



Order under Subsection 57 & 135 Residential Tenancies Act, 2006

Citation: Aholou v Lee, 2023 ONLTB 77097
Date: 2023-11-24 **File Number:** LTB-T-071320-
22-LTB-L-071355-22

In the matter of: G01-50 Fort York Boulevard Toronto,
ON M5V 3Z3

Tenant

Between: Komlavi Aholou

And

Grace Lee

Landlord

Komlavi Aholou (the 'Tenant') applied for an order determining that Grace Lee (the 'Landlord') collected or retained money illegally.

The Tenant also applied for an order determining that Grace Lee the Landlord gave a notice of termination in bad faith.

This application was heard by videoconference on May 26, 2022, and October 4, 2023.

The Landlord, the Landlord's Legal Representative Jie Situ and the Tenant attended the hearing.

Determinations:

Preliminary Issues -

1. The Landlord's Legal Representative raised a preliminary issue prior to the October 4, 2023 reconvening of the matter, suggesting that the Tenant's name as listed in his applications are different than the name that was provided to the Landlord for the purpose of the tenancy.
2. While that may have been the case, the Landlord never at any time suggested that the Tenant was someone other than the individual who had rented her unit and as such, I was satisfied that the parties involved in the action were the Landlord and Tenant as outlined.

T1 Application – Illegal Rent

3. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.

Order Page 1 of 4

4. The Tenant's application was filed with the Board on October 19, 2021. The Tenant alleges that the Landlord owes him \$3,816.00 in illegal rent charged from May 15, 2016 to December 21, 2020 when the Tenant vacated the unit.
5. The tenancy began May 15, 2012. The Tenant had paid \$4,100.00 in rent per month from that date to May 15, 2016 when the rent increased to \$4,500.00, which the Tenant paid until December 21, 2020.
6. As such, the Tenant seeks the difference in rent for that period of time in the amount of \$3,816.00.
7. Section 116 of the *Residential Tenancies Act, 2006* (the 'Act') states that a landlord shall not increase the rent charged to a tenant without giving the tenant 90 days written notice of the landlord's intention to do so. Section 120 of the Act states that a landlord may only increase the rent charged in accordance with the guideline.
8. Section 135 of the Act states that a tenant or former tenant may apply to the Board for an order determining that a landlord collected or retained money in contravention of the Act. That said, s. 136 of the Act states that rent charged one or more year earlier shall be deemed to be lawful rent unless an application has been made within one year after the date that amount was first charged, and the lawfulness of the rent charged is an issue in the application.
9. The alleged illegal amount was first charged as of May 15, 2016. This application was brought by the Tenant on October 19, 2021 and as such, the Tenant had been paying the deemed lawful rent within one year of his application.
10. As such, on a balance of probabilities, I am satisfied that the Landlord did not collect rent in excess of the amount allowed by the Act and this portion of the Tenant's application is dismissed.

Last Month's Rent Deposit & Interest

11. The Tenant alleges that the Landlord failed to apply the last month's rent deposit in the amount of \$4,100.00 to his last month and further alleged that the Landlord failed to pay interest on same in the amount of \$649.85.

12. The Landlord's Legal Representative submitted that order TSL-15687-20, which was an application filed by the Landlord based on an N4 notice of termination, had already considered and applied the Tenant's last month's rent deposit and interest.
13. The hearing for the Landlord's application took place on December 1, 2020 and the order for same was issued on January 20, 2021. The Tenant was not present at the hearing. At the hearing the Landlord had waived the excess rent which has been above the Board's jurisdiction of \$35,000.00 as contemplated under s. 207(1) of the Act. That said, the order did apply the Tenant's last month rent deposit and interest for same from March 3, 2021 to March 2, 2020.
14. On February 11, 2021, the Tenant requested that order TSL-15687-20 be reviewed and that the order be stayed until the request to review was resolved. The Tenant alleged that he was not reasonably able to participate in the December 1, 2020 hearing. As such, TSL15687-20-RV-IN was issued on February 11, 2021, staying the original order until the review was heard.
15. The Tenant's request to review was heard on April 14, 2021 where the Presiding Member had granted the Tenant's request to review. The Landlord's application was considered again, and in TSL-15687-20-RV issued on April 28, 2021, the Tenant was once again ordered to pay the arrears as alleged.
16. Again, the Tenant's last month's rent deposit was applied along with an adjusted amount of interest from May 16, 2012 to December 21, 2021.
17. As such, based on a balance of probabilities, I am not satisfied that the Landlord did not illegally retain the Tenant's rent deposit or fail to pay the Tenant's interest on the last month's rent deposit, as required by the Act and this portion of the Tenant's application is dismissed.

