



Order under Section 135 Residential Tenancies Act, 2006

Citation: Geris v Royal York Property Management, 2024 ONLTB 60900

Date: 2024-08-23

File Number: LTB-T-096899-23

In the matter of:	98 Middleton Street Thamesford ON N0M2M0	Tenant
Between:	Emily Geris Brian Januario	
And		Landlord
	Royal York Property Management	

Emily Geris and Brian Januario (the 'Prospective Tenants') applied for an order determining that Royal York Property Management (the 'Landlord') collected or retained money illegally.

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

The Landlord's representative, Rina Zariqi, and the Tenants attended the hearing.

Preliminary Issue:

1. The Landlord's representative raised the issue that the Landlord's legal representative, Shelby Whittick, was unavailable to attend the hearing. Ms. Whittick had originally logged into the hearing but left to attend a different hearing for the rest of the day. As a result, Ms. Zariqi asked for an adjournment, however, she indicated that, regardless of the outcome of the adjournment request, she would be prepared to speak to the matter.
2. The Prospective Tenants opposed the adjournment, arguing that the Landlord had previously sought an adjournment of this matter on the last hearing date on June 6, 2024. Upon review of the Board's records, I note that this hearing was marked peremptory on the Landlord. On June 6, 2024, the Landlord's adjournment request to allow him time to find legal representation for the hearing was granted. It appears the Landlord knew that the matter was marked peremptory yet still chose to engage a legal representative who had limited availability.
3. After hearing the submissions of the parties, the adjournment request was denied.

Determinations:

4. As explained below, the Prospective Tenants proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Prospective Tenants \$5,340.07.

Testimony of Prospective Tenant, Emily Geris

5. Ms. Geris testified that she first viewed the property on May 31, 2023. The Landlord charged a \$750.00 application fee to be paid when submitting the rental application.
6. On the same day the Prospective Tenant paid the application fee, the Landlord sent the Prospective Tenant an Offer to Lease Agreement. The original offer to lease, which was signed by the Landlord, had an error on it, so a subsequent Offer to Lease Agreement was sent to the Prospective Tenant. The Prospective Tenant signed the second Offer to Lease Agreement, however the Landlord did not.
7. As a result of receiving the second Offer to Lease agreement, the Prospective Tenant sent the Landlord \$5,292.07. This was comprised of \$4,818.33 for first and last month's rent, a \$223.74 "document processing and screening fee", and a \$250.00 refundable key deposit. A copy of this breakdown is found in the Landlord's email dated June 1, 2023 which was submitted into evidence.
8. The Prospective Tenant testified that a new lease was supposed to be sent to the Prospective Tenant with a commencement date of June 2, 2023. However, on June 1, 2023, the Landlord sent the Prospective Tenant an email asking for more information in order to proceed with the application. These items included paystubs for Ms. Geris, 90 days' banking statements, and proof of last two rental payments made to the Prospective Tenant's current landlord. Ms. Geris sent all requested documents to the Landlord on that same day.
9. On June 2, 2023, the Landlord sent the Prospective Tenant an email indicating "we have identified some discrepancies that go against Section 4 of the Offer to Lease Agreement that you have signed. After a holistic review of your file, we have decided not to move forward with the lease as a consequence of said breach".
10. Ms. Geris submitted that after receiving the rejection email, she asked the Landlord what the alleged breach was. The Landlord indicated it was an issue with the May 18, 2023 paystub submitted.
11. After receiving the rejection email on June 2, 2023, Ms. Geris asked for a full refund of all of the money she had paid to the Landlord. The Landlord refused to provide a refund.

Testimony of Tenant, Brian Januario

12. Mr. Januario's testimony was largely a repetition of the testimony of Ms. Geris. He confirmed what had happened with respect to the collection of the money. He also indicated that he did everything he could to comply with the Offer to Lease, yet the Landlord still rejected their application.

Testimony of Landlord's Representative, Rina Zariqi

13. Ms. Zariqi works for the in-house legal team of the Landlord. She testified that the Offer to Lease is clear that it allows the Landlord to "deny the application and apply any money previously paid to monies owed by the Tenant."
14. The witness indicated that the Landlord assumes the responsibility of renting out the rental unit for the actual owner. In this situation, while the rental unit was re-rented for July 2023, and the owner suffered a loss of one month's rent, not having been able to rent the unit out in June 2023.
15. Due to this loss, the Landlord was willing to refund \$2,411.07, however, it submits that the remaining amount would be retained as it was equivalent to one month's rent, \$2,450.00 + HST, and a one-time fee of \$99.00 + HST that the owner paid the Landlord for services relating to the rental unit.
16. When asked why that rent is subject to HST, the witness indicated that there is an agreement between the Landlord and owner that HST would apply. No such proof of that agreement between the Landlord and owner was presented to the Board.
17. Ms. Zariqi further submitted that the reason the Prospective Tenants' application was denied was due to inconsistencies in the paystubs submitted.
18. It is the Landlord's position that according to section 4 of the Offer to Lease Agreement, that if the Tenant commits breaches, the Landlord is also entitled to charge a damages.

Analysis

19. It is undisputed between the parties that an amount of \$2,411.07 should be refunded to the Prospective Tenants. This amount was admitted to by the Landlord. What is at issue is whether the remaining amount paid by the Prospective Tenants should also be returned.
20. I have reviewed the Offer to Lease Agreement and find that it is an attempt by the Landlord to contract out of the provisions contained in the *Residential Tenancies Act, 2006* (the 'Act').
21. An application based on the collection of prohibited charges in s. 134(1) is brought pursuant to s. 135 of the Act which reads in part as follows:

Money collected illegally

135 (1) A tenant or former tenant of a rental unit may apply to the Board for an order that the landlord, superintendent or agent of the landlord pay to the tenant any money the person collected or retained in contravention of this Act or the Tenant Protection Act, 1997.

