



Residential Tenancies Act, 2006

File Number: SOT-16139-20

In the matter of: 99E 41 STREET EAST
HAMILTON ON L8T2Z8

Between: Sabrina Gojacic

Tenant

and

Santoshkumar Manjunath

Landlord

Sabrina Gojacic (the 'Tenant') applied for an order determining that Santoshkumar Manjunath (the 'Landlord') has collected or retained money illegally.

This application was heard via video conference on September 29, 2021.

The Tenant and the Landlord's legal representative, Jordan Nieuwhof attended the hearing.

Determinations:

1. In the T1 Application, the Tenant made the following claims:

- The Landlord charged to the Tenant an illegal rent in the amount of \$1,950.00, and
- The Landlord owed interest to the Tenant in the amount of \$800.00 representing last month's rent deposit

2. In the body of the Tenant's claim, the Tenant sought the following:

- \$1,995.00 representing last month's rent and utilities
- \$800.00 for time off work;
- \$50.00 for child care;
- \$1,000.00 for rent from her previous landlord for the period of May 1, 2020 to June 1, 2020;
- \$200.00 for an application fee to rent a new unit;
- \$3,700.00 for a deposit that had to be paid urgently to find a new home; and
- \$106.00 for filing fees.

3. At the hearing, the Tenant confirmed that she was only seeking the return of the rent deposit, any interest that was accumulating and reimbursement of her filing fees.
4. For the reasons set out below, we find that the Tenant's application is dismissed.

The Tenant's Evidence

5. The evidence before us was that there was a signed lease agreement between the parties for the Tenant to rent from the Landlord the property at 99 East 41st Street, Hamilton, Ontario for a one year period.
6. The parties agreed that the Tenant would move into the unit on May 1, 2020.
7. On May 1, 2020, the Tenant attended the rental unit and obtained the keys to the rental unit from the Landlord. The Tenant testified that the unit was extremely dirty, she observed a major infestation of cockroaches upon opening the cupboards and she advised the Landlord immediately that she could not live there and wanted her money back.
8. The Tenant clarified in cross-examination that although she had packed up her belongings to move into the rental unit, she could not move into the rental unit due to the issues with the unit and she wanted her money returned to her.
9. The Tenant acknowledged that she returned to the rental unit the evening of May 1, 2020 to show it to her friends and family.
10. The Tenant also acknowledged that the Landlord responded to the Tenant's concerns by asking the Tenant to send photographs of any areas that were in need of cleaning. She submitted that the Landlord stated he would hire a professional cleaner and that he would address the Tenant's concerns.
11. The Tenant confirmed that the Landlord told her that he had a spare washing machine set that the Tenant could use until the other machine was repaired.
12. The Tenant acknowledged that the Landlord had sent her a text message confirming that he had hired a pest control company to address the cockroaches and that they were to attend the rental unit the very next day.
13. The Tenant confirmed that she had possession of the rental unit until May 8, 2020 at which time the keys to the rental unit were given back to the Landlord after he returned half of the total rental monies he had received from the Tenant upon the commencement of the tenancy.

Landlord's Evidence

14. The Landlord stated that the Tenant had viewed the unit in the middle of April 2020 when there was another Tenant residing there. The Landlord told the Tenant that he would clean the rental unit prior to the Tenant moving into the rental unit.
15. The Landlord testified that the former Tenant residing in the unit had not identified any issues with the rental unit upon their departure from the rental unit.
16. The Landlord stated he was at the rental until on May 1, 2020 at approximately 7 a.m. and that when the Tenant arrived at approximately 11:00 a.m., he was still cleaning the unit. The Landlord said that the Tenant took the keys to the rental unit and left. Prior to leaving the rental unit, the Landlord told the Tenant that if she was in need of anything to contact him.
17. The Landlord stated that the Tenant advised him of issues with the rental unit in the evening of May 1, 2020 and that the Tenant sent him 8-10 photographs of the unit. As a result of the Tenant's concerns, the Landlord immediately contacted a pest control company and told the Tenant that a pest control company was retained to come to the rental unit the next day. The Landlord stated that the pest control company he had hired had a quality guarantee and that if they were not satisfied, they would attend a second time for no charge.
18. The Landlord confirmed that the issue involving cockroaches was subsequently resolved. He also testified that from his attendance at the rental unit to clean and from the pictures he received from the Tenant there was very little cockroach activity in the unit and the unit was substantially clean.
19. With respect to the washing machine set issues, the Landlord acknowledged that there was a trace of mold on the dryer's seal but that the dryer was only one year old and he didn't feel it was a major concern and he had offered the Tenant another suitable washer and dryer unit.
20. The Landlord testified that the Tenant gave no notice of her terminating the lease agreement. The Tenant received the keys to the rental unit in the morning of May 1, 2020 and in the evening, she told him that she would not be moving into the unit as it was unhygienic and unsafe.
21. The Landlord stated that the Tenant asked for a full refund of her monies despite her being in possession of the rental unit until May 8, 2020 when the keys were returned.
22. The Landlord stated that due to the refusal of the Tenant to move into the unit, he immediately posted the rental unit for rent on social media and was able to secure new tenants to move into the rental unit starting June 1, 2020. He confirmed that after the Tenant refused to move in as she stated that there were cockroaches, he informed the prospective tenants of the issue and he had a second pest control treatment performed before they took possession in June and he has not been advised of any further issues in

the rental unit since their occupation of the unit. He further stated that this new Tenant is still in possession of the unit.

