



Order under Subsection 135 Residential Tenancies Act, 2006

Citation: TANG v LIM, 2023 ONLTB 77438

Date: 2023-11-29

File Number: LTB-T-065556-22

In the matter of: 23 SILVER LINDEN DRIVE
RICHMOND HILL ON L4B3S8

Tenant

Between: SHUAI TANG

And

KYUNG SOOK LIM

Landlord

SHUAI TANG (the 'Tenant') applied for an order determining that KYUNG SOOK LIM (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on October 3, 2023.

The Tenant's legal representative, Cuiwen Hu, and the Tenant attended the hearing.

The Landlord also attended the hearing. Jung Kim (JK), the Landlord's son, and Chloe Kim (CK), the Landlord's daughter, attended the hearing as support for the Landlord.

Determinations:

1. On August 27, 2022 the Tenant applied to the Board, pursuant to s. 135(1) of the Residential Tenancies Act 2006 (the 'Act'), with a T1 application (T1) alleging that the Landlord collected an illegal charge and failed to pay compensation to the Tenant for a N12 notice served on the Tenant.
2. The position of the Tenant is that the Landlord collected an illegal charge of \$200.00 for a key deposit that the Landlord did not return when the Tenant vacated the rental unit.

3. The Tenant also claims the Landlord did not compensate the Tenant for vacating the rental unit on an N12 notice.
4. The position of the Landlord is that the Tenant did not pay a \$200.00 key deposit. The Landlord claims the Tenant had sublet Tenants in the rental unit and keys were left under the front door mat by the sublet Tenants.

Order Page 1 of 6

5. The Landlord also claims that there was no N12 notice or similar request for the Tenant to vacate the rental unit and the Tenant vacated the rental unit on her own choosing, therefore no compensation is required to be given to the Tenant.

Tenant Evidence Illegal Charge: Key Deposit

6. The Tenant testified that she paid a \$200.00 key deposit to the Landlord in cash.
7. The Tenant did not obtain a receipt from the Landlord and did not submit any documentary evidence to support her oral testimony for the claim of the illegal charge she paid the Landlord.
8. The Tenant submitted into evidence a copy of the lease agreement as evidence the Landlord required a \$200.00 key deposit. On page seven of the lease agreement in paragraph 6, the lease agreement states “The Tenant shall provide to the Landlord an amount of Two Hundred Dollars (\$200) towards the replacement of keys...”
9. The Tenant also submitted an email she sent to the Landlord on November 13, 2021 where she states she left the keys under the carpet of the front door.

Landlord Evidence Illegal Charge: Key Deposit

10. The Landlord claims the key deposit was not returned because the Tenant had, without knowledge of the Landlord, allowed occupants to live in the rental unit. Upon discovering the occupants in the rental unit the Landlord changed the locks and claims the key deposit should not be returned.

The Act and Analysis

11. Section 134 of the Act states: Additional charges prohibited

134 (1) 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;

[emphasis added]

12. On a balance of probabilities means the applicant, in this case the Tenant must show that her version of events is the more probable and should succeed. Saying something is proven on a balance of probabilities simply means that it is more likely than not to have occurred. It means that it is probable, i.e., the probability that some event happened is more than 50%--indeed, 50.1% is sufficient. In all cases, the decision maker must weigh up the evidence and decide which version is most probably true. Consequently, the real truth may never be known. All that can be done is to decide which of the parties has presented the most probable version.
13. Given the above the onus rests with the Tenant to provide sufficient evidence to support her claim the Landlord collected an illegal charge of \$200.00 key deposit and did not return this charge to the Tenant. I find the Tenant's testimony and evidence persuasive enough to support her claim the Landlord collected and illegal charge of a \$200.00 key deposit.
14. While the Landlord claims she should be allowed to keep the key deposit because he had to change the lock due to unauthorized occupants, the matter before the Board is whether the Landlord collected an illegal charge or not as claimed in the Tenant's application.
15. In my view the Tenant has provided sufficient evidence to support her claim and the Landlord is not entitled to keep this charge as it is in breach of the Act.
16. I am satisfied the Tenant has met that burden of proof and therefore this portion of the Tenant's application is granted and therefore the Landlord owes the Tenant \$200.00.

Tenant's Evidence: No Compensation Paid

17. The Tenant submitted into evidence an email conversation between the Tenant and the Landlord's daughter CK, where CK reached out to the Tenant and indicated to the Tenant that she intends to move close to her parents as she is pregnant.
18. The Tenant testified that once she received the email, she talked to a realtor to try and find a new place to live. The realtor informed the Tenant that the Landlord was obligated to pay compensation of one month rent.

