The obligation for the Tenant to pay rent, despite the Landlord's retention of an illegal water deposit, is an absolute basic requirement of the tenancy agreement. Section 135(1) of the Act permitted the Tenant to pursue payment of the illegally retained water deposit, and this claim was granted in paragraph 29 above.
39. For the reasons noted in paragraphs 35 to 38, and as provided in *Lopera v. Margosutjahjo, 2020 ONSC 7436 (CanLII)*, I therefore find that the tenancy agreement is valid, and the Tenants are required to pay the lawful rent.

### Summary of Tenancy Issues

40. The Tenants have proven that the Landlord collected an illegal water deposit of \$500.00; however, the Tenants have not proven that the Landlord collected an illegal key deposit of \$100.00. The Tenants also have not proven that the Landlord coerced them, substantially interfered with their reasonable enjoyment of the unit, or that their tenancy agreement is void.

### Remedies

41. The Tenants seek a return of their water and key deposit, an administrative fine issued to the Landlord, and the retention of their tenancy.
42. The Tenants request for payment of their water deposit was granted as per paragraph 28, but their request for payment of their key deposit was denied as provided in paragraph 29. Given that the Landlord is not in breach of s. 22 and s. 23 of the Act, the Tenants' request that an administrative fine be issued to the Landlord pursuant to s. 31(1)(d) of the Act can not be considered. The Tenants' request to retain their tenancy will be considered below.

### **Relief from Eviction**

43. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
44. The Tenants have significant rent arrears of \$25,500.00 and have made no efforts since May 2022 to pay any of the arrears or the on-going rent. The sole reason offered by the Tenants why they did not pay their rent was their belief that they were not required to do so as a result of the Landlord's unlawful collection of a water deposit. Although the Landlord's collection of the water deposit was unlawful pursuant to s. 134(1)(a) of the Act, I find that it was not a serious breach of the Landlord's responsibilities under the Act, and therefore refusal of the eviction is not required pursuant to s. 83(3)(a) of the Act. Furthermore, as provided in paragraph 39 above, the Tenants are not entitled to withhold rent from the Landlord.
45. The Tenants have not actively engaged with the Landlord in an effort to seek a resolution for the arrears, despite the Landlord's willingness to do so. The Tenants did not provide a viable and specific financial plan that would allow them to pay the rent arrears and on-going rent.
46. Other than their children attending a neighbouring school, the Tenants did not provide any additional circumstances that should be considered in a determination of whether to provide them with eviction relief. For the reasons noted above, and given the on-going financial hardship endured by the Landlord as a result of this tenancy, it would be unfair to the Landlord to grant the Tenants with eviction relief.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$28,186.00 if the payment is made on or before March 14, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$31,186.00 if the payment is made on or before March 21, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after March 21, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before March 21, 2023.**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$22,111.00. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit, interest the Landlord owes on the rent deposit, and the water deposit, are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$98.63 per day for the use of the unit starting February 15, 2023 until the date the Tenants move out of the unit.
7. The Landlord shall pay to the Tenants their \$100.00 key deposit on the day the Tenants return the unit keys to the Landlord.
8. If the Tenants do not pay the Landlord the full amount owing on or before March 21, 2023, the Tenants will start to owe interest. This will be simple interest calculated from March 22, 2023 at 5.00% annually on the balance outstanding.
9. If the unit is not vacated on or before March 21, 2023, then starting March 22, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after March 22, 2023.

**March 10, 2023**  
**Date Issued**

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Frank Ebner  
 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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on September 22, 2023 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.



**Schedule 1**  
**SUMMARY OF CALCULATIONS**

**A. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before March 14, 2023**

Rent Owing To March 14, 2023	\$28,500.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenant for the water deposit repayment	- \$500.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$28,186.00</b>

**B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before March 21, 2023**

Rent Owing To April 14, 2023	\$31,500.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenant for the water deposit repayment	- \$500.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$31,186.00</b>

**C. Amount the Tenants must pay if the tenancy is terminated**

Rent Owing To Hearing Date	\$25,500.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$3,000.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$75.00
<b>Less</b> the amount the Landlord owes the Tenant for the water deposit repayment	- \$500.00

<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$22,111.00</b>
Plus daily compensation owing for each day of occupation starting February 15, 2023	\$98.63 (per day)

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