



Order under Subsection 135 Residential Tenancies Act, 2006

Citation: Pham v Tran, 2023 ONLTB 73352

Date: 2023-11-10

File Number: LTB-T-009879-23

In the matter of: 1546 Curry Ave
Windsor ON N9B3P1

Tenants

Between: Khanh Pham
Minh Luu

And

Landlords

Vien Chung Tran
Thiem Tran

Khanh Pham and Minh Luu (the 'Tenants') applied for an order determining that Vien Chung Tran and Thiem Tran (the 'Landlords') collected or retained money illegally.

This application was heard by videoconference on October 30, 2023.

The Landlords and the Tenants attended the hearing.

The Landlords requested an adjournment because they filed application LTB-L-074045-23 and want it heard together with this application. The Landlords' Representative was out of the country but joined from abroad and was not well. The adjournment was denied, as the Board is mandated to ensure the most efficient use of their time and resources. The Landlords was present, and the Landlords' Representative had an adequate opportunity to cross examine the Tenants' evidence and prepare for the hearing.

Determinations:

1. As explained below, the Tenants proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlords must pay the Tenants \$4,178.00.
2. The Tenants moved into the rental unit on August 20, 2004. This tenancy is subject to the Ontario Rent Increase guideline. The rent increase guideline is the maximum amount a landlord can increase rent during the year for most tenancies without the approval of the Landlord and Tenant Board.

3. The Landlords did not issue a lawful Notice of Rent increase (NORI) in accordance with section 116 of the Act which states: .

Notice of rent increase required

Order Page 1 of 3

File Number: LTB-T-009879-23

116. (1) A landlord shall not increase the rent charged to a tenant for a rental unit without first giving the tenant at least 90 days written notice of the landlord's intention to do so.

Increase void without notice

(4) An increase in rent is void if the landlord has not given the notice required by this section, and the landlord must give a new notice before the landlord can take the increase.

4. The Landlords sent an email of the increase; the Landlord may only raise rent if they gave the Tenants at least 90 days' written notice using the correct form. In addition, at least 12 months must have passed since the first day of the tenancy or the last rent increase. The Landlords produced no evidence that the email given to the Tenants substantially complies with the technical requirements mandated by the Act.
5. When there's no Notice of rent increase and when no 90 days are given, s.135.1 of the Act, deems the rent increase valid if the tenant pay the increase for 12 months without challenging it.
6. Section 29(2) of the *Residential Tenancies Act, 2006* (the 'Act') also states no application may be made more than one year after the day the alleged conduct giving rise to the application occurred. This means that the Board only has jurisdiction to award the remedy to the Tenants from December 1, 2021, if the Board determines the Tenants was overcharged illegal rent during the one-year period before the filing of the application on December 1, 2022.
7. I find the lawful rent, therefore is \$825.00 December 1, 2021, which is the rent that was charged one year from the date the application was filed The increase on January 1, 2021, from \$825.00 to \$850.00 is unlawful not only because there was no NORI but in 2021, the government imposed a rent freeze, and a landlord was prohibited from increasing rent within the 2021 calendar year. Since the Tenants filed their application opposing the increase within the 12-month period, they are entitled to the difference between the lawful rent and unlawful rent increase. The Tenants paid the unlawful rent increase from January 1, 2021, to December 1, 2022, which covers almost a two year period.
8. Due to the one-year limitation period, however the Tenants are entitled to \$25.00 (\$850.00-\$825.00) for each month for the period starting December 1, 2021, to January 31, 2022, or \$50.00. The increase of \$875.00 effective February 1, 2022, is also unlawful and the Landlords owes the Tenants a difference of \$50.00 for each month for the period starting February 1, 2022, to May 2022 or \$200.00 (\$50.00 x 4 =\$200.00).

9. The Tenants were not charged June 2022 rent charges because they were out of the unit while renovations were undertaken.
10. When they returned to the unit on July 6, 2022, the Landlords increased the rent charge unlawfully to \$1,600.00 which the Tenants paid for 5 months for the rent period starting July 2022 to November 2022. The Landlords, therefore, owes the Tenants \$3,875.00 ($\$1,600.00 - \$825.00 = \775.00×5 months).
11. The Tenants are seeking other remedy related to other issues which were not properly before me and may be subject to other applications if its within the one-year period from the date the issue arose.

File Number: LTB-T-009879-23

12. The total amount the Landlords owe the Tenants is \$4,125.00 ($\$50.00 + \$200.00 + \$3,875.00$).

It is ordered that:

1. The total amount the Landlords shall pay the Tenants is \$4,178.00. This amount represents:
 - o \$4,125.00 for excess rent collected.
 - o \$53.00 for the cost of filing the application.
2. The Landlords shall pay the Tenants the full amount owing by November 21, 2023.
3. If the Landlords do not pay the Tenants the full amount owing by November 21, 2023, the Landlords will owe interest. This will be simple interest calculated from November 22, 2023, at 7.00% annually on the balance outstanding.
4. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

November 10, 2023

Date Issued

Sandra Macchione

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.