



Order under Subsection 135 Residential Tenancies Act, 2006

Citation: ALVAREZ SANCHEZ v 3GEN DEVELOPMENT GROUP INC., 2023 ONLTB 76809

Date: 2023-12-01

File Number: LTB-T-061609-22

In the matter of: 4, 103 COLEMAN AVENUE
TORONTO ON M4C1P9

Tenants

Between: NURIA ALVAREZ SANCHEZ
MIGUEL ANGEL PERALES PEREZ

And

3GEN DEVELOPMENT GROUP INC.

Landlord

NURIA ALVAREZ SANCHEZ and MIGUEL ANGEL PERALES PEREZ (the 'Tenants') applied for an order determining that 3GEN DEVELOPMENT GROUP INC. (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on November 15, 2023.

The Landlord's Agent Ryan Dolan and the Tenants attended the hearing.

Preliminary:

1. At the hearing, the Tenants requested to amend their application to include a claim for interest on the last month's rent deposit. The Landlord did not oppose the amendment. As such, the application was amended to include the last month's rent deposit interest.
2. In addition to the Landlord, the Tenants also listed Bosley Real Estate Ltd. and Sergei Timoshenko (collectively the 'Real Estate Agents') as parties to the application. Based on the uncontested submissions of the Landlord's Agent and the Tenants, I find that the only action that the Real Estate Agents took was to collect the charges discussed below on behalf of the Landlord. They were not involved in the tenancy at any point after that and are not holding the Tenant's funds. The Landlord's Agent consented to remove the Real Estate Agents from the application. I find that the Real Estate Agents are not involved in the issues of this application. They are removed from the application as parties.

Determinations:

1. As explained below, the Tenants proved some of the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenants \$120.75 for the interest on the last month's rent deposit.

Illegal Charge

2. The lawful monthly rent is \$2,000.00. The Tenants are still living in the rental unit.
3. It is uncontested that the Landlord required the Tenants to pay two months for the last month's rent deposit at the beginning of their tenancy. This is contrary to section 106(2) of the *Residential Tenancies Act 2006* (the 'Act'), which states that a last month's rent deposit cannot be more than one month of rent.
4. The Tenants paid \$4,000.00 to the Landlord on April 22, 2021. \$2,000.00 went towards the last month's rent deposit and \$2,000.00 was an illegal charge. The Tenants confirmed that the additional charge was not for their rent for the first month of the tenancy, and that they paid the first month rent separately.
5. It is the Tenants' own testimony that, once they requested the illegal charge to be returned to them, the Landlord waived the rent for May 2022. The Landlord's Agent confirmed this.
6. I find that the Landlord returned the illegal charge to the Tenants in May 2022 by waiving the rent charge for one month. The Tenants were made whole; as such, the claim for an illegal charge is dismissed.

Last Month's Rent Deposit Interest

7. The Tenants are requesting payment of interest on the \$4,000.00 that was collected for the two months of rent deposit. As discussed above, \$2,000.00 was actually an illegal charge, and \$2,000.00 is being held by the Landlord as the last month's rent deposit.
8. Under section 106(6) of the Act, a Landlord is only required to pay yearly interest on the last month's rent deposit, and not any illegal charge.
9. As I do not have jurisdiction to order interest on the illegal charge, the only interest ordered will be on the last month's rent deposit, calculated as follows:

The last month's rent deposit was collected on April 22, 2021.

The guideline for 2021 was 0%. As such, no interest is owing for the period of April 22, 2021 – December 31, 2021.

The guideline for 2022 was 1.2%. For the 12 months in 2022,

$$\$2,000 \times 1.20\% = \$24.00$$

The guideline for 2023 is 2.5%. For the period of January 1, 2023 – November 15, 2023,

$$\$2,000 \times 2.5\% / 12 \text{ months} \times 10.5 \text{ months} = \$43.75$$

The total interest owing on the last month's rent deposit is $\$24.00 + \$43.75 = \$67.75$.

It is ordered that:

1. The total amount the Landlord shall pay the Tenants is \$120.75. This amount represents:
 - \$67.75 for the interest on the last month's rent deposit.
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenants the full amount owing by December 12, 2023.
3. If the Landlord does not pay the Tenants the full amount owing by December 12, 2023, the Landlord will owe interest. This will be simple interest calculated from December 13, 2023 at 7.00% annually on the balance outstanding.
4. If the Landlord does not pay the Tenants the full amount owing by December 12, 2023, the Tenants may recover this amount by deducting \$120.75 from the rent owing on January 1, 2024.
5. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

December 1, 2023
Date Issued

Kate Sinipostolova
Member, Landlord and Tenant Board

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