



Order under Subsection 135 Residential Tenancies Act, 2006

Citation: Komaki v Kalanathan, 2023 ONLTB 79749

Date: 2023-12-12

File Number: LTB-T-072523-22

In the matter of: 719, 60 Dunsheath Way
Markham Ontario L6B1N3

Tenant

Between: Nobuyoshi Komaki

And

Jana Kalanathan

Landlord

Nobuyoshi Komaki (the 'Tenant') applied for an order determining that Jana Kalanathan (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on November 29, 2023.

The Landlord and the Tenant attended the hearing.

Amending the Application:

1. The Tenant requested an amendment to the T1 application to include a claim that the Landlord was still holding \$2000.00 of the Tenants money. The Tenant submits that at the beginning of the tenancy, the Tenant provide first and last months rent in the amount of \$4000.00 and paid an additional \$2000.00 which represented the monthly rent for the first month of the tenancy being August 1, 2021.
2. I was satisfied that the Landlord could provide submissions on this issue at the hearing, and I consented to amend the T1 application to include this claim.
3. The Landlord testified that the additional \$2000.00 she was holding was applied to the lawful rent owing for July 1, 2021, as the cheque the Tenant had provided for that month's rent had bounced.

4. The Landlord provided a printout from CIBC with a copy of the cheque from the Tenant in the amount of \$2000.00, dated for July 1, 2021, which showed the cheque was returned. The Landlord also provided a screen shot from her bank account with transactions from June 3, 2021 to August 6, 2021. This screen shot shows a credit to the Tenants account in the amount of \$2000.00 on July 5, 2021, and then on July 7, 2021, it shows a debit to the Landlords account for a returned cheque in the amount of \$2000.00.

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5. The Tenant provided a copy of the cheque dated July 1, 2021, made out to the Landlord from his financial institution that shows the Tenant signed the back of the cheque. However, this does not show that the cheque had been successfully deposited, only that the Landlord has signed the back of the cheque and tried to deposit the cheque.
6. The Tenant was unable to provide any evidence that the cheque had been successfully cashed, he noted that the payments come out of his wife's account, and she was not present at the hearing.
7. As the Tenant did not come prepared to the hearing with evidence to support his request to amend the application in regard to the claim that the Landlord was holding \$2000.00 of the Tenants money, I stood the matter down on two separate occasions to allow the Tenant time to try and reach his wife to either have his wife come to the hearing to testify or to provide proof from her bank account that the cheque for July 2021 was successfully cashed.
8. The Tenant was unable to produce any type of evidence to show that the July 1, 2021 rent cheque was deposited successfully and requested to withdraw the request to amend the T1 application to include this claim.
9. I consented to the request to withdraw the request to amend the T1 application to include this claim. **Determinations:**
 1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenant the amount of \$2132.98.

Interest on Last Month Rent Deposit Owing

2. The Landlord failed to pay the Tenant interest on the last month's rent deposit, as required by the *Residential Tenancies Act, 2006* (the 'Act').

3. The Last Months Rent Deposit was collected by the Landlord on August 1, 2019, in the amount of \$2000.00.
4. The Tenant states that interest has never been paid on the Last Month's Rent Deposit and this was uncontested by the Landlord.
5. The Tenant calculated the interest owing on the Last Month Rent Deposit in the amount of \$160.00, and stated at the hearing that he based this on the amount of \$4000.00, not \$2000.00.
6. The Tenant vacated on August 31, 2021, therefore interest on the Last Month Rent Deposit is owing for the period of August 1, 2019 to August 31, 2021.
7. The interest owing to the Tenant on the Last Month Rent Deposit is \$79.98.

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Compensation for N12 or N13 Notice Owing

8. 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.
9. It was undisputed that the Landlord served the Tenant an N12 notice of termination, sometime near the end of June 2021, and the termination date set out in the notice was August 31, 2021.
10. The Tenant testified that he vacated the rental unit on August 31, 2021, because of the N121 notice of termination.
11. The Tenant testified that he did not receive the required one month's compensation from the Landlord as required by the Act. This was undisputed by the Landlord.
12. This order contains all reasons for the decision and no other reasons will be issued.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$2,132.98. This amount represents:
 - o \$79.98 for interest on the last month's rent deposit.
 - o \$2,000.00 for the compensation owing.

- \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by December 23, 2023.
 3. If the Landlord does not pay the Tenant the full amount owing by December 23, 2023, the Landlord will owe interest. This will be simple interest calculated from December 24, 2023 at 7.00% annually on the balance outstanding.

December 12, 2023

Date Issued

Trish Carson

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.