



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

Citation: Zacca v Tran, 2023 ONLTB 81707

Date: 2023-12-27

File Number: LTB-T-010895-23

In the matter of: FLOOR 2, ROOM 2, 256 VICTORIA STREET SOUTH KITCHENER
ON N2G2C2

Tenant

Between: Maurice Zacca

And

Phuong Tran

Landlord

Maurice Zacca (the 'Tenant') applied for an order determining that Phuong Tran (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on December 11, 2023.

The Landlord, Landlord's support Richard Tran, Tenant, and Tenant's support Chantelle Adderley attended the hearing.

Determinations:

1. As explained below, the Tenant proved a portion of the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must by the Tenant the amount of \$206.96.
2. The Tenancy began on August 1, 2020 and ended on December 13, 2023. The monthly rent was \$580.00.

Rent deposit not applied to last month of tenancy

3. The Tenant alleged that the Landlord did not apply their last month's rent deposit for the last month the Tenant resided in the property. Ms. Adderley provided oral evidence involving rent payments made by her father. Ms. Adderley indicated that ODSP made all the rent payments for the tenancy. Reading from a letter she received from ODSP, she indicated that from September 1, 2020 through to August 31, 2021, \$580.00 per month was

paid to the Landlord. Subsequently, from September 1, 2021 to November 30, 2022 \$600.00 per month was paid to the Landlord from ODSP.

4. The Tenant testified that ODSP paid for the first month of rent upon moving in for August 1, 2020 and that he paid for last month's rent in cash to the Landlord the same date. It is this cash payment which the Tenant believes should be returned as the Landlord received

the rent for the last month of the tenancy from ODSP. The Tenant acknowledged he had no evidence of this cash payment as the Landlord refused to provide any rent receipt. The Tenant did not provide an explanation as to why ODSP would pay first month's rent and he would be responsible for last month's rent.

5. Mr. Tran testified that he takes care of the property for the Landlord. It is the Landlord's position that all rent that was received came from ODSP. No rent was received from the Tenant directly during the tenancy.
6. In the absence of any supporting evidence, I find that the Tenant has failed to establish on a balance of probabilities the Tenant paid a last month's rent to the Landlord in cash in August 2020. The onus is on the Tenant to prove their claim, and given the conflicting testimony, the Tenant did not meet their burden.

Return of partial rent for December 2022

7. The parties agreed that the Tenant was evicted December 13, 2022. Despite this, the Tenant had paid rent (through ODSP) for the entire month of December 2022. As a result of leaving mid-month, the Tenant is seeking a rent refund from December 14 to December 31, 2022.
8. The Landlord acknowledged that money is owing the Tenant for this reason, but the parties do not agree on how much is owing. The Landlord's position is that the rent increased from \$600.00 to \$700.00 per month beginning August 1, 2022 as the parties entered into a new lease agreement.
9. I find that rent increase from \$600.00 to \$700.00 was unlawful.
10. Section 120 of the Act sets out the maximum permitted annual rent increases for most rental units:

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.

11. The increase of \$100.00 is more than the guideline amount in 2022 of 1.2%. While the parties signed a new lease with this rent increase, the Court of Appeal for Ontario in *Honsberger v. Grant Lake Forest Resources Ltd.*, 2019 ONCA 44 found that where there is

an ongoing tenancy all rent increase must follow the rent increase rules contained in the Act, even if the parties sign a new lease. As a result, the rent increase was invalid. Therefore, the rent remained at \$600.00 per month from August 1, 2022 to December 31, 2022.

12. The per diem rate is calculated as $\$600.00$ per month \times 12 months / 365 = $\$19.72$. The Landlord admits they owe the Tenant rent for 18 days from December 14 to December 31, 2022 for a total of $\$354.96$.
13. The Landlord submitted the Tenant was ordered to pay the Landlord $\$201.00$ in order LTBL-053076-22, issued on November 10, 2022 and this amount has not been paid. The

Tenant did not dispute that the $\$201.00$ remains unpaid. As per *Marineland of Canada Inc. v. Olsen*, 2011 ONSC 6522, the $\$201.00$ shall be deducted from any amount the Tenant owes to the Landlord.

It is ordered that:

1. The total amount of $\$206.96$ shall be paid to the Tenant by the Landlord. This amount represents:
 - o $\$354.96$ for the period of December 14 to December 31, 2022; o
 - $\$53.00$ for the cost of filing the application; and o $\$201.00$ owing by the
 - Tenant to the Landlord from LTB-L-053076-22.
2. The Landlord shall pay the Tenant the full amount owing by December 31, 2023.
3. If the Landlord does not pay the Tenant the full amount owing by December 31, 2023, the Landlord will owe interest. This will be simple interest calculated from January 1, 2024 at 7.00% annually on the balance outstanding.

December 27, 2023

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.