23. The Landlord stated that the rental unit was in clean and ready to be occupied and he did nothing further to prepare the rental unit after the Tenant's refusal to move in, for the new tenants who took possession in June other than another pesticide treatment.

Analysis

24. Section 13 of the *Residential Tenancies Act, 2006* (the 'Act'), states that a tenancy agreement takes effect when the tenant is entitled to occupy the rental unit, whether the Tenant actually occupies it or not. The Tenant was scheduled to take possession of the rental unit on May 1, 2020 and the Landlord was willing to give the Tenant possession of the unit that day. However, the Tenant accepted the keys to the unit and then later refused to move into the rental unit.
25. On the uncontested evidence before the Board, we find that the tenancy agreement between the parties began on May 1, 2020. Also on the evidence before the Board, we find that the rental unit was ready for occupation on May 1, 2020 and that the Landlord arranged for and had pest control treatment performed to address the Tenant's concerns, within one day of the request.

What were the Tenant's rent obligations?

26. On May 1, 2020, the parties assumed their respective rights and responsibilities under the tenancy agreement and the *Act*. On that day, the Tenant became liable for the rent until the tenancy was terminated or the rental unit was re-rented to other tenants.
27. Section 37(1) of the *Act* states that a tenancy may be terminated only in accordance with the *Act*. In order for a tenant to terminate a tenancy under the *Act* he or she must provide proper notice. The Tenant did not provide the Landlord with a notice to terminate the tenancy in accordance with the *Act*.
28. We must also consider whether or not the Landlord successfully mitigated his losses. Section 16 of the *Act* states:

When a Landlord or a Tenant becomes liable to pay any amount as a result of a breach of a tenancy agreement, the person entitled to claim the amount has a duty to take reasonable steps to minimize the person's losses.

29. Therefore, the Landlord had the obligation, once the Tenant told the Landlord that she was breaching the tenancy agreement and would not be moving in, to try and find another tenant for the unit as quickly as possible. The Landlord testified that upon being notified by the Tenant that she would not move into the unit, he advertised the rental unit immediately and re-rented the unit for June 1, 2020. Further, it was uncontested that the Landlord returned one month of rent which he held when the unit was re-rented; one month's rent was retained as his losses incurred for the breach of the lease.

30. We find that the Landlord took action in a timely fashion and reasonably mitigated its losses as required by section 16 of the Act.

Is the Landlord obligated to return the last month's rent deposit?

31. Section 107 of the Act sets out the Landlord's responsibility to return a rent deposit if vacant possession is not given to the Tenant:

s. 107(a) A Landlord shall repay the amount received as a rent deposit in respect of a rental unit if vacant possession of the rental unit is not given to the prospective tenant.

32. In the case of *Musilla v. Avcan Management Inc.*, 2011 ONCA 502 (Canlii), 106 O.R. (3d) 490, the Court of Appeal interpreted the wording of subsection 107(1) and stated that the subsection,

does not authorize a tenant to obtain the automatic return of a rent deposit where the Landlord has done everything necessary to give the possession of the leased premises and the tenant has unilaterally repudiated the rental agreement.

33. The Court reasoned that subsection 107(1) of the Act was not automatically triggered if it was the Tenant who unilaterally repudiated the agreement:

To permit a tenant, who is legally obligated to take possession, to regain a rent deposit where the Landlord has done everything it was required to do in order to give possession would render meaningless the concept of a rent deposit to secure the tenant's obligation to pay rent.

Findings:

34. We find that Tenant's allegation that the rental unit was unsafe and unhygienic on May 1, 2020 did not represent a fundamental breach of the agreement by the Landlord as the Tenant failed to meet the burden of proof to establish that the unit was uninhabitable and further as the Landlord immediately took steps to address the Tenant's concerns once they were raised.

35. In the situation before us, we find that the rental unit was available to the Tenant on May 1, 2020 and that the Tenant did in fact take possession of the unit by accepting the keys to the unit on the same day.

36. We further find that when the Tenant vacated the premises on May 8, 2020, the Landlord did mitigate his losses by re-renting the rental unit, and was able to do so in a short period of time.

37. Between the parties, we prefer the evidence of the Landlord as it was clear and concise while the Tenant's was not. For example, the Tenant was quite adamant that she had been waiting since 2019 to have her hearing before the Board. When it was pointed out

the Application was filed in 2020, the Tenant denied that fact, firmly stated that her application was submitted in 2019 and that she was to move into the rental unit in 2019. Furthermore, we found the Tenant to be evasive and flippant in her responses to questions posed to her during cross-examination.

38. It is agreed between the parties that one month's rent, being half of the first and last month's rent deposit paid by the Tenant, was returned to the Tenant by the Landlord on May 8, 2020.
39. Based on the reasons above and on a balance of probabilities, we find that the rental unit was ready for the Tenant on May 1, 2020, that the Tenant was entitled to take possession of the unit on that date and that the tenancy agreement between the parties took effect on May 1, 2020. We find that the Landlord took immediate action to remedy the concerns the Tenant had.
40. Finally, we find that the Landlord took reasonable steps to re-rent the rental unit and was able to re-rent the unit until June 1, 2020 and the Landlord therefore has complied with his obligations to mitigate his damages. We find that the Landlord suffered a loss of one month's rent due to the Tenant's breach of the lease; the Landlord did not fail to return the rent deposit to the Tenant but applied the rent to his losses due to the breach of the lease.

It is ordered that:

1. The Tenant's application is dismissed.

October 19, 2021
Date Issued



Nicola Mulima
Member, Landlord and Tenant Board



Heather Chapple
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.