



Order under Subsection 135 Residential Tenancies Act, 2006

Citation: BOULOS v SANTOS, 2024 ONLTB 584

Date: 2024-01-17

File Number: LTB-T-010396-23

In the matter of: 304, 2263 QUEEN ST E
TORONTO ON M4E1G3

Tenant

Between: CLAIRE BOULOS

And

SUZIE SANTOS

Landlord

CLAIRE BOULOS (the 'Tenant') applied for an order determining that SUZIE SANTOS (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on November 29, 2023.

Only the Tenant attended the hearing.

As of 2:43pm, the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Tenant's evidence.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities in part. Therefore, the Landlord must pay the Tenant \$500.00.
2. In her T1 Application, the Tenant request the return of the last month's rent deposit.
3. The Tenant testified that she and her parents signed a lease agreement for the rental unit with the Landlord on August 25, 2022. The Tenant tendered the lease agreement signed by the parties. The lease was a fixed term lease running from September 1, 2022 until May 31, 2023. The rent was \$2,000.00 per month.

4. On August 26, 2022, the Tenant's parents paid a last month's rent deposit of \$2,000.00 to the Landlord. The Tenant tendered a copy of her parents' bank statement confirming that an e-transfer was sent to the Landlord.
5. The Tenant testified that she moved into the rental unit on September 2, 2022.

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6. The Tenant testified that on September 28, 2022, she contacted the Landlord because she no longer wanted to live in the rental unit. She stated that she was studying at the University of Toronto and the commute to and from the rental unit was too long for her. In addition, she testified she was concerned for her safety in the area of the rental unit.
7. The Tenant tendered copies of text messages between herself and the Landlord outlining the conversation they had with respect to the Tenant's intention to move out.
8. On September 29, 2022, the Landlord texted the Tenant stating that she would need 60 days notice from the Tenant. The Landlord also stated that she would require rent for the month of October and that the last month's rent deposit would apply to the last month (the second 30 day period). The Landlord also stated in the text message that if she did rent the unit to someone sooner she would repay the Tenant.
9. The Tenant testified that she paid the \$2,000.00 rent for October.
10. The Tenant testified that because the Landlord was out of the country that she facilitated showing the rental unit to prospective tenants for the Landlord. This was also documented in the text messages between the Landlord and the Tenant. In a message to the Landlord on September 30, 2022, the Tenant said she would post the unit on Marketplace.
11. The Tenant testified that the Landlord did rent the unit to new tenants and that those new tenants moved in on November 4, 2023. She testified that she moved out of the rental unit on November 4, 2022 and she gave the keys to the rental unit to the Landlord's husband and that she saw him give those keys to the new tenants.
12. The Tenant testified that she texted the Landlord on November 6, 2022 asking for her last month's rent deposit back, as the unit had been re-rented. On November 8, 2022, the Landlord texted the Tenant back saying that the Tenant had broken the lease and that she had to "take a break on the price" to the new tenants. The Landlord further stated that as the rental unit was not available on November 1, 2022, she only received half a month's rent from the new tenants and that these losses needed to be absorbed by the Tenant.

13. The uncontested evidence before me is that the Tenant paid the Landlord a last month's rent deposit of \$2,000.00 and that last month's rent deposit has not been returned to the Tenant.
14. The Tenant's position is that the Landlord is not entitled to retain the deposit as the Landlord re-rented the unit to new tenants. In determining the Tenant's claim, I considered that the Tenant did not lawfully end the tenancy in accordance with ss. 47 and 44(2) of the *Residential Tenancies Act, 2006* because she gave less than 60 days notice of termination and the termination date she provided was earlier than the last day of the fixed term. However, I also considered that the Landlord entered into a new tenancy agreement, which had the effect of ending the Tenant's tenancy.

15. Subsection 88(1) of the Act states:

88(1) If a tenant abandons or vacates a rental unit without giving notice of termination in accordance with this Act and no agreement to terminate has been made or the landlord has not given notice to terminate the tenancy, a determination of the amount of arrears of rent owing by the tenant shall be made in accordance with the following rules:

If the tenant vacated the rental unit after giving notice that was not in accordance with this Act, arrears or rent are owing for the period that ends on the earliest termination date that could have been specified in the notice, had the notice been given in accordance with section 47, 96 or 145, as the case may be.

16. Subsection 88(3) of the Act states:

88(3) Despite subsections (1) and (2), if the landlord enters into a new tenancy agreement with a new tenant with respect to the rental unit, the tenant who abandoned or vacated the rental unit is not liable to pay an amount of arrears of rent that exceeds the lesser of the following amounts:

1. The amount of arrears of rent determined under subsection (1) or (2).
2. The amount of arrears of rent owing for the period that ends on the date the new tenant is entitled to occupy the rental unit.

17. In this case, the earliest the Tenant could have lawfully terminated the tenancy was May 31, 2022. However, the tenancy terminated when the Landlord entered into a new tenancy agreement for the rental unit. Thus, the last month of the tenancy was November 2022 and the Landlord was entitled to apply the deposit to the rent for that month. However, the uncontested evidence before me is that the new tenants moved into the rental unit on November 4, 2022. Therefore, by virtue of s. 88(3)2, I find that the Tenant is only liable for rent up to November 3, 2022.

18. Based on my analysis above, the rent that the Tenant owed the Landlord for the period from November 1 – 3, 2022 is \$197.25. I calculated that amount by using the following formula - $\$2,000.00 \times 12 \text{ months} / 365 \text{ days} \times 3 \text{ days}$. The Landlord owes the remainder of the last month's deposit, \$1,802.75, to the Tenant.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$1,855.75. This amount represents:
 - o \$1,802.75 for the last month's rent deposit.
 - o \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by January 28, 2024.
3. If the Landlord does not pay the Tenant the full amount owing by January 28, 2024, the Landlord will owe interest. This will be simple interest calculated from January 29, 2024 at 7.00% annually on the balance outstanding.
4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

January 17, 2024

Date Issued

Angela Long

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor Toronto
ON M7A 2G6

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