



Order under Section 135 Residential Tenancies Act, 2006

Citation: Lam v Tu, 2024 ONLTB 61143

Date: 2024-08-22

File Number: LTB-T-071148-23

LTB-T-071158-23

In the matter of: 1901, 88 SCOTT ST
TORONTO ON M5E0A9

Between: Aaron Yik Ting Lam Tenant

And

Yun Tu Landlord
Qian Chen
Loyalty Real Estate

Aaron Yik Ting Lam (the 'Tenant') applied for an order determining that Yun Tu, Qian Chen and Loyalty Real Estate (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on May 13, 2024.

The Tenant Aaron Yik Ting Lam, the Landlord Yun Tu, and the Landlord's Agent Jason Zhang attended the hearing.

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

Preliminary Issues:

1. The Tenant filed a duplicate application, LTB-T-071158-23, due to a typographical error in the original application, LTB-T-071148-23. Since both applications involve the same parties, issues, and evidence, they were heard together. This order resolves both applications.

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 \$106.65.
2. The Tenant's application alleges that the Landlord collected illegal rent charges for the period of August 19, 2022, to September 18, 2023.

3. The parties agreed that:
 1. The tenancy started on September 19, 2021, at a lawful rent of \$2,250.00 due on the 19th day of each month.
 2. The Landlord increased the rent on August 19, 2022, to \$2,305.25, without giving the Tenant proper written notice in accordance with the Act.
 3. The Tenant paid the increased rent of \$2,305.25, for the 12-month period of August 19, 2022, to August 18, 2023. The Tenant did not file an application challenging the increase within that period.
 4. The Landlord increased the rent a second time on August 19, 2023, to \$2,363.90, by sending the Tenant an e-mail on July 4, 2023.
 5. The Tenant paid the increased rent of \$2,363.90 for one month and has been paying the original rent amount of \$2,250.00 since September 19, 2023.
4. Pursuant to section 136(2) of the Act, an increase in rent is deemed to be lawful unless an application has been made within one year after the date the increase was first charged, and the lawfulness of the rent increase is in issue in the application. Since the Tenant paid the first increased rent of \$2,305.25 for a period of 12 months without filing an application challenging it, the first rent increase is deemed to be lawful.
5. The Tenant argued that section 136 does not apply because the Landlord failed to provide a notice of rent increase. The Tenant relied on section 116(4) of the Act, which voids any rent increase if the required notice was not given and requires the landlord to issue a new notice before implementing the increase.
6. However, section 135.1 provides that a rent increase that would otherwise be void under section 116(4) is deemed not to be void if the tenant has paid the increased rent for 12 consecutive months without challenging it. In such cases, the requirement for notice under section 116 is considered fulfilled, and section 136 applies.
7. It is undisputed that the Landlord did not provide a valid notice of rent increase for the first increase, rendering it void under section 116(4) of the Act. However, since the Tenant paid the increased rent of \$2,305.25 for 12 months without challenging it, the increase is deemed lawful pursuant to section 135.1 and 136 of the Act.
8. The parties agreed that the Landlord increased the rent again on August 19, 2023, by sending an email to the Tenant on July 4, 2023. As this provided less than 90 days' notice and was not in a form approved by the Board, the increase is void under section 116(4) of the Act.
9. Therefore, the lawful rent remains \$2,305.25. The Landlord collected \$2,363.90 on August 19, 2023, which exceeds the lawful rent. The Landlord must return the excess amount of \$58.65 to the Tenant.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$106.65. This amount represents:
 - \$58.65 for excess rent collected; and
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by September 2, 2024.
3. If the Landlord does not pay the Tenant the full amount owing by September 2, 2024, the Landlord will owe interest. This will be simple interest calculated from September 3, 2024 at 7.00% annually on the balance outstanding.
4. If the Landlord does not pay the Tenant the full amount owing by September 2, 2024, the Tenant may recover this amount by deducting it from the rent due on September 19, 2024.
5. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

August 22, 2024
Date Issued

Kate Sinipostolova
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.