....

Prospective tenants

(2) A prospective tenant may apply to the Board for an order under subsection (1).

22. Section 134 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;

(b) require or attempt to require a tenant or prospective tenant to pay any consideration for goods or services as a condition for granting the tenancy or continuing to permit occupancy of a rental unit if that consideration is in addition to the rent the tenant is lawfully required to pay to the landlord; or

...

23. The prescribed exemptions from this provision are found in s. 17 of Ontario Regulation 516/06:

The following payments are exempt from subsections 134 (1) and (3) of the Act:

- (a) Payment for additional keys, remote entry devices or cards requested by the tenant, not greater than the direct costs.
- (b) Payment for replacement keys, remote entry devices or cards, not greater than the direct replacement costs, unless the replacement keys, remote entry devices or cards are required because the landlord, on the landlord's initiative, changed the locks.
- (c) Payment of a refundable key, remote entry device or card deposit, not greater than the expected direct replacement costs.
- (d) Payment of NSF charges charged by a financial institution to the landlord.
- (e) Payment of an administration charge, not greater than \$20, for an NSF cheque.
- (f) Payment by a tenant, former tenant, subtenant or former subtenant in settlement of a court action or potential court action or an application or potential application to the Board.
- (g) Payment to a landlord or tenant of a mobile home park or land lease community at the commencement of a tenancy as consideration for the rental of a particular site.
- (h) Payment of a charge not exceeding \$250 for transferring, at the request of the tenant,
 - i. between rental units to which subsection 6 (1) or (3) of this Regulation applies, if the rental units are located in the same residential complex, or
 - ii. between rental units in a residential complex that is described in paragraph 1, 2, 3 or 4 of subsection 7 (1) of the Act.
- (i) Payment of an amount to reimburse the landlord for property taxes paid by the landlord with respect to a mobile home or a land lease home owned by the tenant.

24. The evidence in this case is that the Landlord charged the Prospective Tenants a \$223.74 "document processing and screening fee". I find that none of the exemptions in the regulations apply to that kind of fee. The Landlord was prohibited from charging this and it should be refunded to the Prospective Tenants.

25. The Landlord also charged a \$250 refundable key deposit. Refundable key deposits are permitted but the amount of the refundable deposit must be no more than the direct

replacement costs. In any event, I find that this amount should be returned to the Prospective Tenants.

26. Based on the Landlord's own submissions, the amount of \$99.00 + HST is a fee that the owner paid to the Landlord for their services. This falls squarely under section 134(a) as an additional charge which is prohibited. I find that the Prospective Tenants should not be responsible for having to pay this. It should therefore be refunded.
27. The Prospective Tenant noted that the Landlord charged a \$750.00 application fee. I find that none of the exemptions in the regulations apply to that kind of fee. It should also be refunded. It was unclear whether this amount was paid by the Prospective Tenants, but regardless it was not sought in the application. As a result, this \$750.00 application fee shall not be awarded. Had the Prospective Tenants paid the application fee and claimed it in the application, this amount would have been awarded.
28. The limitations on the amount of security deposit a Landlord can collect is found in s.105 of the Act:

(1) The only security deposit that a landlord may collect is a rent deposit collected in accordance with section 106.

Definition

(2) In this section and in section 106,

“security deposit” means money, property or a right paid or given by, or on behalf of, a tenant of a rental unit to a landlord or to anyone on the landlord's behalf to be held by or for the account of the landlord as security for the performance of an obligation or the payment of a liability of the tenant or to be returned to the tenant upon the happening of a condition.

29. While damage deposits are not permitted under the Act, a Prospective Tenant may be required to pay a rent deposit:

106 (1) A landlord may require a tenant to pay a rent deposit with respect to a tenancy if the landlord does so on or before entering into the tenancy agreement.
Amount of rent deposit

(2) The amount of a rent deposit shall not be more than the lesser of the amount of rent for one rent period and the amount of rent for one month.

30. S.107 of the Act stipulates that a rent deposit is to be returned to a Prospective Tenant where vacant possession is not given:

A landlord shall repay the amount received as a rent deposit in respect of a rental unit if vacant possession of the rental unit is not given to the prospective tenant.

31. In this case, I find that though the Landlord collected a rent deposit but they never gave the Prospective Tenants vacant possession of the rental unit. Therefore, any rent deposit collected from the Landlord must be returned to the Prospective Tenant in full. While ultimately irrelevant to the outcome, I will note that residential rent is exempt from HST in Ontario.

32. As I found that the Offer to Lease Agreement is an attempt to contract out of the Act, I find that the Landlord has collected or retained \$5,292.07 illegally.

It is ordered that:

1. The total amount the Landlord shall pay the Prospective Tenants is \$5,340.07. This amount represents:
 - \$5,292.07 for money illegally collected; and
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Prospective Tenants the full amount owing by September 3, 2024.
3. If the Landlord does not pay the Prospective Tenants the full amount owing by September 3, 2024, the Landlord will owe interest. This will be simple interest calculated from September 4, 2024 at 7.00% annually on the balance outstanding.

August 23, 2024

Date Issued

Brett Lockwood

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.

When the capitalized word "Tenant" is used in this order, it refers to all persons identified as a Tenant at the top of the order.