



Order under Subsection 135 Residential Tenancies Act, 2006

Citation: Turner v Watson, 2024 ONLTB 13110

Date: 2024-02-23

File Number: LTB-T-022220-23

In the matter of: 5, 21 Perth Street
St. Catharines Ontario L2P3C8

Between: Cory Turner Tenant

And

Ronald Watson Landlord

Cory Turner (the 'Tenant') applied for an order determining that Ronald Watson (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on February 8, 2024.

Only the Tenant attended the hearing.

As of 2:17 p.m., the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB. The Landlord did sign into the hearing at 10:09 a.m. Board records show that the Landlord disconnected at 11:30 a.m. There was no record of the Landlord contacting the Board or a request to adjourn the hearing. As a result, the hearing proceeded with only the Tenant's evidence.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. The Landlord collected rent in excess of the amount allowed by and did not pay interest as required by the *Residential Tenancies Act, 2006* (the 'Act'). Therefore, the Landlord must pay the Tenant a total of \$1,480.72 by March 5, 2024.
2. The Tenant testified that the tenancy commenced on September 1, 2013 and the lawful rent then was \$700.00. The Tenant paid the Landlord \$700.00 for the last month's rent deposit on September 1, 2013.

3. The Tenant submitted that the Landlord illegally increased the rent from \$775.00 to \$825.00 effective March 1, 2022.
4. The Tenant testified that the Landlord provided written notice on January 1, 2022 of the rent increase effective March 1, 2022. The Tenant paid \$825.00 each month for March 2022 to April 2023.

Order Page 1 of 4

5. The Tenant testified that the Landlord has a history of increasing the rent amount to whatever amount the Landlord wants.
6. The Tenant testified that the Landlord increased the rent to \$845.00 effective May 1, 2023. The Tenant paid \$845.00 each month for May 2023 to February 2024. The Landlord originally requested a rent increase of \$50.00 but the Tenant objected as it was above the guideline increase.
7. The Tenant testified that the Landlord has not paid him any interest on the last month's rent deposit.
8. The relevant provisions of the *Residential Tenancies Act, 2006* ("Act") are:

Landlord's duty, rent increases

110 No landlord shall increase the rent charged to a tenant for a rental unit, except in accordance with this Part.

Landlord not to charge more than lawful rent

111 (1) No landlord shall charge rent for a rental unit in an amount that is greater than the lawful rent permitted under this Part.

Notice of rent increase required

116 (1) A landlord shall not increase the rent charged to a tenant for a rental unit without first giving the tenant at least 90 days written (N1) notice of the landlord's intention to do so.

Increase void without notice

116 (4) An increase in rent is void if the landlord has not given the notice required by this section, and the landlord must give a new notice before the landlord can take the increase.

Guideline increase

120 (1) No landlord may increase the rent charged to a tenant, or to an assignee under section 95, during the term of their tenancy by more than the guideline, except in accordance with section 126 or 127 or an agreement under section 121 or 123.

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 or agent of the landlord pay to the tenant any money the person collected or retained in contravention of this Act.

Interest

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.

Analysis

Rent Increase

9. The annual guideline rent increase for 2022 was 1.2%.
10. The increase in rent effective March 1, 2022 was contrary to sections 110 and 111 of the Act because the Landlord failed to serve a NORI (Notice of Rent Increase) at least 90 days in advance of the increase as required by section 116, and because the rent increase was greater than the rent increase guideline (section 120).
11. Therefore, the rent increase was illegal at the time it was imposed on March 1, 2022. Based on the uncontested evidence before me, I find that the lawful monthly rent on March 1, 2022 was \$775.00.
12. The subsequent rent increase effective May 1, 2023 is therefore illegal as the rent increase was calculated based on an illegal rent amount charged.
13. Accordingly, the Landlord illegally collected \$50.00 per month from March 2022 to April 2023 and \$70.00 per month from May 2023 to February 2024.
14. Therefore, a total of \$1,400.00 in illegal rent was collected from March 1, 2022 to February 1, 2024.

Last Month's Rent Deposit Interest

15. Based on the uncontested evidence before me, I find that the Landlord has failed to pay the Tenant interest on the last month's deposit as required by section 106(6) the Act.

16. Section 29(2) of the Act states no application may be made more than one year after the day the alleged conduct giving rise to the application occurred.
17. The Tenant is seeking interest from the date the deposit was collected on September 1, 2013 which is outside the one-year limitation period. Since the Tenant's application was filed on February 28, 2022, the Board only has jurisdiction to order interest owing within the one year from the making of the application. As such, interest is calculated for the period from February 28, 2021 to February 8, 2024, the hearing date, in the amount of \$27.72.
18. As the Tenant's application is successful, the Tenant is entitled to reimbursement for his costs of filing the application in the amount of \$53.00.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$1,480.72. This amount represents:
 - \$1,400.00 for excess rent collected. ○ \$27.72 for interest on the last month's rent deposit.
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by March 5, 2024.
3. If the Landlord does not pay the Tenant the full amount owing by March 5, 2024, the Landlord will owe interest. This will be simple interest calculated from March 6, 2024 at 7.00% annually on the balance outstanding.
4. If the Landlord does not pay the Tenant the full amount owing by March 5, 2024, the Tenant may recover this amount by deducting \$400.00 from the rent each month from April 2024 to June 2024 and \$280.72 in July 2024.
5. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

February 23, 2024

Date Issued

Vicky Liu

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.

File Number: LTB-T-022220-23

2024 ONLTB 13110 (CanLI)