



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

Citation: MUNEER v PAJOLLARI, 2023 ONLTB 81168

Date: 2023-12-20

File Number: LTB-T-009265-23

2023 ONLTB 81168 (CanLII)

In the matter of: 2618 CHALKWELL CLOSE
MISSISSAUGA ON L5J2B9

Tenants

Between: ATIF MUNEER
MARRIAM IFTIKHAR

And

Landlord

VANGJUSH PAJOLLARI

ATIF MUNEER and MARRIAM IFTIKHAR (the 'Tenants') applied for an order determining that VANGJUSH PAJOLLARI (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on September 18, 2023.

The Landlord and the Tenants' legal representative, Watchia Faiz, attended the hearing.

Determinations:

1. As explained below, the Tenants proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenants is \$4,753.00.

Illegal rent collected

2. The Landlord collected rent in excess of the amount allowed by the *Residential Tenancies Act, 2006* (the 'Act').
3. Effective January, 2022, the Landlord increased the rent for the rental unit from \$1,900.00 to \$2,300.00. From that point the Tenants paid the increased rent to the Landlord until the tenancy was terminated in August, 2022.
4. Section 116 of the Act provides as follows:

- (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 notice of the Landlord's intention to do so.

5. Section 116 of the Act goes on to say that any such notice shall be in a form approved by the Board, and that any increase in rent is void if the Landlord has not given the notice required by this section.
6. The parties do not dispute that the Landlord did not provide the Tenants notice of the rent increase in a form approved by the Board. The parties do not dispute that the Landlord notified the Tenants of the 2022 rent increase by letter and that the letter was provided to the Tenants in December 2022, less than 90 days before the increase was to take effect. Therefore, the rent increase is void pursuant to section 116(4) of the Act.
7. In addition, this rent increase far exceeded the Guideline amount that was in effect at the time and the Landlord had never made an application for an above guideline increase pursuant to section 126 of the Act.
8. Accordingly, the increased rent paid by the Tenants between January, 2022 and the termination of the tenancy in August, 2022 must be reimbursed by the Landlord to the Tenants. This amounts to \$2,800.00 (\$400.00 per month for each of January, February, March, April, May, June and July, 2022). The Tenants' rent deposit was applied to the rent for August 2022 in the proper amount of \$1,900.00. Therefore, there is no rebate for that month.

Illegal deposit collected:

9. The Landlord collected a charge which is not allowed by the Act.
10. The parties do not dispute that the tenancy agreement provided that the Tenants would pay the Landlord \$5,700.00 at the start of the tenancy, which was in fact paid. This payment was made up of three months' rent at a rate of \$1,900.00 per month. This payment was for the first month's rent, and a rent deposit of two months' rent.
11. The Landlord applied \$1,900.00 to the first month's rent and \$1,900.00 to the last month's rent , but the additional deposit of \$1,900.00 continues to be retained by the Landlord.
12. Subsection 105(1) of the Act provides that the only security deposit that Landlord may collect is a rent deposit collected in accordance with section 106. Subsection 106(2) states that the amount of a rent deposit shall not be more than the rent for one month. The Divisional Court has held that it is a tenant is not prohibited from voluntarily prepaying rent in excess of one month's rent (see *Covers v. Bumbia*, 2014 ONSC 7548 and *Royal Bank of Canada v. MacPherson* [2009] O.J. No. 3806). In this case, the Tenants voluntarily paid the rent deposit of \$3,800.00, which exceeded one month's rent.
13. However, subsection 106(10) of the Act requires a landlord to apply a rent deposit the tenant has paid to the last rent period before the tenancy terminates. In this case, the

Landlord applied \$1,900.00 of the deposit to the last month of the tenancy, which was August 2022. The Landlord was prohibited from continuing to hold any part of the rent deposit beyond the end of the tenancy.

14. Therefore, even if the \$3,800.00 rent deposit was initially collected legally, the Landlord retained it illegally when he failed to return any unused portion to the Tenants after the tenancy terminated. Therefore, \$1,900.00 must be returned to the Tenants.

Repair and Maintenance Issues

15. In the course of the hearing the Tenants' legal representative attempted to raise a series of repair and maintenance issues with respect to the rental unit. The Tenants' legal representative was apparently under the impression the hearing would address T2 and T6 applications which she believed were scheduled to be heard at the same time as this T1 application. In fact no applications other than this T1 application were before me, and I limited the Tenants' evidence and submissions to the application before me.

It is ordered that:

1. The total amount the Landlord shall pay the Tenants is \$4,753.00. This amount represents:
 - o \$2,800.00 for excess rent collected.
 - o \$1,900.00 for the illegal deposit collected.
 - o \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenants the full amount owing by January 31, 2024.
3. If the Landlord does not pay the Tenants the full amount owing by January 31, 2024, the Landlord will owe interest. This will be simple interest calculated from February 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.

December 20, 2023

Date Issued

Paul Sommerville

Member, Landlord and Tenants 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.