



Order under Subsection 135 Residential Tenancies Act, 2006

Citation: Macleod v Sutic, 2023 ONLTB 80151

Date: 2023-12-14

File Number: LTB-T-061079-22

In the matter of: 7, 65 Mount Albion Rd.
Hamilton ON L8K5S5

Tenants

Between: Patsy Macleod
Julia Macleod

And

Landlord

Roger Sutic
1315631 Ont. Inc.

Patsy Macleod and Julia Macleod (the 'Tenants') applied for an order determining that Roger Sutic and 1315631 Ont. Inc. (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on November 27, 2023.

The Landlord's agent Zeljko Miokovic and the Tenants attended the hearing, at which time the Tenants testified that they waived Duty Counsel.

The issuance of the order was delayed due to clerical error on my part.

Determinations:

1. At the start of the hearing the Tenants testified that though they had filed a request for French Language Services before the hearing, they made this request in error and they do not require such services.
2. The Tenants testified that they signed a written tenancy agreement for the rental unit on March 11, 2022, pursuant to which the start date of tenancy was to have been May 1, 2022 and the tenancy was to have been for a one year term. On signing the tenancy agreement, the Tenants gave the Landlord a deposit for the first and last months of the tenancy, each in the amount of \$2,400.00. However, on or about April 26, 2022 the Tenants developed concerns about the possibility that water spilled on one floor of the unit might infiltrate the ceiling light fixture on the floor below. Based on their perception of this possible safety

concern the Tenants repudiated the tenancy in the first week of May 2022 without occupying the unit. The Tenants are content with Landlord retaining the first month's rent deposit but seek recovery of the last month's rent deposit.

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3. Zeljko Miokovic disputed the veracity of the Tenants' claimed safety concern but did not otherwise challenge the Tenants' above testimony. Zeljko Miokovic baldly responded in the affirmative to my question as to whether the Landlords attempted to mitigate the Landlords' loss by advertising the unit for re-rental when notified of the Tenants' repudiation. However, Zeljko Miokovic also testified as to being entirely unaware of the particulars of such efforts, such as when, where or how many times the unit was advertised or the results of such efforts. As well, Zeljko Miokovic did not testify that the Landlords undertook other action to mitigate their loss.
4. Given Zeljko Miokovic's unexplained failure to provide any of the usually expected details around the Landlords' claimed mitigation efforts, I found against the credibility of his testimony on this issue.
5. Based on the evidence, it is clear that the Tenants acted improperly in vacating the unit without giving the Landlord lawful notice. The Tenants' stated safety concern was insufficient to vitiate their tenancy agreement. However, a landlord's entitlement to rent pursuant to section 88 of the *Residential Tenancies Act, 2006* (the Act) is impacted by a determination of whether they took reasonable steps to minimize their losses pursuant to section 16 of the Act. In the present case, because the Landlords have not shown that they took such steps, I determined that there is an insufficient basis for the deposits to be applied in accordance with section 88. As such, I found in favor the application. Given that the Tenants seek recovery of the last month's rent deposit, only, though their actual entitlement may be greater, I also determined that it appropriate to grant this remedial request.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$2,400.00. This amount represents: 2,400.00 for the last month's rent deposit.
2. The Landlord shall pay the Tenant the full amount owing by May 7, 2024.
3. If the Landlords do not pay the Tenant the full amount owing by May 7, 2024, the Landlord will owe interest. This will be simple interest calculated from May 8, 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.

April 26, 2024

Date Issued

Sean Henry

Vice Chair, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor Toronto
ON M7A 2G6

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.