



Order under Subsection 135 Residential Tenancies Act, 2006

Citation: Wong v Tang, 2024 ONLTB 19350

Date: 2024-03-26

File Number: LTB-T-030333-23

In the matter of: 2424, 500 DORIS AVENUE
TORONTO ONTARIO M2N0C1

Tenant

Between: Kyle Wong
Chunru Han

And

Ouyun Tang

Landlord

Kyle Wong and Chunru Han (the 'Tenant') applied for an order determining that Ouyun Tang (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on March 6, 2024.

The Landlord and the Tenants attended the hearing.

Determinations:

Preliminary Issue

1. In the Application, the Tenant selected reason 6 being that the Landlord did not pay compensation as required by s. 48.1 of the Act. After hearing the facts, this application should have been brought under both reason 6 and in addition, reason 2: that the Tenant paid an illegal charge to their Landlord.
2. The total amount claimed by the Tenant is \$2,100.00. The actual amount of compensation at issue is \$1,600.00, and the remaining \$500.00 is comprised of a \$300.00 key deposit, and a \$200.00 damage deposit.
3. I am satisfied that the application disclosed the facts in support of the Tenant's claim under reason 6 and that the Landlord had an opportunity to respond to this claim and there would be little prejudice suffered in applying the correct statutory provision. Therefore, the application is amended accordingly.
4. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay to the Tenant the sum of \$2,153.00 by April 30, 2024.

5. It was undisputed that The Landlord gave the Tenant a notice of termination under section 48 of the *Residential Tenancies Act, 2006* (the 'Act') and did not pay the Tenant the compensation required by the Act.
6. The Tenant testified that they received an N12 notice from their Landlord and gave an N9 notice to vacate by the end of February. Keys were returned to the unit and the Landlord did not pay the compensation required under s. 48.1 and did not return the damage deposit nor key deposit.
7. The Tenants gave evidence of a Tenant acknowledgement showing the key deposit and damage deposit, and also supplied the N9 notice they gave to their Landlord.
8. The Tenant's testimony is that they never received the compensation nor the return of their key and damage deposit. The Tenants are requesting the return of their key deposit and damage deposit in addition to compensation required by the Act.
9. The Landlord's evidence is that the Tenants were given 90 days notice and had more time than required to move. The Tenants paid rent in January, 2023 and gave an N9 notice to vacate at the end of February. The Tenants left in accordance with their notice and the last month's rent held by the Landlord was applied to February, 2023.
10. The Landlord also testified about damages to the unit for which the Landlord applied the "damage deposit".
11. The provisions of the Act in relation to deposits provides:

Security deposits, limitation

105 (1) The only security deposit that a landlord may collect is a rent deposit collected in accordance with section 106. 2006, c. 17, s. 105 (1).

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. 2006, c. 17, s. 105 (2).

Rent deposit may be required

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. 2006, c. 17, s. 106 (1).

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. 2006, c. 17, s. 106 (2).

And

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; [Emphasis added]

12. The Landlord's explanation for not paying compensation is that the Tenants N9 notice serves to override the Landlord's obligation to pay compensation as the compensation contemplated by the Landlord would have been applied to the last month of the tenancy, or the end of the notice period on the N12 which was March 31, 2023. The Landlord submits that because the N9 was given and the Tenants did not take advantage of staying in the rental until the date in the N12 notice, the Tenants effectively chose to waive compensation.

13. I reject this argument as the Act provides that a Tenant can provide earlier notice to their Landlord after receiving a notice of termination under s. 48 (3) and (4):

Earlier termination by tenant

(3) A tenant who receives notice of termination under subsection (1) may, at any time before the date specified in the notice, terminate the tenancy, effective on a specified date earlier than the date set out in the landlord's notice. 2006, c. 17, s. 48 (3).

(4) The date for termination specified in the tenant's notice shall be at least 10 days after the date the tenant's notice is given. 2006, c. 17, s. 48 (4)

14. An earlier notice by a Tenant does not negate a Landlord's obligation under the original notice served by a Landlord.

15. Based on the evidence before me, I find that the Landlord has not paid compensation as required by s. 48.1 and continues to illegally retain money collected from the Tenants for their damage and key deposits, which deposits I find to be a rent deposit for the purposes of s. 105.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$2,153.00:
 - o \$1,600.00 for the compensation owing.

- \$300.00 for the return of the Tenant's key deposit.
 - \$200.00 for the return of the Tenant's damage deposit.
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by April 30, 2024.
 3. If the Landlord does not pay the Tenant the full amount owing by April 30, 2024, the Landlord will owe interest. This will be simple interest calculated from May 1, 2024 at 7.00% annually on the balance outstanding.
 4. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

March 26, 2024
Date Issued

Kyle McGraw
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.