



**Order under Section 31
Residential Tenancies Act, 2006**

Citation: Locheed v Wonderful Rentals, 2023 ONLTB 77195

Date: 2023-11-30

File Number: LTB-T-060858-22

In the matter of: Basement, 62 Scarboro Beach Blvd Toronto
Ontario M4E2X1

Tenant

Between: Leah Locheed

And

Landlord

Wonderful Rentals

Leah Locheed (the 'Tenant') applied for an order determining that Wonderful Rentals (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on November 14, 2023.

The Landlord and the Tenant attended the hearing.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay to the Tenant \$703.00.

Analysis and The Law

2. The Tenant claims that the Landlord is illegally retaining a portion of her last month rent deposit. It is undisputed that on October 4, 2021, the Tenant paid the Landlord \$3,650.00. This amount was comprised of the Tenant's last month rent deposit of \$1,675.00, payment for her first month of rent in the amount of \$1,675.00 and a refundable key deposit of \$300.00. It is also undisputed that the Landlord returned \$1,025.00 of the Tenant's last month rent deposit and that the Landlord also returned the \$300.00 key deposit.

3. Further, it is undisputed that Tenant entered into a fixed term lease agreement that was to end on March 31, 2022, and that the Tenant asked to be released from her lease agreement one month prior to the end of the fixed period.
4. The Landlord testified that she agreed to accept the early termination of the tenancy subject to her finding another tenant to rent the unit on a fixed term basis. The Landlord provided text messages showing the Tenant offering to stay the final month if it was too difficult for the Landlord to find a new tenant.
5. The Tenant does not dispute that she offered to stay until the end of the lease term if the Landlord could not find another tenant, however, the Tenant states the Landlord did rent the unit for March 2022 and as such, the Landlord is not suffering financial loss caused by the Tenant's early termination of one month.
6. Section 47 of the *Residential Tenancies Act, 2006* (the 'Act') states "a tenant may terminate a tenancy at the end of a period of the tenancy or at the end of the term of a tenancy for a fixed term by giving notice of termination in accordance with section 44.
7. Section 44(4) of the *Act* states that a period of notice for a fixed term tenancy shall be given at least 60 days before the date the termination is specified to be effective and that date shall be on the last day of a yearly period on which the tenancy is based.
8. It is undisputed that the Tenant ended her tenancy 1 month prior to the termination date specified in the fixed term lease agreement. As such the Tenant has breached section 88(1) of the *Act* which states:

If a tenant abandons or vacates a rental unit without giving notice of termination in accordance with this Act and no agreement to terminate has been made or the landlord has not given notice to terminate the tenancy, a determination on the amount of arrears of rent owing by the tenant shall be made in accordance with the following rules:

 1. If the tenant vacated the rental unit after giving notice that was not in accordance with this Act, arrears of rent are owing for the period that ends on the earliest termination date that could have been specified in the notice, and the notice been given in accordance with section 47, 96, or 145, as the case may be.
9. However, pursuant to section 88(4) "in determining the amount of arrears of rent owing under subsections (1), (2), and (3), consideration shall be given to whether or not the landlord has taken reasonable steps to minimize losses in accordance with section 16.
10. The Landlord stated that, given the rental unit was furnished, she found a tenant willing to rent the unit for a short term of 30 days for the month of March 2022. The Landlord stated that she then found another tenant to rent the unit on a one-year lease as of April 1, 2022.

Therefore, I find that the Landlord was successful in mitigating the loss caused by the Tenant's insufficient notice.

11. The Landlord stated that she retained \$650.00 of the Tenant's last month rent deposit as compensation for her costs involved with re-renting the unit prior to the end of the Tenant's fixed term agreement such as advertising, cleaning, and hiring someone to show the unit.
12. Pursuant to section 105 of the *Act*, the only security deposit that a Landlord may collect is a rent deposit collected in accordance with section 106.
13. Pursuant to section 106(10) of the *Act*:

A Landlord shall apply a rent deposit that a Tenant has paid to the Landlord or to a former Landlord in payment of the rent for the last rent period before the tenancy terminates.

14. Section 134(1) of the *Act* states:

Unless otherwise prescribed, no Landlord shall, directly or indirectly, with respect to any rental unit,

(a) Collect or require or attempt to collect or require from a tenant, prospective tenant or former tenant of the rental unit a fee, premium, commission, bonus, penalty, key deposit, or other like amount of money whether or not the money is refundable.

15. This means that the last month's rent deposit can only be applied to the last month of tenancy. In this case, the last rent period was February 1, 2022, to February 28, 2022. The Landlord is not entitled to retain the last month's rent deposit for any other purpose.
16. Based on the evidence before me, I find, on the balance of probabilities that the Tenant paid a last month's rent deposit in the amount of \$1,675.00 prior to taking possession of the rental unit. I further find that the Landlord successfully re-rented the unit when the Tenant vacated on short notice, and as such the Landlord is required to return the portion of the deposit that they have unlawfully retained.

It is ordered that:

1. The Landlord shall pay to the Tenant the sum of \$650.00. This amount represents the remaining portion of the last month's rent deposit that the Landlord unlawfully retained.
2. The Landlord shall pay the Tenants \$53.00 for the cost of filing this application.

3. The total amount the Landlord owes to the Tenants is \$703.00
4. If the Landlord does not pay the Tenant the full amount owing by December 31, 2023, the Landlord will owe interest. This will be simple interest calculated from January 1, 2023 at 7.00% annually on the balance outstanding.
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

Melissa Anjema
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.