



Order under Subsection 135 Residential Tenancies Act, 2006

Citation: SINGH v SONIK, 2024 ONLTB 3617

Date: 2024-01-24

File Number: LTB-T-059236-22

In the matter of: 1, 79 LANARK CIRCLE BRAMPTON
ONTARIO L6X5L5

Tenants

Between: PAWANDEEP SINGH
AMRITA AULAKH
GURKIRAT SINGH
MANPREET KAUR

And

Landlords

SUSHMA SONIK
AMIT SONIK
BHAWANA SONIK
VIJAY KUMAR

PAWANDEEP SINGH, AMRITA AULAKH, GURKIRAT SINGH and MANPREET KAUR (the 'Tenants') applied for an order determining that SUSHMA SONIK, AMIT SONIK, BHAWANA SONIK and VIJAY KUMAR (the 'Landlords') collected or retained money illegally.

This application was heard by videoconference on December 14, 2023.

The Tenants Pawandeep Singh and Amrita Aulakh and the Tenant's Legal Representative Silvat Syed attended the hearing. The Landlords Sushma Sonik, Amit Sonik and Vijay Kumar attended the hearing. Namrat Kapoor attended the hearing to translate for Sushma Sonik and Vijay Kumar. Landlord Bhawana Sonik's Legal Representative Noah Lewis appeared on her behalf.

Determinations:

Adjournment Request #1 Denied

1. At the beginning of the hearing the Landlords Sushma Sonik and Vijay Kumar requested an adjournment on two grounds. First, they stated they required an interpreter. Second,

they stated that their legal representative James Hill was unable to be present as he was not feeling well. Mr. Kumar stated that Mr. Hill had asked them to ask for an adjournment on his behalf. The Landlord Bhawana Sonik requested an adjournment as there was ongoing divorce litigation in the Superior Court of Justice pertaining to the ownership of the rental unit.

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2. The Tenants' representative opposed both adjournment requests and her position was that an adjournment would be prejudicial to her clients. She stated that the parties have had notice of the proceedings since August 2023 and the Landlords should have brought an interpreter had they required one. In addition, she submitted that Mr. Kumar had a good command of English and that both Landlords understood what was being said in the hearing room. With respect to the second part of Ms. Sonik and Mr. Kumar's adjournment request, Ms. Syed stated that Mr. Hill had not contacted her to request an adjournment. Ms. Syed also opposed Mr. Lewis' adjournment request. Her position was that the ownership of the rental unit had no bearing on the matter before the Board. All four Landlords had entered into a tenancy agreement with the Tenants in this case.
3. After a brief recess I denied both requests for an adjournment. With respect to Mr. Lewis' request, I found that the divorce proceedings involving the ownership of the rental unit had no bearing on the matters before the Board. With respect to Ms. Sonik and Mr. Kumar's request, I found that they had ample notice to prepare for the hearing by bringing an interpreter if they needed one. The Board does not provide interpretation services and it is up to the parties to bring an interpreter to the hearing if they need one. In addition, it was clear to me that both Mr. Kumar and Ms. Sonik understood me and what was happening in the proceedings. Both Mr. Kumar and Ms. Sonik were able to respond to my questions readily. With respect to their request to adjourn because their representative was ill, the Board had no adjournment request from Mr. Hill. The Landlords Mr. Kumar and Ms. Sonik did not submit any proof that Mr. Hill had been retained. I was not convinced that Mr. Hill had been retained in this matter. As the parties had more than 5 months notice, Mr. Kumar and Ms. Sonik had ample time to retain legal representation in this matter.
4. I note that after I ruled on this adjournment request and during the Tenant's evidence in chief, the Landlord Amit Sonik appeared on the same device as Mr. Kumar and Ms. Sonik. Amit Sonik is the son of Mr. Kumar and Ms. Sonik. In addition, just after Amit Sonik appeared on screen, another person appeared in the room with Mr. Kumar, Ms. Sonik and Mr. Sonik. That person was the daughter of Mr. Kumar and Ms. Sonik, Namrat Kapoor. Ms. Kapoor interpreted for Mr. Kumar and Ms. Sonik when they gave evidence.

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Adjournment Request #2 - Denied

5. During the cross examination of the Landlord Amit Sonik requested an adjournment as he stated he had not been served with the Notice of Hearing or the Application and that as a result he had not had adequate time to prepare for the hearing. I denied that adjournment request. A review of the Board file revealed that all four Landlords had been mailed a copy of the Notice of Hearing with the application on September 1, 2023. The address for all four Landlords was the same. Mr. Sonik confirmed that the address the Board mailed these documents to was correct but stated that none of the Landlords had received them. When I asked how he knew about the hearing, he stated that he had come home when the proceedings had already started. When I asked how the other Landlords knew about the proceedings, he stated that his mother, Sushma Sonik had received an e-mail from the Board with the hearing information, but he had received nothing. I was satisfied that all four Landlords had been properly served with the Notice of Hearing, as well as a copy of the application. None of the Notices of Hearing had been returned to the Board as undeliverable.

