



## Order under Subsection 135 Residential Tenancies Act, 2006

**Citation:** GOODHUE v NAGEE, 2023 ONLTB 76892

**Date:** 2023-11-27

**File Number:** LTB-T-062252-22

**In the matter of:** UPSTAIRS (2ND FLOOR), 71 HAVELOCK STREET  
TORONTO ON M6H3B3

**Between:** STEPHANIE GOODHUE Tenant

**And**

HAZEL NAGEE Landlord

STEPHANIE GOODHUE (the 'Tenant') applied for an order determining that HAZEL NAGEE (the 'Landlord') collected or retained money illegally.

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

Only the Tenant attended the hearing.

As of 3:48 PM, the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Tenant's evidence.

### **Determinations:**

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenant \$1,641.24.

### Last month's rent deposit

2. The Landlord did not use the Tenant's rent deposit to pay for the last rental period of the tenancy and did not return the deposit to the Tenant. This is prohibited by the *Residential Tenancies Act, 2006* (the 'Act').
3. The Tenant testified that she paid a last month's rent deposit to the Landlord at the start of her tenancy in October 2021 in the amount of \$850.00. The lawful monthly rent was \$850.00 during the tenancy. The Tenant provided rent receipts signed by the Landlord which confirm that the deposit was paid on October 8, 2021. The receipts also show rent payments for every month of the tenancy up to the date the Tenant moved out on March 28, 2022.



4. The Tenant testified that the Landlord did not use the last month's rent deposit for the last month of the tenancy and did not return it to the Tenant.

When was the tenancy lawfully terminated?

5. The Tenant provided a copy of an N12 notice of termination under section 48 of the Act (an 'N12') which was served to her by the Landlord on March 21, 2022. The Tenant testified that she moved out one week later, on March 28, 2022, because of the N12 notice. The termination date on the notice is May 21, 2022.
6. The Tenant testified that she notified the Landlord that she would be moving out by texting the Landlord's daughter, who was the Tenant's point of contact at the time. The Tenant did not provide a copy of the text message and did not specify an exact date on which she texted the Landlord's daughter. However, the Tenant did state that she notified the Landlord that she would be moving out after receiving the N12 notice on March 21, 2022. She returned the keys to the Landlord on March 29, 2022 after cleaning the unit.

7. Section 88(2) of the Act states:

(2) If a notice of termination has been given by the landlord under section 48, 49 or 50 and the tenant vacates the rental unit before the termination date set out in the notice without giving a notice of earlier termination or after giving a notice of earlier termination that is not in accordance with subsection 48 (3), 49 (4) or 50 (4), as the case may be, a determination of the amount of arrears of rent owing by the tenant shall be made as if arrears of rent are owing for the period that ends on the earlier of the following dates:

1. The date that is 10 days after,

- i. the date the tenant gave notice of earlier termination, if the tenant vacated the rental unit after giving a notice of earlier termination that was not in accordance with subsection 48 (3), 49 (4) or 50 (4), as the case may be, or
- ii. the date the landlord knew or ought to have known that the tenant had vacated the rental unit, if the tenant vacated the rental unit without giving a notice of earlier termination.

8. In matter before me, a notice of termination under section 48 of the Act was given. The Tenant did not give a notice of earlier termination in accordance with subsection 48(3) of the Act. The date the Landlord knew or ought to have known that the Tenant had vacated the rental unit is March 29, 2022. Therefore, arrears are calculated up to April 8, 2022, which is 10 days after March 29, 2022.
9. The Tenant testified that the tenancy started on October 5, 2021, and the rent receipts show that rent was paid on the 5<sup>th</sup> day of every month. As such, I find that the rental period ran from the 5<sup>th</sup> to the 4<sup>th</sup> day of the month in this tenancy. The Tenant paid rent on March 5, 2022, which means rent was paid up to April 4, 2022.

10. The rent owing to the Landlord for the four days from April 4, 2022 – April 8, 2022 is calculated as follows:

1. Daily rent charge:  $\$850.00 \times 12 \text{ months} / 365 \text{ days} = \$27.94$
2. Rent for 4 days:  $\$27.94 \times 4 \text{ days} = \$111.76$

11. On the uncontested evidence of the Tenant, I find that the Landlord collected a last month's rent deposit and failed to apply it to the last month of the tenancy or return it to the Tenant, contrary to the Act.

12. This portion of the application is granted. The Landlord shall pay the Tenant  $\$850.00 - \$111.76 = \$738.24$  for the balance of the last month's rent deposit less the four days of rent owing in April.

### N12 compensation

13. The Landlord gave the Tenant a notice of termination under section 48 of the *Residential Tenancies Act, 2006* (the 'Act') and did not pay the Tenant the compensation required by the Act.

14. The Tenant provided a copy of an N12 notice of termination under section 48 of the Act (an 'N12') which was served to her by the Landlord on March 21, 2022. The N12 indicates that the person intending to move into the rental unit is a caregiver for the Landlord. The termination date on the notice is May 21, 2022. The N12 is signed by the Landlord.

15. The Tenant testified that she moved out because of the N12 notice. The Landlord did not pay her the one month's rent compensation required under section 48.1 of the Act at any point.

16. On the uncontested evidence of the Tenant, I find that the Landlord gave the Tenant an N12 notice for his own use, the Tenant moved out because of the notice, and the Landlord did not pay the Tenant the required compensation under section 48.1 of the Act.

17. This portion of the application is granted. The Landlord shall pay the Tenant  $\$850.00$  towards the N12 compensation required under section 48.1 of the Act.

### **It is ordered that:**

1. The total amount the Landlord shall pay the Tenant is  $\$1,641.24$ . This amount represents:
  - $\$738.24$  for the balance of the last month's rent deposit.
  - $\$850.00$  for the N12 compensation owing.
  - $\$53.00$  for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by December 8, 2023.

3. If the Landlord does not pay the Tenant the full amount owing by December 8, 2023, the Landlord will owe interest. This will be simple interest calculated from December 9, 2023 at 7.00% annually on the balance outstanding.
4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

**November 27, 2023**

**Date Issued**

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Kate Sinipostolova  
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.