



Tribunals Ontario
Landlord and Tenant Board

Tribunaux décisionnels Ontario
Commission de la location immobilière

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

2023 ONL TB 77288 (CanLI)

In the matter of: A, 311 Jeremy's Crescent
Mount Forest Ontario N0G2L3

Between: Gladys Stevenson Tenant

And

Terry Martin, Terrence Martin, Landlords
Terry and Terry Martin operating as TLC Properties

Gladys Stevenson (the 'Tenant') applied for an order determining that Terry Martin, Terrence Martin, and “Terry and Terry Martin operating as TLC Properties” (the 'Landlords') collected or retained money illegally.

This application was heard by videoconference on November 1, 2023.

The Tenant and the Tenant’s Representative Warren Dickson, who is a family member, attended the hearing. The Landlords Terry Martin and Terrence Martin also attended.

Preliminary Issue:

1. A preliminary issue was raised with the parties with respect to who the Tenant intended to name as respondents on the T1 application, given that she listed “Terry and Terry Martin” as landlords along with a company called “TLC”. The parties clarified that Terry Martin and Terrence Martin are a couple, and the Tenant’s landlords, and that they also operate a company called “Terry and Terry Martin operating as TLC Properties”. All parties agreed that the individual landlords and the landlord company were provided with adequate notice of the hearing, and that all three should be named as respondents, given that the company was also listed on the Tenant’s lease. The application is amended to reflect these three names.

Determinations:

2. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlords must compensate the Tenant in the amount of \$1,200.00 plus the \$53.00 application filing fee.

3. The Tenant moved into the rental unit on August 1, 2019 and as of the hearing date, currently resided in the unit.

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4. The Tenant's rent was initially \$1,500.00, with utilities being separate. Rent is due on the first of each month.
5. On November 1, 2021 the Tenant received an informal notice of rent increase from the Landlords which was not on a Board approved form, but on the company TLC Properties letterhead. It stated:
"Dear Gladys Stevenson,
This is to notify you that your rent plus outside maintenance costs – lawn cutting, snow removal, spring & fall cleanup & gardens – will increase January 1, 2022 to \$1600.00 [...]."
6. All parties agreed that the reason for the increase in rent from \$1,500.00 to \$1,600.00 was in relation to the Landlords' property upkeep, maintenance, and carrying costs, and that it constituted an above guideline increase.
7. The Tenant paid the increase of \$100.00 in rent between January 1, 2022 to December 1, 2022 for a total of 12 months, but filed her T1 application within one year of the increase first taking effect by filing with the Board on December 20, 2022.
8. Pursuant to section 135.1 of the *Residential Tenancies Act*, 2006 (the 'Act') a notice of rent increase that would otherwise be void under subsection 116(4) of the Act (which relates to the requirement to use a Board approved form and provide a tenant with a guideline increase, plus 90 days notice), 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.
9. However, in this case, by having filed her application on December 20, 2022 the Tenant complied with sections 135.1(2) and section 135(4) of the Act which impose a one year limitation period on a tenant, and which allows them an opportunity to challenge an unlawful rent increase if an application is filed within one year of the date that money was first collected in contravention of the Act.
10. Thus, the Tenant is entitled to be reimbursed for 12 months of overpayments in the amount of \$1,200.00. The rental increase by the Landlords was illegal because it failed to comply with the requirements of the Act to provide the Tenant with 90 days notice of the increase, use a Notice of Rent Increase form, and limit the increase to the guideline percentage amount, pursuant to sections 116 and 120 of the Act.

It is ordered that:

1. The total amount the Landlords shall pay the Tenant is \$1,253.00. This amount represents:
 - o \$1,200.00 for excess rent collected.
 - o \$53.00 for the cost of filing the application.
2. The Landlords shall pay the Tenant the full amount owing by December 11, 2023.

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3. If the Landlords do not pay the Tenant the full amount owing by December 11, 2023, the Landlords will owe interest. This will be simple interest calculated from December 12, 2023 at 7.00% annually on the balance outstanding.
4. If the Landlords do not pay the Tenant the full amount owing by December 11, 2023, the Tenant may recover this amount by deducting \$1,253.00 from the monthly rent for the period of January 1, 2024 to January 31, 2024.
5. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

November 30, 2023

Date Issued

Madeline Ntoukas

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.

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