

2009 CarswellOnt 9151
Ontario Superior Court of Justice (Divisional Court)

Drewlo Holdings Inc. v. Custidio

2009 CarswellOnt 9151

**Drewlo Holdings Inc., Landlord/Appellant vs.
Maria Custidio, Tenant/Respondent in Appeal**

Hambly J., Murray J., Ray J.

Judgment: November 25, 2009

Docket: London 1760

Counsel: Joe Hoffer, for Landlord / Appellant

Subject: Property; Civil Practice and Procedure

Headnote

Real property --- Landlord and tenant — Residential tenancies — Termination of tenancy — Miscellaneous
Deposit not refundable.

Per curiam:

1 Custidio signed a lease. She was a tenant and not a prospective tenant when she repudiated the lease. Bd decisions have interpreted "prospective tenant" as someone at the application stage. That is not the case here where a tenancy agreement was entered into. Since Custidio was not a prospective tenant, S.107 of the Residential Tenancies Act does not apply. There is nothing in S.106 to require the Landlord to refund the deposit in these circumstances. There is nothing to distinguish this case from the Divisional Court case in *Opara v. Cook*, 2008 CarswellOnt 2747 (Ont. Div. Ct.).

2 The Appeal is allowed. The review order of Member Elizabeth Usprich issued February 17, 2009 is set aside

Per curiam:

3 No order as to costs in light of the impecuniosity of Custidio.