The Application

6. As explained below, the Tenants proved the allegations with respect to illegal rent and an illegal charge contained in the application on a balance of probabilities. Therefore, the Landlords must pay the Tenants \$800.00.
7. However, as explained below, the Tenants did not prove the allegations with respect to the last month's rent deposit and interest on the last month's rent deposit contained in the application on a balance of probabilities. Therefore, the application with respect to these two claims is dismissed.
8. Finally, in the application, the Tenants asked the Board to order the Landlords to pay a fine to the Board as the Landlord did not give the required notice telling the Tenants that there was an *Order Prohibiting a Rent Increase* affecting the rental unit. The Tenants' representative stated they were seeking a fine due to the rent freeze ordered by the provincial government in 2021. I explained that I would be unable to make this order the provincial rent freeze was not an order prohibiting a rent increase issued by the Board.

Illegal Rent

9. The Landlords collected \$300.00 rent in excess of the amount allowed by the *Residential Tenancies Act, 2006* (the 'Act'). The Tenant Ms. Aulakh testified that the Tenants and the Landlords first entered into a tenancy agreement in April 2019 and that the Tenants moved into the rental unit on May 1, 2019. She testified that the rent was \$2,700.00 per month. She then testified that on May 1, 2021, the parties entered into a new tenancy agreement where rent was increased to \$2,750.00 per month. She tendered the lease agreement dated May 1, 2021 as evidence in the proceeding. She further testified that no Notice of Rent Increase was served on the Tenants and that at the time the Tenants were not aware that there was a rent freeze in place in Ontario.

10. The Landlords did not contest the Tenants evidence regarding the rent increase. Sushma Sonik testified in cross-examination that she did not give 90 days notice when the rent was increased because the Tenants did not ask for notice. She also testified that she was not aware of the rent freeze that was in place at the time. She testified that the Landlords told the Tenants about the increase to the rent and that the Tenants agreed with that increase.
11. Based on the evidence before me, I find that the Landlords increased the Tenants' rent by \$50.00 on May 1, 2021. Pursuant to section 136.1(3) of the *Residential Tenancies Act, 2006* (the 'Act'), no landlord was permitted to increase the rent charged to a tenant during the rent freeze period, being January 1, 2021 to December 31, 2021. As a result, I find that the rent increase of May 1, 2021 was unlawful. The Landlords must pay the Tenants \$300.00, which represents the \$50.00 increase the Tenants paid for the months of May 2021 to October 2021.

Illegal Charge Collected

12. The Landlords collected a \$500.00 charge which is not allowed by the the Act. Ms. Aulakh testified that the Landlords required that the Tenants pay a \$500.00 damage deposit when they first entered into the tenancy agreement with the Landlords in 2019. She testified that the Tenants paid that amount in cash to Sushma Sonik and Vijay Kumar when they signed the first lease agreement on May 1, 2019 at a local Starbucks.
13. In cross-examination, Amit Sonik asked Ms. Aulakh if she understood paragraph 11 of the Additional terms of the lease for 79 Lanark Circle in the second lease agreement that had been tendered as evidence. Paragraph 11 states as follows:

The tenant has agreed voluntarily with their own consent to give the landlord \$500 deposit for any damages if it occurs to the house. This deposit cannot be used towards last month rent. This deposit can be used by the landlord for any damages/deposit if occurred by the tenant i.e., lost remote for car garage opener, lost home key, lost mailbox key, damage to property, damage to appliances, house repairs, cleaning the house, etc.

14. Ms. Aulakh testified that she did not understand at the time a damage deposit was illegal.
15. Sushma Sonik testified that she received the \$500.00 damage deposit in cash from the Tenants.
16. Based on the evidence before me, I find that the Landlords collected a \$500.00 damage deposit from the Tenants when they entered into the first lease agreement in 2019. While the Tenants did agree to the terms of the lease agreement, including paragraph 11 of the

additional terms, such damage deposits are not permitted under s. 134(1) of the Act. Subsection 134(1) of the Act states:

134 (1) Unless otherwise prescribed, no landlord shall, directly or indirectly, with respect to any rental unit,

(a) collect or require or attempt to collect or require from a tenant, prospective tenant or former tenant of the rental unit a fee, premium, commission, bonus, penalty, key deposit or other like amount of money whether or not the money is refundable;

17. Damage deposits are not prescribed by the Act or the regulations and therefore, the \$500.00 damage deposit collected by the Landlords was illegal. The Landlords shall repay the Tenants the \$500.00 damage deposit.

