Order under Section 135
Residential Tenancies Act, 2006

File Number: LTB-T-061726-26

In the matter of: 1104 Fantham Road
FAUQUIER ON P0L1G0

Between: Rachelle Berube — Tenant

And

Stephen Wagler
Marlene Wagler — Landlord

I hereby certify this is a true copy of an Order dated
NOV 04, 2026
Jin Zhang
Landlord and Tenant Board

Rachelle Berube (the 'Tenant') applied for an order determining that Stephen Wagler and Marlene Wagler (the 'Landlords') collected or retained money illegally.

This application was heard by videoconference on October 28, 2026.

Only the Tenant and the Tenant's Legal Representative, Masoud Tchavoshi, attended the hearing.

As of 9:26 a.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.

The T1 Application:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlords must pay the Tenant $598.00.

   The Rent Increase

2. The Landlords collected rent in excess of the amount allowed by the *Residential Tenancies Act*, 2006 (the '*RTA*').

3. The rental unit is a site that the Tenant rents from the Landlords; the Tenant owns the home on the site.

   a) *The Lawful Rent*

4. The lease between the Tenant and the previous landlords for the site (*DOC-8375427; Exhibit 1*), with a term starting June 1, 2024, states that the rent is $750.00 a year.

5. The Tenant's acknowledgement letter (*DOC-8375428; Exhibit 2*), signed on April 23, 2026, for the purpose of confirming to the Landlords the terms of the lease agreement, states that the rent for the site is $750.00.

6. I find that the lawful rent for the site before June 1, 2026, was $750.00 a year as stated in the lease and the Tenant's acknowledgement letter.

b) *The Rent Increase*

7. Subsections 116(1), (3) and (4) of the *RTA* read, in part, as follows:

> (1) A landlord shall not increase the rent charged to a tenant for a rental unit without first giving the tenant at least 90 days written notice of the landlord's intention to do so.
>
> (3) The notice shall be in a form approved by the Board and shall set out the landlord's intention to increase the rent and the amount of the new rent.
>
> (4) An increase in rent is void if the landlord has not given the notice required by this section, and the landlord must give a new notice before the landlord can take the increase.

8. Landlords and tenants cannot contract out of the *RTA*. A written agreement to raise the rent, without proper service of a notice of rent increase, is therefore unenforceable. The only exceptions are an agreement to increase the rent under section 121 or section 123.

9. The Court of Appeal has confirmed this principle. An existing tenant who signs a new lease for the same unit is not a new tenant and does not begin a new tenancy, so the landlord must still give notice of the rent increase and the increase stays capped at the guideline (see *Honsberger* v. *Grant Lake Forest Resources Ltd.*, 2019 ONCA 44, at paras. 28–29).

10. After the Landlords took over the site, they issued a new lease for it (*DOC-8375429; Exhibit 3*). The lease raised the rent from $750.00 to $1,300.00 per year, effective June 1, 2026.

11. I am satisfied that the Landlords did not serve a Notice of Rent Increase in the LTB's approved form at least 90 days before June 1, 2026. The Tenant's Legal Representative advised that the Tenant received no notice of rent increase, and no evidence before me shows one. I find that the increase in the new lease is therefore unenforceable.

12. I find that the rent increase of June 1, 2026, through the signing of a new lease agreement, is void. Therefore, the lawful annual rent remains $750.00.

c) *The Rent Paid*

13. The Tenant testified that they paid the Landlords $2,400.00 in one e-transfer for two sites, 1104 Fantham Road and 1106 Fantham Road, as shown in the confirmation email of the e-transfer (*DOC-9040901; Exhibit 4*). The Tenant further testified that $1,300.00 of the total amount transferred was rent for the site at 1104 Fantham Road.

14. I am satisfied that the Tenant paid the Landlords $1,300.00 in rent for the site for the year starting June 1, 2026. The Tenant's evidence was not contradicted, and the e-transfer shows a payment to the Landlords for “1104 -1106 Fantham Road”.

15. I find that the Landlords collected $550.00 above the lawful rent in contravention of the *RTA*. That amount shall be repaid to the Tenant pursuant to subsection 135(1) of the *RTA*.

16. The Tenant incurred costs of $48.00 for filing the application and is entitled to reimbursement of those costs pursuant to Rule 23.1 of the LTB's *Rules of Procedure*.

Request for Costs:

17. The Tenant’s request for costs is denied.

18. Pursuant to subsection 204(2) of the *RTA* and Rule 23.3, the LTB may order a party whose unreasonable conduct caused another party undue delay or expense to pay that party's costs. A breach of the *RTA* is not, by itself, unreasonable conduct.

19. The Tenant testified that they wrote to the Landlords asking for a refund of the increase, and that the Landlords did not reply.

20. The Tenant's Legal Representative submitted that the Landlords' failure to attend the hearing wasted the LTB's time and the Tenant's, so costs of $750.00 for preparation and for attending the hearing should be ordered.

21. I find that the Landlords' failure to attend the hearing did not cause the Tenant undue expense or delay. The hearing proceeded in the Landlords' absence without delay, and the Tenant would have had to prepare for and attend the hearing to prove the application whether or not the Landlords attended.

22. The Tenant's Legal Representative submitted that the Landlords knew the increase was unlawful and could have refunded it before the hearing, which would have avoided the hearing for the LTB and the Tenant.

23. I find that the Landlords' failure to refund the increase, either before or after the Tenant requested a refund, is part of the breach claimed in this application and does not constitute conduct in this proceeding.

It is ordered that:

1. The total amount the Landlords shall pay the Tenant is $598.00. This amount represents:

    - $550.00 for excess rent collected; and
    - $48.00 for the cost of filing the application.

2. The Landlords shall pay the Tenant the full amount owing by November 15, 2026.

3. If the Landlords do not pay the Tenant the full amount owing by November 15, 2026, the Landlords will owe interest. This will be simple interest calculated from November 16, 2026 at 4.00% annually on the balance outstanding.

4. If the Landlords do not pay the Tenant the full amount owing by November 15, 2026, the Tenant may recover this amount by deducting $598.00 from the rent due on or before May 31, 2027.
5. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

November 4, 2026
Date Issued

Jin Zhang
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.