



Order under Section 135
Residential Tenancies Act, 2006

File Number: CET-93441-20

In the matter of: 130 GREEN BRIAR ROAD
ALLISTON ON L9R1S2

Between: Phyllis Mylly Tenant

and

Stephen Tonner Landlord

Phyllis Mylly (the 'Tenant') applied for an order determining that Stephen Tonner (the 'Landlord') has collected or retained money illegally.

This application was heard via video/teleconference on October 21, 2021.

The Tenant, the Tenant's Legal Representative Donald Cameron and the Landlord attended the hearing.

Preliminary matter:

1. The Landlord attempted to raise a preliminary matter that the Tenants' application was subject to a judicial review application filed by the Landlord and therefore proceeding with the application until the review is complete is prohibited.
2. What is Judicial Review? Judicial review is a process by which courts make sure that the decisions of administrative bodies are fair, reasonable, and lawful. The Divisional Court hears applications for judicial review of decisions of administrative bodies in Ontario by virtue of s. 6(1) of the Judicial Review Procedure Act, R.S.O 1990, c J.1.
3. In an application for judicial review, a party asks a panel from the Divisional Court to change or set aside a decision of an administrative body where the party can show an error was made that warrants action by the Court. (Emphasis added)
4. Prohibition – prevents a decision-maker from continuing an unlawful process or action. If the Court determines that the decision-maker has no authority to do something or it would be wrong for them to do something, the Court may prevent the decision-maker from doing or continuing to do that thing.
5. In this instance, no application has yet been heard by the Board, no final decision has been issued on the Tenant's application. Therefore, the preliminary issue attempted to be made by the Landlord is premature and has no cause or merit to be raised. The Tenant's application is not subject to prohibition.
6. I proceeded to hear the Tenant's application.

Background and Determinations:

7. The residential complex is a multi-level house comprising of two units, an upper and a lower unit. Both the Tenant and the Landlord lived in the residential complex.
8. The monthly rent was \$900.00. The Tenant paid to the Landlord the first month rent and a last month rent deposit.
9. Ultimately it was determined that the tenancy by the right of possession commenced May 1, 2019, the Tenant moved into the lower unit on May 14, 2019 and moved out of the rental unit on May 31, 2019.
10. The Tenant alleged that the Landlord failed to disclose to her that other rooms in the lower unit would be rented out to other Tenants and that in essence she believed she would only be occupying the house with the Landlord. The Tenant asserted had that fact been disclosed to the her in advance she would not have moved into the rental unit.
11. The Landlord disputed her assertion, and that the Tenant simply rented a room from the Landlord not the whole lower unit.
12. The Tenant's T1 application is based on that the Landlord retained the Tenant's last month's rent deposit, that would be prohibited by the *Residential Tenancies Act, 2006* (the 'Act').
13. This issue to be determined by the Board is whether the Landlord and the Tenant had an agreement to terminate the tenancy.
14. Section 37(1) of the Residential Tenancies Act states: "A tenancy may be terminated only in accordance with this Act"
15. Subsection 37(2) of the Act states: "If a notice of termination is given in accordance with this Act and the tenant vacates the rental unit in accordance with the notice, the tenancy is terminated on the termination date set out in the notice". Neither the Landlord nor the Tenant gave a notice of termination to the other.
16. Subsection 37(3) of the Act states: "A notice of termination need not be given if a landlord and a tenant have agreed to terminate a tenancy". The Landlord asserted that he did not agree that this tenancy would end on May 31, 2019.
17. There is no provision in the Act that would allow one party to unilaterally end a tenancy.
18. The Tenant vacated the rental unit on May 31, 2019 without giving proper notice to the Landlord and without a mutual binding agreement to terminate the tenancy having been entered with the Landlord.
19. Section 44(2) of the Residential Tenancies Act, 2006 ('the Act') sets out that for monthly tenancies, tenants must give Landlords at least 60 days' notice prior to vacating a rental unit, and the termination of the tenancy is effective on the last day of the rental period (i.e. the last day of the month).

20. Therefore, the Tenant did not comply with section 44(2) of the Act and the tenancy was not lawfully terminated on May 31, 2019 the date she moved out of the rental unit.
21. In this case, the earliest possible lawful termination date that the Tenant could have ended the tenancy would have been July 31, 2019 if notice had been given.
22. Where a tenant vacates without notice or with less than the notice required by law, section 88 of the Residential Tenancies Act, 2006 entitles the landlord to daily compensation in lieu of the notice of termination the tenant ought to have given before leaving.
23. In this case, because the tenancy was not lawfully terminated, the Landlord was not obliged to refund the Tenant's deposit, as May 2019 was not the final month of the tenancy.
24. Therefore, pursuant to Section 88 the Landlord is entitled to keep the Tenant's deposit and apply it to any outstanding balance that would be owing to the Landlord.
25. For all the foregoing reasons, the Tenant's application must be dismissed.
26. The order sets out the reasons for the decision within the order. No other reasons will be issued.

It is ordered that:

1. The Tenants' application is dismissed.



Randy Aulbrook
Member, Landlord and Tenant Board

October 25, 2021
Date Issued

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