Last Month's Rent Deposit

18. For the reasons below, I find that the Tenants have not proven that it is more likely than not that the parties agreed to terminate the lease on October 31, 2021. Therefore, this portion of the application is dismissed.
19. The Tenants' position is that the parties agreed that the tenancy would terminate at the end of November, 2021 but if the Tenants found new accommodations that they would leave by the end of October 2021 and that the Landlords would return the last month's rent deposit, as well as the \$500.00 damage deposit. The Landlords' position is that the parties agreed the tenancy would terminate at the end of November 2021, not the end of October 2021 and that because the Tenants left at the end of October 2021, they were entitled to keep the last month's rent deposit.
20. Ms. Aulakh testified that in September 2021, the Tenants called the Landlords because they might want to terminate the lease. She testified that one of the Tenants had moved to Nova Scotia and that the remaining Tenants could no longer afford the rent. She testified that the Landlords agreed over the phone to terminate the tenancy at the end of October and that they would use the last month's rent deposit for the rent in October 2021. Ms. Aulakh did not state which of the Tenants had this conversation with which of the Landlords.
21. In cross-examination, Sushma Sonik denied that there was any conversation between the Tenants and the Landlords in September 2021 about terminating the lease at the end of October. As there is no evidence corroborating the Tenants' version of events about this agreement, and the Tenants bear the burden of proof, the evidence is not sufficient to establish there was any oral agreement to terminate the tenancy.
22. However, the Tenants state that the parties came to a new written agreement to terminate the tenancy on October 10, 2021. Ms. Aulakh testified that Sushma Sonik and Vijay Kumar attended the rental unit that day.

23. At the meeting between the parties on October 10, 2021, the parties signed a document. The dispute over the termination date centres on what was written on the 2nd page of an N11 Agreement to End the Tenancy form ('N11 Form'). The second page of the document was tendered as evidence by the Tenants. Ms. Aulakh testified in cross-examination that the Landlords did not give a copy of both pages of the N11 Form to the Tenants and that they had taken a photo of the second page for their records. The Landlords did not submit a copy of the entire N11 Form as evidence.
24. The 2nd page of the N11 Form has the names of two of the Tenants Harkirat Singh and Pawandeep Singh typed in the first box under "Signature of the Tenant". The signature and date boxes under the Tenants names are blank. Under "Signature of the Landlord", the names "Sushma Sonik and Vijay Lumar" (sic) are typed in. Again, the signature and date boxes are blank.
25. Under the Landlord's signature box the following was handwritten:
- Both Tenant and Landlord, agrees that we will leave this property by the end of November, by giving rent \$2300, but in case we find some other place to live Tenant will leave by the end of October and Landlord will give back \$2750 and \$500 security back.
26. Under this handwriting, there are four signatures, that of Harkirat Singh, Pawandeep Singh, Sushma Sonik and Vijay Kumar. Under the signatures the document is dated Oct/10/2021. Ms. Aulakh testified in cross-examination that the handwriting on the 2nd page of the N11 form was that of Harkirat Singh.
27. Neither Sushma Sonik nor Vijay Kumar contested that these were their respective signatures. However, Sushma Sonik testified that she did not read what had been written before she signed the 2nd page of the N11 Form and that her understanding was that the tenancy would terminate on November 30, 2021. Vijay Kumar testified that he signed the document before the handwritten portion had been added to the 2nd page of the N11 form.
28. The parties agree that the Tenants vacated the rental unit on October 31, 2021. The Tenants Harkirat Singh and Pawandeep Singh sent an e-mail to Sushma Sonik on October 22, 2021 stating that they would be leaving by the end of October.
29. The question I need to answer is whether the parties agreed to terminate the tenancy on October 31, 2021 pursuant to s. 37(3) of the Act.
30. To find that the parties agreed to terminate the tenancy on October 31, 2021 I must be satisfied that it is more likely than not that there was a clear meeting of the minds about the date the tenancy would end. I am not satisfied that the parties clearly agreed to end the tenancy on October 31, 2021.

31. The written agreement itself is not clear as to the date the tenancy will terminate. The agreement first states that the parties agree to end the tenancy at the end of November, but then qualifies this date by stating that if the Tenants find a new place to live they will leave by the end of October 2021. An agreement to terminate a tenancy cannot be conditional. The parties did not agree to a clear termination date and therefore I cannot find that the parties agreed to terminate the tenancy on October 31, 2021.
32. Pursuant to s. 44 of the Act, the Tenants were required to give the Landlords 60 days' notice of termination with the termination date being the last day of the rental period. The parties clearly contemplated termination at their meeting on October 10, 2021, although the termination date was unclear. If I take that date as the day the Tenants gave notice, as this was the date when all parties agreed they understood the Tenants wished to terminate the tenancy, then the tenancy would have lawfully terminated on December 31, 2021.
33. Sushma Sonik testified that the rental unit was not re-rented until a month or two after the Tenants moved out, which I find reasonable given that the Tenants moved out on October 31, 2021. Given this, I find it appropriate that the Landlords applied the Tenants rent deposit to the rent for November 2021.

Interest on Rent Deposit Owing

34. The Tenants did not present any evidence with respect to interest owing on the last month's rent deposit. Therefore, this portion of the application is dismissed.

It is ordered that:

1. The total amount the Landlords shall pay the Tenants is \$853.00. This amount represents:
 - \$300.00 for excess rent collected. ○ \$500.00 for the illegal charge collected.
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by February 4, 2024.
3. If the Landlords do not pay the Tenants the full amount owing by February 4, 2024, the Landlords will owe interest. This will be simple interest calculated from February 5, 2024 at 7.00% annually on the balance outstanding.
4. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

January 24, 2024

File Number: LTB-T-059236-22
Date Issued

Angela Long
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor Toronto
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

2024 ONLTB 3617 (CanLI)