



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

**Citation:** Kaur v Giuggio, 2023 ONLTB 78624

**Date:** 2023-12-05

**File Number:** LTB-T-059814-22

**In the matter of:** Basement, 7902 MARTIN GROVE RD  
WOODBIDGE ON L4L2E2

**Between:** Baljinder Kaur  
Rathindra Kakati Tenants

**and**

David Giuggio  
Caitlin Sammut Landlords

Baljinder Kaur and Rathindra Kakati (the 'Tenants') applied for an order determining that David Giuggio and Caitlin Sammut (the 'Landlords') collected or retained money illegally.

This application was heard by videoconference on August 23, 2023 and November 23, 2023.

The Landlords and the Tenant, Rathindra Kakati ('RK'), on behalf of both Tenants, attended on both hearing dates. Baljinder Kaur attended the hearing on August 23, 2023 only.

**Determinations:**

*N12 Notice of Termination Compensation*

1. It was undisputed by the parties that the Landlords purchased this property in April 2022 and subsequently served the Tenants with an N12 notice of termination (the 'N12 Notice') under section 48(1) of the *Residential Tenancies Act, 2006* (the 'Act'), claiming the Landlords required possession of the rental unit for residential occupation by themselves. The termination date in the N12 Notice was July 31, 2022.
2. It was not disputed that the monthly rent was \$1,250.00.
3. The Tenants vacated the rental unit on July 9, 2022 because they were served with the N12 Notice. This was not disputed by the Landlords.
4. The Tenants submit that the Landlord did not pay the required one month's rent compensation. This was disputed by the Landlords.

5. The Landlords submit that they provided compensation to the Tenants by way of waiver of the rent owing to the Landlords for June 2022. The Landlords submitted a copy of the email sent by their lawyer to the Tenants dated June 29, 2022. In that email, the Landlords' lawyer informs the Tenants that the rent for June 2022 is being waived as compensation the Landlords were required to provide under section 48.1 of the Act and that the last month's rent deposit would be applied to the month of July 2022.
6. The Tenants disputed that June's rent was owing and submit that the Landlords could not waive rent that had already been paid. The Tenants submitted bank statements showing two payments of \$1,250.00 to the Landlords, one on April 28, 2022 and one on May 1, 2022.
7. The Landlords submit that the payment on April 28, 2022 was a deposit for last month's rent and the payment on May 1, 2022 was for the rent for May 2022. The Landlords submitted a copy of an email sent from the Tenant, Rathindra Kakati, dated April 29, 2022 confirming that the April 28<sup>th</sup> payment was for a deposit and that he would be transferring the rent for May on May 1<sup>st</sup>.
8. The Tenants initially disputed that the April 28, 2022 payment was a deposit. However, RK later testified that he instructed the Landlords to apply the deposit to the rent owing for June 2022.
9. Based on the evidence, I find, on a balance of probabilities, that the Landlords compensated the Tenants within the meaning of section 48.1 of the Act. The Landlords expressly notified the Tenants that they are waiving the rent for June 2022 for the purpose of providing compensation.

#### *Last Month's Rent Deposit*

10. There are two issues remaining to be decided. First, did the Tenants pay a rent deposit to their previous landlord. The second issue to be decided is whether the Landlords applied the rent deposit to the last rental period of the tenancy or return the deposit to the Tenants.
11. RK testified that the Tenants paid \$1,250.00 as a rent deposit to the previous landlord prior to moving into the rental unit. The Tenants sought to obtain and submit evidence showing this on the day of the second hearing and the Landlords objected to the admission of this evidence. The Tenants submitted that they were not aware of the requirement to produce evidence that they paid a rent deposit and therefore were not able to comply with the requirement for advanced disclosure. The Tenants had ample opportunity to collect, serve and file any evidence they required to support their claims in this application, and I do not find their explanation for not doing so reasonable in the circumstances and so I did not allow the Tenants the opportunity to collect and submit the late evidence.
12. The Landlord, David Giuggio ('DG') testified that they were not aware of any rent deposit, and they did not receive any rent deposit from the previous owner of the property on closing. The Landlords submitted a copy of the acknowledgement signed by the Tenants on April 6, 2022 which they received from the previous landlord on closing. In the acknowledgement, the Tenants confirm that they have paid all rent due and owing for the period ending April 30, 2022, there is no prepaid rent and that there are no monies owing to the Tenants by the landlord or claims by the Tenants against the landlord.

