



Order under Subsection 135 Residential Tenancies Act, 2006

Citation: MILNE v AKUJOBI, 2023 ONLTB 76289

Date: 2023-11-27

File Number: LTB-T-008862-23

In the matter of: LOWER UNIT, 35 HOLLOWAY ST
BELLEVILLE ON K8P1N8

Tenant

Between: CHRISTOPHER MILNE

And

FRANK AKUJOBI

Landlord

CHRISTOPHER MILNE (the 'Tenant') applied for an order determining that FRANK AKUJOBI (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on September 19, 2023.

The Landlord, the Tenant and their support person, Tricia Patrick, attended the hearing.

Determinations:

1. On January 17, 2023, 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 on December 21, 2022, the Landlord illegally retained \$600.00 of a \$1,600.00 rent payment sent from Ontario Disability Support Program ('ODSP'), on behalf of the Tenant. Additionally, the Tenant applied for an order determining that the Landlord did not use the last month's rent deposit to pay for the last rental period of the tenancy and did not return the deposit to him. The last month's rent deposit held by the Landlord was \$1,600.00. The total amount claimed by the Tenant is \$2,200.00.
2. The Tenant filed this application within one-year of the date that the money was allegedly retained illegally pursuant to s. 135(4) of the Act. Therefore, the Tenant's allegations will be considered.
3. It is undisputed that ODSP sent the Tenant's monthly rent directly to the Landlord on or before the first day of each month in the amount of \$1,600.00.
4. The Tenant testified that he vacated the unit on December 29, 2022 and that he informed the Landlord of his intention via text message on December 1, 2022. It is undisputed that ODSP sent a rental payment on December 21, 2022 in the amount of \$1,600.00 to the Landlord and this was to be paid for the January 2023 rental period.

5. The Tenant testified that his last month's rent deposit was to be applied to December 2022 as this was the last month of his tenancy. Further, the Tenant testified that he paid his December 2022 rent and that the Landlord and him agreed for him to vacate by December 31, 2022.
6. The Tenant testified that the Landlord returned \$1000.00 of the \$1600.00 January rent payment to the Tenant between January 1, 2023 and January 16, 2023. The Landlord does not dispute this.
7. The Tenant submitted various screenshots of text messages between him and the Landlord. Most of these text messages show the Tenant asking during the month of December 2022 for his January 2023 rental payment back. The Landlord replied to these messages telling the Tenant to move out and that they would figure out what amounts were owing between the parties.
8. The only issues in dispute between the parties is a question of when the Tenant vacated and gave notice to vacate from the unit.
9. The Tenant testified that he sent a text to the Landlord on December 1, 2022 notifying him that he would be vacating by December 31, 2022. This was after numerous verbal requests from the Landlord to vacate the unit at any point in time. The Tenant could not provide any record of this text message. The Tenant testified that he returned the keys to the Landlord's property manager on or before December 29, 2022.
10. The Landlord disputes that he ever received this text message on December 1, 2022 but does admit that he had asked the Tenant to leave since June 2022. The Landlord could not provide a date for when he noticed the unit was vacated but stated that near the end of January 2023 is when he went to check on the unit and saw that it was vacated.
11. What I found to be most peculiar about the Landlord's testimony in regard to the vacate date is that when I asked if and when his property manager ever gave him the keys to the unit after collecting them from the Tenant, he could not recall.
12. I prefer the Tenant's testimony in relation to these issues and find that it is more credible. On a balance of probabilities, I find that the Tenant vacated the unit on December 29, 2022 and the Tenant notified the Landlord on or about December 1, 2022 either verbally or via text message. The Tenant clearly stated in his text messages to the Landlord that he was moving out of the rental unit by the end of December and needed the January rental payment back in order to pay his new landlord.
13. However, I cannot find that the parties had an agreement to terminate the tenancy as the Tenant has not provided any evidence to support this claim.
14. There was no notice of termination served by either the Landlord or the Tenant nor was there an agreement to end the tenancy.
15. The Tenant served an invalid notice of termination on or about December 1, 2022 purporting to terminate his tenancy effective December 31, 2022. The notice was invalid because the Tenant was required to give at least 60 days' notice to terminate their tenancy and additionally, a text message is not a valid form of a notice to end a tenancy.

16. Section 88 of the Act addresses the common situation where a tenant vacates their apartment after giving short notice. Subsection 88(1)(1) provides that the tenant owes arrears of rent up to the earliest valid termination date that could have been specified in the notice. In this case, the Tenant gave his notice on December 1, 2022. If he had given a valid 60 days' notice, he could have terminated the tenancy effective January 31, 2023. Accordingly, pursuant to subsection 88(1)(1), arrears are owing for December and January.
17. However, subsection 88(4) provides that in determining the amount of arrears owing, I must consider whether the Landlord took reasonable steps to minimize the rent he lost due to the short notice. In other words, I must consider whether the Landlord took reasonable steps to try to re-rent the unit earlier than February 1.
18. The Landlord testified that his property manager had told him that the Tenant vacated sometime in mid-late January, leaving the unit in bad condition and leaving behind a considerable amount of garbage and damage. The Landlord had to empty, clean, and repair the unit before he could advertise it for rent. The Landlord did not call the property manager as a witness and did not provide any supporting documentation to support this claim. I considered this hearsay evidence but put little weight to it.
19. The Landlord's duty to mitigate begins when the Landlord learns that the Tenant intends to move out on short notice. There was no evidence before me as to why the Landlord did not advertise the unit for rent promptly once it received the Tenant's short notice on December 1. There was no evidence that the Landlord knew, in early December, that the Tenant would leave behind furniture and garbage when he moved out at the end of December.
20. I find that the Landlord failed to take reasonable steps to minimize its losses. If he had advertised the unit in early December, he might well have been able to re-rent for January 1. There is no way to know. In the absence of evidence to the contrary, I find that the Landlord has not taken reasonable steps to minimize his losses and therefore, I would then find it appropriate in the circumstances that the Landlord could not have re-rented the unit until January 15, 2023 as it would take some time to do any necessary repairs as well as vetting a new tenant after the Tenant vacated. Therefore, the Tenant owed rent up to January 15, 2023.
21. Therefore, I find that the Landlord's retention of \$2,200.00 to pay the Tenant's rent is in contravention of s.135(1) the Act. Accordingly, the Tenant is owed half a month rent in the amount of \$800.00 for January 2023 and this will be deducted from the last month's rent deposit still being held by the Landlord. The Tenant is also owed \$600.00 for the remaining rent monies paid by ODSP that the Landlord is holding for the month of January 2023.

It is ordered that:

1. The Landlord shall pay to the Tenant the sum of \$1,400.00. This amount represents the amount of the unlawfully retained deposit and rent monies.
2. The Landlord shall also pay to the Tenant \$53.00 for the cost of filing the application.
3. The total amount the Landlord owes to the Tenant is \$1,453.00.

4. 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 outstanding balance.
5. 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

Colin Elsby
Member, Landlord and Tenant Board

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