



Order under Subsection 135 Residential Tenancies Act, 2006

Citation: Saleh v Awad, 2024 ONLTB 20603

Date: 2024-03-19

File Number: LTB-T-011364-23

In the matter of: 5592 Meadowcrest Avenue
Mississauga ON L5M0V1

Tenants

Between: Dia Saleh
Rania Alnabulsi

And

Imad Awad

Landlord

Dia Saleh and Rania Alnabulsi (the 'Tenants') applied for an order determining that Imad Awad (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on March 11, 2024.

The Landlord and his Legal Representative C. Williams and the Tenants and the Tenants' Legal Representative J. Gangadin attended the hearing.

Determinations:

1. As explained below, the Tenants proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenants \$5,600.00 plus the cost of bringing this application.
2. This application was heard at the same time as LTB-T-013354-23 and the matters are dealt with as separate orders.
3. The Tenants lived at this unit for approximately 8 years and in September 2021 received an e-mail from the Landlord informing them that the Landlord's son wished to move into the unit and that a N12 notice would be sent. The Tenants requested that the Landlord allow them to stay until the end of the school year. The Landlord agreed and the Tenants vacated on June 23, 2022.
4. In September 2021 the monthly rent was \$2,000.00 per month. Rent was payable on the 15th of the month.
5. The Landlord presented a new lease contract for a term of October 2021 to June 2022 with an increase in rent to \$2,700.00 per month.

6. The 2021 provincial guideline for monthly rent increase was 0% in accordance with section 120(3.1) of the Act.
7. The Tenants testified that they did not receive a notice of rent increase from the Landlord as required by the Act and no evidence was presented by the Landlord to discredit this evidence. The rent increase was first implemented in October 2021 and the Tenants paid \$2700.00 for nine consecutive months before moving out in June 2022.
8. The Tenants further testified they felt they had no choice but to accept the illegal rent increase because they wished to maintain the tenancy for the remainder of the school year and under cross-examination stated they signed the new lease agreement under duress.

Analysis

9. Section 110 of the Act states that no landlord shall increase the rent charged to a tenant for a rental unit, except in accordance with the Act's rent increase rules.
10. Section 116 states that 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 using a Board approved form.
11. In this case, the Landlord increased the rent from \$2,000.00 to \$2,700.00 per month effective October 1, 2021, without first serving the required Notice of Rent Increase (NORI).
12. In addition, even if the Landlord had given the Tenants a NORI, the increase would still have been illegal because the Landlord was limited to the 2021 guideline rent increase of 0%.
13. Subsection 120(1) of the Act provides:

120(1) No landlord may increase the rent charged to a tenant, or to an assignee under section 95, during the term of their tenancy by more than the guideline, except in accordance with section 126 or 127 or an agreement under section 121 or 123.
14. There was no evidence of any of the exceptions identified in section 120 under sections 121, 123, 126 or 127 applied – i.e. there were no Board orders permitting above guideline increases and there were no agreements entered into due to the provision of increased services or because of additional capital expenditures undertaken.
15. The fact that the Tenants signed a new lease containing the illegal rent increase does not make it lawful. The Court of Appeal for Ontario addressed this very issue in *Honsberger v. Grant Lake Forest Resources Ltd.*, 2019 ONCA 44. The Court found that while parties are free to enter into a new tenancy agreement at the expiry of their existing fixed term agreement, the landlord must also provide a written notice of rental increase in accordance the RTA in order to increase the rent in the new tenancy agreement. Further, the rent increase is subject to the rent control guideline. The Court also found that an existing tenant does not create a new tenancy or become a new tenant by signing a new tenancy agreement. The RTA provisions (s. 113) that allow for a new rental rate for a new tenant do not apply in these circumstances.

16. Therefore, I find that the Landlord collected rent more than the amount allowed by the *Residential Tenancies Act, 2006* (the 'Act') and must pay the Tenants the illegally collected rent.
17. As the rent increases were unlawful and were paid by the Tenants for the rental periods October 2021 through to June 2022, I find the Landlord collected \$5,600.00 of rent in excess of the amount permitted under the Act from the Tenants.
18. However, section 135(4) of the Act provides that this type of application cannot be filed more than one year after the person collected or retained money in contravention of this Act.
19. This application was filed on January 13, 2023, meaning that the Board can only order the return of money illegally collected by the Landlord on or after January 2022.
20. As the Tenants were successful in their application, they are entitled to the cost of the filing fee.
21. This order contains all the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The total amount the Landlord shall pay the Tenants is \$4,253.00. This amount represents:
 - \$4,200.00 for excess rent collected.
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenants the full amount owing by March 30, 2024.
3. If the Landlord does not pay the Tenants the full amount owing by March 30, 2024, the Landlord will owe interest. This will be simple interest calculated from March 31, 2024 at 7.00% annually on the balance outstanding.

March 19, 2024
Date Issued

Mitch Panciuk
Member, Landlord and Tenants Board

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