13. While the acknowledgement does not expressly state that there is no last month rent deposit, in my view, based on the totality of the contents of the acknowledgement, it is more likely than not that there was no rent deposit being held by the previous landlord. I say this because the acknowledgement expressly references that there is neither prepaid rent nor monies owing to the Tenants.
14. Based on the evidence, I find, on a balance of probabilities, that the previous landlord was not holding a rent deposit and therefore, the rent deposit paid to the new Landlords on April 28, 2022 is the only rent deposit being held by the Landlords with respect to this tenancy.
15. The Tenants vacated the rental unit on July 9, 2022. The Tenants did not provide proper notice to the Landlords that they would be vacating the rental unit on that date and did not notify the Landlords that they had vacated the rental unit until July 10, 2022. The Landlords submitted a copy of the email from RK dated July 10, 2022, confirming that the Tenants had vacated the rental unit the day prior.
16. Section 48(3) of the Act allows a tenant to give notice to a landlord at any time before the termination date specified in an N12 notice of termination to end the tenancy on a specified date earlier than the date set out in the landlord's notice. The notice must give at least 10 days before the termination date pursuant to section 48(4) of the Act.
17. Based on the email sent from RK to the Landlords on July 10, 2022, the Tenants did not provide the Landlords with at least 10 days of notice as required by the Act.
18. Section 88(2) of the Act provides that if a tenant vacates a rental unit without giving notice of termination in accordance with this Act, a determination of the amount of arrears of rent owing by the tenant, in the case where the tenant vacated the rental unit after giving notice that was not in accordance with this Act, are for the period that ends on the earliest termination date that could have been specific in the notice, had proper notice been given.
19. The Landlords are obligated to mitigate their losses. The Landlords could not re-rent the unit as it was their intention to move into the rental unit and that is why the Tenants vacated. The Landlords were not provided with any notice that the Tenants would be vacating on that date, 22 days before the termination date in the N12 Notice. It would be unrealistic to expect the Landlords to immediately move into a rental unit they were not expecting to be vacant for another three weeks. Consequently, I find that the Landlords mitigated their loss.
20. The Tenants are therefore responsible for the rent for the period that ends on the earliest termination date that could have been specific in the notice, had proper notice been given pursuant to section 81(1) of the Act. The Tenants told the Landlords on July 10, 2022 that they had vacated the rental unit. Therefore, the earliest termination date that could have been specified in the notice, had proper notice been given, is July 20, 2022.
21. I find the tenancy terminated as of July 20, 2022. Therefore, the Tenants' last month rent deposit is to be applied towards the month of July 2022.
22. Section 135(1.1) of the Act provides:

No landlord shall, directly or indirectly, with respect to any rental unit, collect or require or attempt to collect or require from a former tenant of the rental unit any amount of money purporting to be rent in respect of,

(a) any period after the tenancy has terminated and the tenant has vacated the rental unit; or

(b) any period after the tenant's interest in the tenancy has terminated and the tenant has vacated the rental unit.

23. Given that the Tenants vacated on July 9, 2022, and I have found the tenancy to have terminated on July 20, 2022, I find the Landlords collected an excess rent in the amount of \$428.20.

24. As the Tenants were successful on their application, the cost of filing this application is also granted.

**It is ordered that:**

1. The Landlords shall pay the Tenants \$428.20, representing the amount owing to the Tenants in excess rent.
2. The Landlords shall also pay to the Tenants \$53.00 for the cost of filing the T1 Application.
3. The total amount the Landlords owe the Tenants is **\$481.20**.
4. The Landlords shall pay the Tenants the full amount owing by December 16, 2023.
5. If the Landlords do not pay the Tenants the full amount owing by December 16, 2023, the Landlords will owe interest. This will be simple interest calculated from December 17, 2023 at 7.00% annually on the balance outstanding.
6. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

**December 5, 2023**

**Date Issued**

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Candace Aboussafy

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.