



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

Citation: AUSTIN v WILD, 2024 ONLTB 4652

Date: 2024-01-22

File Number: LTB-T-011390-23

In the matter of: 3143 PRESERVE DRIVE
OAKVILLE ON L6M0V9

Tenants

Between: GWENYTH KAREN AUSTIN
JOHN SPEAR

And

Landlords

PATRICK WILD
NORA WILD

GWENYTH KAREN AUSTIN and JOHN SPEAR (the 'Tenants') applied for an order determining that PATRICK WILD and NORA WILD (the 'Landlords') collected or retained money illegally.

This application was heard by videoconference on December 12, 2023.

The Landlords, the Tenants and the Tenants' Legal Representative, Vanessa Smith, attended the hearing.

Determinations:

1. As explained below, the Tenants proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlords must pay the Tenants an amount equal to one month of rent.
2. The Landlords gave the Tenants a notice of termination under section 49 of the *Residential Tenancies Act, 2006* (the 'Act') and did not pay the Tenants the compensation equal to one month's rent as required by section 49.1 of the Act.
3. It is undisputed that sometime in the fall of 2021, the Landlord Patrick Wild ("PW") had a verbal conversation with the Tenants regarding the need to list the property for sale as a condition to the mortgage application they submitted for another property. In this conversation, PW told the Tenants they would have to move out of the unit in February or March of 2022.
4. The Landlords testified they told the Tenants they would have to move because they thought that was the regular process.

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5. The Tenants advised the Landlords on January 24, 2022 of their intention to vacate the property March 31, 2022.
6. The monthly rent at the time the tenancy terminated was \$2,770.00.
7. The Landlords listed the house for sale on April 6, 2022. After three weeks on the market, there were no offers. The Landlords listed the house for lease on April 29, 2022. The Landlords rented the apartment to a new tenant on May 25, 2022.
8. The Landlords testified that, when the house wasn't selling as quickly as they hoped, they listed it for lease without advising the former tenants. They thought they would already be locked into a new contract and didn't expect the former tenants to want to return.
9. The Landlords' position is in the absence of an N12 notice, or a purchaser, they should not be responsible for compensation of one month rent to the Tenants.
10. The Tenants' position is they moved to a new unit in response to PW advising them of their intention to sell.

Analysis

11. Section 49(1) of the Act provides that a landlord may serve the tenant with a notice of termination if they have entered into an agreement of purchase and sale and the purchaser intends to move into the rental unit. Section 49.1 of the Act provides that a landlord shall compensate a tenant in an amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant if the landlord gives a notice of termination on behalf of a purchaser. Section 55.1 of the Act states the aforementioned one month's rent compensation must be paid prior to the termination date on an N12.
12. Section 212 of the Act says that "substantial compliance with this Act respecting the contents of forms, notices or documents is sufficient". Although the Landlords did not serve an N12 notice, section 202(1) of the Act permits the Board to ascertain the real substance of any transaction 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.

13. I find PW's verbal conversation with the Tenants in the fall of 2021 constitutes a notice to terminate under section 49 because PW gave the Tenants verbal notice of the intention to sell, told the Tenants they would have to move as a result of the sale, and gave an approximate date of when they would need to vacate. This conversation encompassed the details required to complete a formal N12 notice.
14. I find that the fact the Tenants vacated the rental unit the same month PW estimated they would have to move shows they moved as a result of the Landlord's verbal notice of termination. Therefore, the Landlords had an obligation to compensate the Tenants in an amount equal with one month rent in accordance with section 49.1.

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15. The Landlords ignorance to the Act and failure to serve a notice of termination using the prescribed form does not allow them to circumvent the Act or escape liability.
16. Therefore, the Landlords will be ordered to pay the Tenants an amount equal to one month's rent and the Tenant's filing fee. **It is ordered that:**
1. The total amount the Landlord shall pay the Tenants is \$2,823.00. This amount represents:
 - o \$2,770.00 in compensation equal to one month's rent; and
 - o \$53.00 for the cost of filing the application.
 2. The Landlords shall pay the Tenants the full amount owing by February 2, 2024.
 3. If the Landlords do not pay the Tenants the full amount owing by February 2, 2024, the Landlords will owe interest. This will be simple interest calculated from February 3, 2024 at 7.00% annually on the balance outstanding.

January 22, 2024

Date Issued

Elena Jacob

Member, Landlord and Tenant Board

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