T5 Application & s. 135(1.1) Application

18. As explained below, the Tenant did not prove the allegations contained in the applications on a balance of probabilities. Therefore, the application is dismissed.
19. The Tenant alleges that on February 15, 2019, he had received an N12 notice of termination from the Landlord for purchaser's own use. This notice was never filed, and the Tenant received a subsequent notice for the Landlord's child on October 14, 2019, with a termination date of January 14, 2020.
20. The Tenant alleges that after he received the notice he then received the Landlord's N4 notice for non-payment of rent from December 15, 2019 to February 14, 2020, which he stated was false.
21. The Tenant testified that he could not move any earlier than the termination date of January 14, 2020 due to COVID-19 and the fact that he had a baby and had eventually moved out of the unit by December 21, 2020.

22. The Tenant alleges that after he vacated the unit the Landlord had started renovating the unit and had noticed a party who was not the Tenant's daughter living in the unit. The Tenant alleges a few months later the unit was converted to a pet store.
23. The Tenant alleges that he was forced to move out because he refused to pay the Landlord higher rent and that the Landlord's N12 notice was given in bad faith.
24. Subsection 57(1)(a) of the Act requires the Tenant to prove each of the following on a balance of probabilities:
 1. The Landlord gave the Tenant an N12 notice of termination under section 48 of the Act;
 2. The Tenant vacated the rental unit as a result of the N12 notice of termination;
 3. No person referred to in subsection 48(1) of the Act occupied the rental unit within a reasonable time after the Tenant vacated; and
 4. The Landlord served the N12 notice of termination in bad faith.
25. On a balance of probabilities, I am not satisfied that the Tenant had proven the second prong of the test as outlined, namely that the Tenant vacated the unit as a result of the N12 notice of termination. As well, I am not satisfied that the Landlord was required to pay the Tenant compensation as required under s. 48.1 of the Act.
26. The Tenant was served the N12 application in October of 2019, which contained a termination date of January 14, 2020. This application was never filed. On February 16, 2020 the Tenant was served with an N4 notice of rent arrears. The Landlord's application was filed on March 12, 2020 and the hearing took place on December 1, 2020 as outlined above.
27. It is clear from my assessment of the evidence that the Landlord's intentions pivoted at this time. The N12 notice of termination was never filed with the Board or proceeded with and the Landlord had served an N4 notice of termination and had filed an application for same.
28. The Landlord attended the hearing on December 1, 2020 and presented the evidence as it pertained to the rent arrears within the rental period as alleged. In that order it was determined that the Tenant had not been paying rent since December of 2019.
29. The order was issued, and the Tenant filed a request to review. The review was granted, and a new hearing took place with respect to the Tenant's rent arrears.
30. In the third paragraph of TSL-15687-20-RV, the Presiding Member made a determination that the Tenant vacated the unit on December 21, 2020 as a result of a consent agreement that was reached in mid-December of 2020.
31. The Tenant never sought a review of that determination. As such, because the Presiding Member in that hearing made a determination with respect to the reasons regarding the ending of the tenancy, I am unable to make a determination otherwise. The Tenant ought

to have sought a review of that order if he did not agree with the reasoning behind the ending the tenancy.

It is ordered that:

1. The Tenant's applications are dismissed.

November 24, 2023

Date Issued

Jagger Benham

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.