



Order under Subsection 135 Residential Tenancies Act, 2006

Citation: Dodd v Michaelides, 2023 ONLTB 76317

Date: 2023-12-05

File Number: LTB-T-008913-23

In the matter of: Basement, 83 TOTTENHAM ST
KITCHENER ON N2R1V2

Tenants

Between: Jonathan Dodd
Kaitlin Colombo

And

Athos Michaelides
Alex Michaelides

Landlords

Jonathan Dodd and Kaitlin Colombo (the 'Tenant') applied for an order determining that Athos Michaelides and Alex Michaelides (the 'Landlords') collected or retained money illegally.

This application was heard by videoconference on September 19, 2023.

The Landlords' agent, Nick Michaelides, and the Tenants attended the hearing.

Determinations:

1. The Tenants assert the Landlords collected rent in excess of the amount allowed by the *Residential Tenancies Act, 2006* (the 'Act') and that the rent charged by the Landlords is illegal as they did not receive a proper notice of rent increase and the rate of increase charged exceeds the guideline amount.
2. The Rent Increase Guideline ('guideline') is set on an annual basis by the Provincial government establishing the maximum amount that a landlord can increase a tenant's rent without the approval of the Board. Landlords may only increase a sitting tenant's rent once every 12 months by the guideline amount.
3. A fundamental objective of the Act is to clearly define the amount and the circumstances in which rents may be increased by a Landlord. Consistent with this objective, the legislation provides that a tenant shall be given at least 90 days notice, in the prescribed form, of a Landlord's intention to increase the rent. Ultimately, the purpose of the 90-day period is to allow a Tenant sufficient time to accept the increase, or to serve the required 60-day notice to terminate the tenancy.

4. The tenancy between the Tenants and the Landlords commenced January 1, 2018 and the lawful rent then was \$1,250.00. Thereafter the Landlords incrementally increased the monthly rent without giving the Tenants a proper notice of rent increase pursuant to the provincial guidelines.
5. By September 1, 2018 the Landlord had increased the monthly rent to \$1350.00 and on February 1, 2020 increased the monthly rent to \$1375.00. Then on January 1, 2021, the rent was increased to \$1,390.00 and on January 1, 2022, the rent was increased to \$1,410.00.
6. The relevant provisions of the Act are:

Notice of rent increase required

116 (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 (N1) notice of the landlord's intention to do so.

Increase void without notice

116 (4) An increase in rent is void if the landlord has not given the notice required by this section, and the landlord must give a new notice before the landlord can take the increase.

Money collected illegally

135 (1) A tenant or former tenant of a rental unit may apply to the Board for an order that the landlord or agent of the landlord pay to the tenant any money the person collected or retained in contravention of this Act.

Rent increase deemed not void

135.1 (1) An increase in rent that would otherwise be void under subsection 116 (4) is deemed not to be void if the tenant has paid the increased rent in respect of each rental period for at least 12 consecutive months.

Time limitation

135 (4) No order shall be made under this section with respect to an application filed more than one year after the person collected or retained money in contravention of this Act or the Tenant Protection Act, 1997.

Rent deemed lawful

136 (1) Rent charged one or more years earlier shall be deemed to be lawful rent unless an application has been made within one year after the date that amount was first charged and the lawfulness of the rent charged is in issue in the application

Increase deemed lawful

136 (2) An increase in rent shall be deemed to be lawful unless an application has been made within one year after the date the increase was first charged and the lawfulness of the rent increase is in issue in the application.

