



Order under Section 135
Residential Tenancies Act, 2006

File Number: SWT-44248-20

In the matter of: 573 FLORENCE ROAD
FLORENCE ON N0P1R0

Between: Jackie Faber Tenants
Daniel Miller

and

William McCutcheon Landlord

Jackie Faber (J.F.) and Daniel Miller (D.M.) (the 'Tenants') applied for an order determining that William McCutcheon (W.M.) (the 'Landlord') has collected or retained money illegally.

This application was heard by videoconference on October 2, 2020. The Landlord, represented by Jason Dudley, and the Tenants attended the hearing. The Tenants spoke with Duty Counsel prior to the hearing.

Determinations:

1. The Landlord collected rent in excess of the amount allowed by the *Residential Tenancies Act, 2006* (the 'Act').
2. It is the oral evidence of DM that the parties entered into a tenancy agreement for September 1, 2017 for \$750.00 per month. On September 1, 2019 this rent was raised to \$800.00 per month. The rent of \$750.00 is supported by the tenancy agreement submitted by the Tenant as evidence.
3. It is the Landlord's evidence that rent for the previous tenants (prior to DM) was \$800.00. When Mr. Miller rented from him in September, 2017 he agreed to reduce the rent \$50.00 in exchange for repairs and maintenance. The lease makes no mention of any tenant duties or repairs.
4. In the Ontario Court of Appeal decision of *Montgomery v. Van*, [2009 ONCA 808](#) [hereinafter *Montgomery*] the Ontario Court of Appeal identified that the provision in the tenancy agreement vaguely placed a maintenance obligation on the tenants (in *Montgomery* it was snow removal). The provision failed to define the (individual) tenant's tasks clearly enough to create an enforceable contractual obligation.

5. In this case, the LL says some repairs were needed around the place, and the Tenant offered to do them and maintain the place for \$50.00. However, there are no specifics as to what that would look like. I cannot accept that there is a contractual obligation in place for unspecified maintenance and repairs at a rate of \$50.00 per month.
6. Section 120 (1) of the Act says “No landlord may increase the rent charged to a tenant, or to an assignee under section 95, during the term of their tenancy by more than the guideline except in accordance with section 126 or 127 or an agreement under section 121 or 123.” There is no evidence before me to show any exemption applies to these circumstances.
7. The rent increase is unlawful. The lawful rent is \$750.00. The rent increase from \$750.00 to \$800.00 is akin to an increase of 6.6%. The maximum rent increase permitted in 2019 was 1.8%, or \$13.50.

It is ordered that:

1. The Landlord shall pay to the Tenants the sum of \$650.00 for the period of September 1, 2019 to October, 2020.
2. The Landlord shall reduce the rent to \$750.00 per month effective November 1, 2020 and refund to the Tenant any overpayment.
3. The Landlord shall only raise the rent in accordance with the Act.
4. The Landlord shall also pay to the Tenants \$50.00 for the cost of filing the application.
5. The total amount the Landlord owes to the Tenants is \$700.00 plus any overpayments of rent since November 2020.
6. If the Landlord does not pay the Tenants the full amount owing by June 22, 2021, the Landlord will owe interest. This will be simple interest calculated from June 23, 2021 at 2.00% annually on the outstanding balance.
7. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

June 11, 2021
Date Issued



Dawn King
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

