



Order under Section 135 Residential Tenancies Act, 2006

Citation: Olawole v Canadian Home Inspection Services Inc, 2024 ONLTB 60438

Date: 2024-08-21

File Number: LTB-T-039965-24

In the matter of: 21 Almond Street
St. Catharines ON L2T1G1

Tenant

Between: Ifeoluwa Olawole

And

Landlord

Canadian Home Inspection Services Inc
Christian Vattovaz

Ifeoluwa Olawole (the 'Tenant') applied for an order determining that Canadian Home Inspection Services Inc and Christian Vattovaz (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on August 8, 2024.

The Landlord and the Tenant attended the hearing. The Tenant requested to speak to Tenant Duty Counsel prior to the start of the proceeding, however Duty Counsel was not available.

Determinations:

Preliminary Issue

1. Christian Vattovaz, the Landlord as listed in the application (CV), submitted that this application should be dismissed. CV testified that he is not in fact the Landlord, but the landlord's son, and only acted as the property manager, in dealing with the Tenant and other Tenants who rented rooms in the rental complex. CV further testified the landlord is in fact Thomas Vattovaz (TV).
2. The Tenant testified all issues related to the tenancy were dealt with CV directly from the execution of the lease to payment of rent, and that he briefly met Thomas Vattovaz, once at the rental complex, during a maintenance issue with another Tenant.
3. Sections 1, 2(1) and 202(1) of the *Residential Tenancies Act, 2006* ('Act') are central to this determination, and provide as follows:

1. The purposes of this Act are to provide protection for residential tenants from unlawful rent increases and unlawful evictions, to establish a framework for the regulation of residential rents, to balance the rights and responsibilities of residential landlords and tenants and to provide for the adjudication of disputes and for other processes to informally resolve disputes.

2(1) In this Act,

(...)

“landlord” includes,

(a) the owner of a rental unit **or any other person who permits occupancy of a rental unit**, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit,

(b) the heirs, assigns, **personal representatives** and successors in title of a person referred to in clause (a), and

(c) a person, other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent;

(. . .)

“tenant” includes a person who pays rent in return for the right to occupy a rental unit and includes the tenant’s heirs, assigns and personal representatives, but “tenant” does not include a person who has the right to occupy a rental unit by virtue of being,

202(1) In making findings on an application, the **Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so,**

(a) may disregard the outward form of a transaction or the separate corporate existence of participants; and

(b) may have regard to the pattern of activities relating to the residential complex or the rental unit.

4. These sections taken together suggest that the necessary starting point for the analysis in this case is the protection of the rights of the Tenant residing in the rental unit, and the rights and relationships as between the Tenant and the party or parties who meet the definition of Landlord in respect of this residential tenancy. The “tenant protection” focus of the Act is well established, and has been affirmed by numerous Board decisions and the Courts: *Matthews v. Algoma Timberlakes Corp.*, [2010 ONCA 468](#) (QL), 102 O.R. (3d) 590; *Metropolitan Toronto Housing Authority v. Godwin*, [2002 CanLII 41961 \(ON CA\)](#), [2002] O.J. No. 2514 (ONCA) (QL), 161 O.A.C. 57; *Price v. Turnbull's Grove Inc.*, [2007 ONCA 408 \(CanLII\)](#), *MacDonald v. Richard*, [2015 CanLII 34322 \(ON LTB\)](#), 2008 Carswell Ont 638 (Ont. Div. Ct.).

5. In my view, CV held himself out to be the Landlord, and testified to this effect, given he testified to being the property manager for TV. The Tenant further testified all his dealings in relation to the tenancy were between himself and CV. As such CV meets the definition of Landlord in respect of this tenancy.
6. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenant \$353.00 by September 1, 2024.
7. The Tenant's T1 application was filed on May 8, 2024, alleging that the Landlord collected an illegal charge of \$300.00 in total during the tenancy. Specifically, for a refundable damage deposit.
8. The Tenant testified that he provided the Landlord a refundable damage deposit of \$300.00 with the first and last month's rent deposit when he entered the tenancy. The Tenant further testified when the tenancy was terminated on April 30, 2024, he requested the return of the damage deposit from CV via a text message, and continued to do so until May 7, 2024 when the Tenant received a message from CV advising he would only receive \$150.00 of the damage deposit as the carpet had to be cleaned and a damaged door repaired, which the Tenant vehemently denies. The Tenant did receive \$150.00 from CV but returned the funds to CV and commenced this herein application.
9. CV testified, the lease (which was not submitted as evidence) provided that a refundable damage deposit of \$300.00 was required and any damages would be deducted from this deposit, and this is in fact what transpired. On further questioning of CV, he testified the Tenant did in fact provide \$300.00 as a damage deposit upon entering the tenancy and the Tenant was provided half of this refundable damage deposit back on the termination of the tenancy, which the Tenant returned to CV.

ANALYSIS: ILLEGAL CHARGE COLLECTED

10. The question before me is whether the Landlord is entitled to collect this additional charge pursuant to the Act.
11. 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;

12. This reads as an absolute prohibition against a landlord charging any kind of fee other than rent to a tenant. However, the section uses the phrase "unless otherwise prescribed" which means fees can be charged if they are specifically permitted in the regulations of the Act.

13. The exemptions to s.134(1) are set out in section 17 of Ontario Regulations 516/06. The list of exemptions does not include a charge for a refundable damage deposit.
14. Therefore, I find that the Landlord breached section 134 of the Act by collecting from the Tenant and additional illegal charge in the sum of \$300.00 for a damage deposit.
15. As the Tenant has been successful in their application, the Tenant is entitled to a reimbursement of the application fee.
16. This order contains all of the reasons for my decision within it. No further reasons shall be issued.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$353.00. This amount represents:
 - \$300.00 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 September 1, 2024.
3. If the Landlord does not pay the Tenant the full amount owing by September 1, 2024, the Landlord will owe interest. This will be simple interest calculated from September 2, 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.

August 21, 2024
Date Issued

Panagiotis Peter Roupas
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.