7. Despite attempts, the Landlords did not serve the Tenants with proper notices of rent increase pursuant to the Act, and consequently the annual rent increases charged by the Landlords were in excess of the guideline amount.
 1. Effective July 21, 2020, as a result of the *Protecting Tenants and Strengthening Community Housing Act, 2020*, there was a new section 135.1 added to the Act. It states the following:
 - 135.1 (1) An increase in rent that would otherwise be void under subsection 116 (4) is deemed not to be void if the tenant has paid the increased rent in respect of each rental period for at least 12 consecutive months.
 - (2) Subsection (1) does not apply with respect to an increase in rent if the tenant has, within one year after the date the increase was first charged, made an application in which the validity of the rent increase is in issue.
 - (3) For greater certainty, if subsection (1) applies with respect to an increase in rent, section 116 is deemed to have been complied with.
 - (4) For greater certainty, nothing in this section limits the application of section 136.
 - (5) This section applies with respect to an increase in rent even if it was first charged before the day the *Protecting Tenants and Strengthening Community Housing Act, 2020* receives Royal Assent, provided the validity of the rent increase was not finally determined by the Board before that day.
8. As a result of the new section 135.1, even if a landlord increased the rent without serving the tenant with any notice of rent increase, the otherwise unlawful rent increase is deemed to be valid if the tenant pays the increased rent for a period of one year without filing an application with the Board challenging the lawfulness of the increase.
9. At the hearing the Landlords' agent submitted that by paying the increased rent without complaint, the Tenants accepted the increased rent and therefore cannot now challenge it.
10. Clearly under subsection 136(1) of the Act, if a tenant acquiesces to the payment of an otherwise unlawful rent for more than twelve months, the unlawful amount is deemed lawful, and the intent of section 136 is to prevent those who knowingly pay more than their lawful rent for longer than twelve months from commencing proceedings on that account.
11. The Tenants filed this application with the Board on October 25, 2022.
12. Between January 1, 2021, and December 1, 2021, the Tenants paid \$1,390.00 per month and this was for 12 consecutive months. As a result, \$1,390.00 became the lawful monthly rent on December 1, 2021 due to section Act's deeming provisions.
13. Between January 1, 2022, and May 1, 2022, the Tenants paid \$1,410.00 but starting on June 1, 2022, the Landlords and Tenants agreed to decrease the rent to \$1,360.00 and remove a service relating to a parking spot the Tenants were paying \$100.00 a month for

which formed part of the monthly rent. The Tenants however continued to pay \$50.00 to store some items in the garage. They continued to pay \$1360.00 until September 1, 2022. The Tenants vacated the unit in October of 2022.

14. Given that the rent increase in 2021 was paid for 12 consecutive months and the Tenants did not bring an application within one year after the increase was first charged, I find that, pursuant to section 135.1, the rent increase is deemed not to be void. Because there was no unlawful increase in rent before December 1, 2021, that part of the application is dismissed.
15. The remaining issue for me to determine is what the lawful monthly rent was between January 2022 and October 2022.
16. The Landlords' purported rent increase that commenced January 1, 2022 is not saved by section 135.1 of the Act because the Tenants did not pay the increased rent in respect of each rental period for at least 12 consecutive months. The rent increase is also not saved by section 136 of the Act. Although the legislature has since enacted section 135.1 of the Act, when section 135.1 of the Act does not apply the Court of Appeal's decision in *Price v. Turnbull's Grove Inc.*, 2007 ONCA 408 (CanLII) remains good law. In particular, the Court's finding at paragraph 45 that non-compliance with the mandatory written notice requirements for rent increase cannot be cured by the operation of what is now section 136 of the Act continues to apply. The result in this case is that the lawful rent as of January 1, 2022 remains \$1,390.00. The Landlords owe the Tenants an overpayment of \$20.00 per month for January, 2022 to May 2022 which totals \$100.00.
17. There is no dispute in my view that the Landlords and Tenants agreed to decrease the rent in June of 2022 as the Tenant no longer needed one of their parking spots. They agreed to decrease the rent in accordance with section 125 of the Act by \$50 from \$1,410 per month to \$1,360.00. The Tenants were still using the parking spot to store some personal items.
18. Given that I have found that the lawful monthly rent between January 1, 2022 and May 2022 to be \$1,390.00 per month, the period from June 1, 2022 to October 1, 2022 shall be \$50.00 less to account for the section 125 agreement to reduce the rent, totalling \$1,340.00 per month as there has been a decrease in services and an agreement to decrease the rent by only \$50.00. Since the Tenants had paid \$1,360.00 each month from June 1, 2022, the Landlords owe the Tenants an overpayment of \$20.00 per month for these five months which totals \$100.00.
19. The Landlords also failed to pay the Tenants interest on the last month's rent deposit, as required by the *Residential Tenancies Act, 2006* (the 'Act'). The Landlords collected a last month's rent deposit of \$1,250.00 on January 1, 2018, and have not paid any interest on the deposit. The total amount owing to the Tenants for interest is \$83.80.

It is ordered that:

1. The total amount the Landlords shall pay the Tenants is \$336.80. This amount represents:
 - \$200.00 for excess rent collected.
 - \$83.80 for interest on the last month's rent deposit.
 - \$53.00 for the cost of filing the application.
2. The Landlords shall pay the Tenants the full amount owing by December 16, 2023.
3. 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.
4. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

December 05, 2023
Date Issued

Colin Elsby
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.