



Order under Subsection 135 Residential Tenancies Act, 2006

Citation: Detmer v Management, 2024 ONLTB 3055

Date: 2024-01-18

File Number: LTB-T-012377-23

In the matter of: 1512, 535 North Service Road
Mississauga Ontario L5A1B4

Tenant

Between: Martin Detmer

And

Ranee Management

Landlord

Martin Detmer (the 'Tenant') applied for an order determining that Ranee Management (the 'Landlord') collected or retained money illegally.

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

The Tenant and the Landlord's Legal Representative Ilana Glickman attended the hearing.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenant \$65.27 in interest for his last month's rent deposit if it has not already been added to the last month's rent deposit it currently holds.
2. The facts in this case are uncontested. The issue to be decided is whether the Landlord correctly applied s. 106(6) of the *Residential Tenancies Act, 2006* (the 'Act') in how they calculated the interest owing on the rent deposit they are holding for the Tenant. For the reasons that follow, I find that the Landlord has incorrectly calculated the interest on the Tenant's rent deposit.
3. The Tenant signed a tenancy agreement with the Landlord on November 2, 2020. The fixed-term rental period started on February 1, 2021 and ran to January 31, 2022, as set out in the lease tendered by the Tenant. His rent was \$1,750.00 per month. He paid a last month's rent deposit of \$1,750.00.

4. On January 12, 2022, the Landlord sent the Tenant a document called “Notice Re: Last Month Deposit Interest Payment”. The Tenant entered this document into evidence. The notice stated that the Tenant had earned \$1.78 in interest on his rent deposit from February 1, 2021 to January 31, 2022. The notice also stated that the rent for February 2022 would be \$1,771.00, owing to a lawful rent increase. In addition, the notice stated Tenant owed the Landlord \$21.00 to increase his rent deposit in line with the current lawful rent.
5. The Tenant took issue with this notice. His position is the interest calculation of \$1.78 does not conform with s. 106(6) of the Act, as the interest was not calculated at the guideline rate at the time the payment became due. Rather, the interest was calculated monthly using the guideline amount that was in effect during that month. In 2021, the guideline rate was 0%, meaning that the Landlord applied the 0% rate for the months of February 2021 – December 2021 and then applied the 1.2% rate for January 2022. The \$1.78 was calculated by the following formula $\$1,750.00 \times 0.012 / 365 \times 31$. The Tenant’s position is that the interest owing should have been \$21.00, which matched the amount the Landlord asked the Tenant to pay to bring his rent deposit in line with his new lawful rent.
6. The Tenant wrote many times to the Landlord about this issue, but did not receive a response, save for one voicemail message from an employee of the Landlord, which confirmed the way the Landlord calculated the interest on the rent deposit. This voicemail message was also tendered as evidence at the hearing.
7. The Tenant received another “Notice Re Last Month Rent Deposit Interest Payment” on January 11, 2023. That notice mirrored the one from 2022, except with new amounts. The interest earned was \$22.97 and the Landlord required the Tenant to pay \$65.27 to bring his rent deposit in line with his new lawful rent, which was \$1,815.27 on February 1, 2023. The notice stated that the Tenant’s rent deposit was still \$1,750.00, as he had not paid the \$21.00 as required in the previous year’s notice.
8. The Tenant again took issue with this notice for the same reason as above and wrote to the Landlord again. He did not receive a satisfactory response from the Landlord. The Tenant’s position is that the interest on the rent deposit payable in January 2023 should have been \$44.27, as the guideline amount for 2023 was 2.5%, and not 1.2% for the months of February 2022 – December 2022 and 2.5% for January 2023.
9. The Landlord’s representative confirmed that the Landlord calculates interest on the rent deposit monthly using the guideline amount in effect during each month and then adds each month together to arrive at the annual figure. She testified that this is the way the rent accounting software calculates interest on rent deposits and that it is industry standard for large corporate landlords. Her position is that the interest paid on the Tenant’s rent deposit is correct and that any discrepancies owing to the way they calculate interest will even out over time given the yearly fluctuation of the guideline amount.

10. Subsection 106(6) of the Act states:

106(6) A landlord of a rental unit shall pay interest to the tenant annually on the amount of the rent deposit at a rate equal to the guideline determined under section 120 that is in effect at the time payment becomes due.

11. The statute is very clear. Interest on the rent deposit must be calculated by using the guideline amount that is in effect at the time the payment becomes due. Therefore, the rate to be used is the guideline rate in force at the time the payment is due. If the payment is due in January 2022, then the guideline amount in effect in January 2022 must be used to calculate the interest owing from the previous year. Had the legislature intended that landlords calculate interest based on the specific guideline amount for each month of the year, it could have done so.
12. Based on the uncontested facts before me, the Tenant is owed interest on January 31 of each year, the interest must be calculated using the guideline amount in place in January of the year the interest payment is due. For January 2022, that rate was 1.2% and for January 2023 that rate was 2.5%. Therefore, I find the Tenant was owed \$21.00 in interest on his rent deposit on January 31, 2022. Had the Landlord calculated the interest in accordance with the statute, the interest could have been applied to the Tenant's rent deposit to increase it to match the new rent, rather than asking the Tenant to pay that amount separately. This means his rent deposit in January 2023 would have been \$1,771.00 and the interest payable on January 31, 2023 would have been \$44.27.
13. At the hearing, the Landlord's representative testified that the \$65.27 the Tenant claimed had been applied to his rent deposit, although this was not indicated on the ledger uploaded to the portal on December 6, 2023.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$118.27. This amount represents:
 - \$65.27 for interest on the last month's rent deposit.
 - \$53.00 for the cost of filing the application.
2. By January 29, 2024, the Landlord shall either pay the Tenant the amount set out in paragraph 1 or confirm with the Tenant it has applied \$65.27 to the rent deposit it is holding for the Tenant to increase it to match the current rent. In either case, the Landlord shall pay the Tenant the cost of filing the application by January 29, 2024.
3. If the Landlord does not pay the Tenant the full amount owing as reflected in paragraphs 1 and 2 by January 29, 2024, the Landlord will owe interest. This will be simple interest calculated from January 30, 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 18, 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.