



## **Order under Subsection 135 Residential Tenancies Act, 2006**

**Citation:** SIVANAND v YAN, 2024 ONLTB 17603

**Date:** 2024-03-26

**File Number:** LTB-T-062234-22

**In the matter of:** 3911, 295 ADELAIDE STREET WEST  
TORONTO ON M5V0L4

**Between:** HARSHINI SIVANAND Tenant

**And**

JENNIE YAN Landlord

Harshini Sivanand (the 'Tenant') applied for an order determining that Jennie Yan (the 'Landlord') collected or retained money illegally.

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

The Landlord and the Tenant attended the hearing. The parties attempted to resolve the issues with the assistance of the mediator but were unable to reach an agreement.

### **Determinations:**

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay to the Tenant \$7,503.00 for rent illegally collected from January 1, 2022 to November 14, 2023 and the cost of filing the application.
2. The tenancy began on September 1, 2018 when the parties signed a one year rental agreement. The lawful monthly rent was \$2,000.00. The tenancy then continued on a month-to-month basis.
3. The parties agree that the lawful monthly rent in 2020 was \$2,000.00. They also agree that throughout 2021, the monthly rent was \$1,700.00. They disagree, however, as to whether this was a one-year discount or whether this amount became the lawful monthly rent.

*Tenant's evidence*

4. The Tenant testified that she asked the Landlord on October 31, 2020 to lower the rent because rents in the area had decreased. The Tenant stated that she intended to move out at the end of the year if the Landlord did not lower the monthly rent to \$1,700.00 and then continue with Guideline increases thereafter. She stated that she did not agree to a

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temporary discount, rather that if the rent had not been reduced, she would have found other accommodation at a lower rate.

5. The Tenant stated that when she received an email from the Landlord on November 9, 2021 that the rent would be \$2,000.00 effective January 1, 2022, she objected but continued to pay that amount of rent to avoid hassle, then filed the application January 10, 2022.
6. The Tenant submitted that the reduction in rent was not a discount, but rather a decrease in rent which became the lawful monthly rent based on the parties' agreement. Therefore, in the Tenant's view, the increase from \$1,700.00 to \$2,000.00 (the former rent) in 2022 was an illegal rent increase.
7. Although an N1 Notice of Rent Increase was provided to the Tenant effective January 1, 2023 indicating a Guideline rent increase to \$2,050.00 monthly, the Tenant submits that this is not a proper increase as it is based on the \$2,000.00 rent.
8. The Tenant submitted into evidence a text conversation from November 2, 2020 where she suggested to the Landlord that she could pay \$1,600.00 per month. The Landlord responded that they could continue on a month-to-month basis for \$1,800.00 "but given when the market goes back up ... we will have to agree to bring the rent back up to the market price." The Landlord then wrote "I'm willing to compromise at \$1700 month [sic] effective Jan 2021 with 6 month cheques on hand."

*Landlord's evidence*

9. The Landlord testified that the rent was only decreased to \$1,700.00 as a pandemic discount for one year on the basis that it would increase again to \$2,000.00 monthly. She stated that the text conversations did not indicate that she accepted the Tenant's proposal to maintain the rent at \$1,700.00 monthly and increase per the Guideline from that amount.
10. She testified that she was informed by the LTB that she could rely on the original lease amount as the lawful monthly rent. She did not have any supporting evidence of the conversation that she had with LTB staff.

11. She submitted that she served an N1 Notice on the Tenant for a Guideline rent increase effective January 1, 2023 which increased the monthly rent from \$2,000.00 to \$2,050.00. She also stated that the average rent in the area is higher than the rent that the Tenant is currently paying.

Analysis

*Lawful monthly rent*

*Was there a discount?*

12. The Tenant paid the rent of \$1,700.00 for 12 months through 2021. Section 110 of the *Residential Tenancies Act, 2006* (the “Act”) states that: “No landlord shall increase the rent charged to a tenant for a rental unit, except in accordance with this Part.”

13. Subsection 111 of the Act states, in part

(1) No landlord shall charge rent for a rental unit in an amount that is greater than the lawful rent permitted under this Part.

(2) The lawful rent is not affected by a discount in rent at the beginning of, or during, a tenancy of up to 2 per cent of the rent that could otherwise be lawfully charged for a rental period if the discount is provided for paying rent on or before the date it is due and the discount meets the prescribed conditions.

14. The discount that the Landlord claims is not a prompt payment discount, and therefore this section of the Act does not apply.

15. Subsection 111(2.1) of the Act describes other allowed discounts:

1. A discount in rent at the beginning of, or during, a tenancy that consists of up to three months rent in any 12-month period if the discount is provided in the form of rent-free periods and meets the prescribed conditions.

2. **A prescribed discount.** [emphasis added]

16. Subsection 111(2.1)(1) of the Act does not apply to this application as the discount that the Landlord claims was not in the form of rent-free periods. Therefore, I must next consider whether the Landlord provided a permitted “prescribed discount”.