19. The Tenant testified that she then spoke to CK over the phone and requested one month compensation in exchange for moving out. The Tenant testified that CK acknowledged the requirement for compensation and agreed to pay the Tenant the compensation by waiving the last month's rent in lieu of compensation.
20. The Tenant testified she vacated the rental unit and did not receive compensation.
21. The Tenant testified that after she moved out, she again asked CK in a phone conversation about the compensation.

Landlord's Evidence: No Compensation Paid

22. The position of the Landlord is that they did not offer compensation to the Tenant because they submit there was no N12 notice or any likeness of an N12 notice provided to the Tenant.
23. The Landlord submitted an order issued by a Board member for an L1 application for arrears of rent the Tenant owed the Landlord. In the arrears order the Tenant is ordered to pay arrears for the period of August 15, 2021 to November 14, 2021. In the order there is no mention of the Landlord waiving the November 2021 rent as the Tenant claims.

The Act and Analysis

24. Findings of Board

202 (1) In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so,

(a) may disregard the outward form of a transaction or the separate corporate existence of participants; and

(b) may have regard to the pattern of activities relating to the residential complex or the rental unit.

25. The Tenant's own evidence of the email exchange between CK and the Tenant, in my opinion does not contain details I would expect in an N12 notice. I find the intent of the email sent by CK is one of inquiry, and CK does not give a date for the Tenant to vacate or any indication of termination date for the Tenant to vacate. I specifically focus my attention on CK's opening of the June 7, 2021 email where she asks the Tenant, "I'm writing you today because your lease ends on August 14th...I am wondering if you have plans to move out when the lease ends. I'd like to move in if possible."

26. I do not find that CK's email has the same intention as serving an N12 notice where a specific termination date is given to the Tenant. In consideration of section 202, I find that CK is seeking information on the Tenant's intentions and not providing a date of termination. I find this to be normal conversation for a Tenant and Landlord, or in this case the Landlord's daughter acting as agent, to have regarding the ending of a lease.
27. Another entry in the email communication is September 2, 2021 where the Tenant informs CK she will be moving out in November but she is not sure of the date. On September 8, 2021 the Tenant again communicates to CK that she will sign an N11 notice and take care of the unpaid rent in a few days. On October 13, 2021 the Tenant writes, "...I know your expected date of delivery in November, even if I can't find a place, I promise you will move in mid-November." The entire communication between the Tenant and CK is one of negotiating a day for the Tenant to vacate and CK to move in. CK does not provide the Tenant with a firm date of termination in any of the emails.
28. Further I am not persuaded by the Tenant's testimony that CK offered to provide her compensation in the form of waiving rent for vacating the rental unit. The Tenant testified all the compensation conversations happened by phone, whereas all other communication regarding the tenancy and discussions on when the Tenant would move out were done by email. I do not find the Tenant's evidence persuasive enough, relying solely on her oral testimony that compensation was offered by CK for vacating the rental unit. The Tenants' lack of particulars and specific details regarding when the conversations took place are such that I am not satisfied the Tenant has met that burden of proof to support her claim.
29. I prefer the Landlord's evidence and testimony of JK regarding the Tenant owing arrears, and there being no discussion regarding any compensation. I am satisfied by the Landlord's submission for the L1 application order for arrears that the Landlord did not intend to compensate the Tenant by waiving the November 2021 rent as this was requested in the Landlord's L1 application.
30. Given all the above and With the evidence before me an on a balance of probabilities I find the Tenant has not met the burden of proof to support her claim she vacated the rental unit on the understanding of the Landlord giving her an N12 notice, and therefore no compensation would be required by the Landlord.
31. Regarding the N11 agreement to end the tenancy I do not find the Landlord intended for the Tenant to sign this to circumvent providing compensation for an N12 notice. As I have stated above, I do not find there to be sufficient evidence to support CK was giving the Tenant a termination date or details similar to an N12 notice. The N11 was signed after the tenancy agreement had ended, and the emails between the Tenant and CK seem to indicate a mutual agreement to sign the N11.
32. With the evidence before me an on a balance of probabilities I find the Tenant has not provided sufficient evidence to support her claim the Landlord owes the Tenant compensation. I find the Tenant vacated the rental unit after signing an N11 and this was done so willingly between the Landlord and the Tenant.

33. Given the above, as I find the Landlord did not give the Tenant an indication to vacate on an N12 notice, there is no compensation to be granted to the Tenant, therefore this portion of the Tenant's application must be dismissed.
34. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
35. This order contains all reasons for the determinations and order made. No further reasons will be issued.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$200.00 This amount represents:
 - o \$200.00 for the illegal charge collected.
2. The Landlord shall pay the Tenant the full amount owing by December 17, 2023.
3. If the Landlord does not pay the Tenant the full amount owing by December 17, 2023, the Landlord will owe interest. This will be simple interest calculated from December 18, 2023 at 7.00% annually on the balance outstanding.

December 6, 2023

Date Issued

Greg Brocanier

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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