17. Prescribed discounts are defined in section 11(1) of O. Reg. 516/06 under the Act:

11. (1) The following discounts are prescribed for the purposes of paragraph 2 of subsection 111 (2.1) of the Act:

1. A discount provided for in a written agreement, if the total amount of the discount that is provided during the first eight months of the 12-month period does not exceed the rent for one month.

2. A discount provided for in a written agreement, if,
  - i. the total amount of the discount that is provided in the 12-month period does not exceed the rent for two months,
  - ii. the total amount of the discount that is provided in the first seven months of the 12-month period does not exceed the rent for one month, and
  - iii. any discount that is provided in the last five months of the 12-month period is provided in only one of those months and does not exceed the rent for one month.

...

(2) In this section,

“the 12-month period” means,

- (a) the 12-month period following the commencement of the tenancy,
- (b) the 12-month period following any rent increase taken after the 12-month period described in clause (a), other than a rent increase taken under section 123 of the Act, or
- (c) where clauses (a) and (b) do not apply, the 12-month period following the most recent anniversary of a rent increase taken in accordance with section 116 of the Act or, where no rent increase has been taken in accordance with section 116 of the Act, the commencement of the tenancy.

18. The purported discount in this case does not satisfy the requirements of section 11(1)1. The discount over the first eight months of the 12-month period is \$2,400.00, which is greater than one month of rent at \$2,000.00.
19. The same can be said in relation to section 11(1)2(ii). The amount of purported discount in the first seven months is \$2,100.00, which is greater than one month of rent, and in any event the discount does not satisfy the criteria in 11(1)2(iii).
20. As a result, this is not a prescribed discount within the meaning of section 111(2) of the Act. Even if the reduction in rent were to be considered as a “temporary side-agreement,” under section 4 of the Act this is impermissible as “a provision in a tenancy agreement that is inconsistent with this Act or the regulations is void.”
21. Sections 111(2)-(2.1) provide that the lawful rent is not affected by a prompt payment discount or a prescribed discount. This implies that a discount that does not comply *may* affect the lawful rent. Reading sections 111, 135.1 and 136 of the Act together, in my view a landlord risks having the lawful rent affected by offering a discount beyond what is

allowed by the Act. While there is an argument that the excessive discount would be captured by section 136, I think it is more likely than not that at some point, the parties agreed (implicitly through their conduct), to change the lawful rent to what the tenant was paying and the landlord was accepting.

22. As a result, the lawful monthly rent became \$1,700.00 in 2022, and the increase of rent from \$1,700.00 to \$2,000.00 in January 2022 by the Landlord was an illegal rent increase. The Tenant brought an application challenging the increase, and thus neither section 135.1 nor section 136 apply to this case.

*Illegal rent collected*

23. As I have found that the lawful monthly rent became \$1,700.00 on during the course of 2021, the Landlord collected rent in excess of the amount allowed by the *Residential Tenancies Act, 2006* (the 'Act').

24. Section 116 of the Act states:

116 (1) A landlord shall not increase the rent charged to a tenant for a rental unit without first giving the tenant at least 90 days written notice of the landlord's intention to do so.

...

(3) The notice shall be in a form approved by the Board and shall set out the landlord's intention to increase the rent and the amount of the new rent.

(4) An increase in rent is void if the landlord has not given the notice required by this section, and the landlord must give a new notice before the landlord can take the increase.

25. The parties agree that a notice that met the requirements of section 116(3) for the increase effective January 1, 2022 was not provided. While a Notice was properly served for the increase of January 1, 2023, this was based upon the Landlord's assumption that \$2,000.00 was the lawful monthly rent, which was incorrect.

26. The Tenant is entitled to a return of the illegal rent increase charged from January 1, 2022 to November 14, 2023.

**It is ordered that:**

1. The total amount the Landlord shall pay the Tenant is \$7,503.00. This amount represents:
  - o \$3,600.00 for excess rent collected in 2022 (\$300.00 x 12 months)
  - o \$3,850.00 for excess rent collected in 2023 to the date of the hearing (\$350.00 x 11 months)
  - o \$53.00 for the cost of filing the application.

2. The Landlord shall pay the Tenant the full amount owing by April 6, 2024.
3. If the Landlord does not pay the Tenant the full amount owing by April 6, 2024, the Landlord will owe interest. This will be simple interest calculated from April 7, 2024 at 7.00% annually on the balance outstanding.
4. If the Landlord does not pay the Tenant the full amount owing by April 6, 2024, the Tenant may recover this amount by deducting \$1,700.00 from the rent each month from May 1, 2024 to August 1, 2024 and \$703.00 in September 2024.
5. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

**March 26, 2024**

**Date Issued**

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Margo den Haan  
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.