



Order under Subsection 135 Residential Tenancies Act, 2006

Citation: Xavier v Subramaniam, 2023 ONLTB 71305

Date: 2023-11-10

File Number: LTB-T-009310-23

In the matter of: 7 GILBANK DR
AURORA ON L4G5G2

Between: Sonia Xavier Tenants
Michael Digaetano
Chelsea Xavier Creador
Martina Xavier
Maria Xavier

And

Satheeskumar Subramaniam and Vivian Sara Landlords

Sonia Xavier, Michael Digaetano, Chelsea Xavier Creador, Martina Xavier and Maria Xavier (the 'Tenants') applied for an order determining that Satheeskumar Subramaniam and Vivian Sara (the 'Landlords') collected or retained money illegally.

This application was heard by videoconference on October 18, 2023.

The Tenants Sonia Xavier and Michael Digaetano, the Tenants' Representative Farukh Bhatti, and the Landlord Vivian Sara attended 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 \$11,053.00.
2. The Landlords collected rent in excess of the amount allowed by the *Residential Tenancies Act, 2006* (the "Act").
3. At the hearing, the Tenants' unchallenged evidence was that they paid \$2,300.00 in rent from May 18, 2021 to December 31, 2021 which was increased to \$2,850.00 from January 1, 2022 until August 2023 (i.e. 20 months).
4. The Landlord admitted that they never served the Tenants with a Notice of Rent Increase (NORI) using a Board approved form at least 90 days in advance in accordance with s. 116 of the Act. Therefore, the Landlords' rent increase from January 1, 2022 is invalid and deemed void pursuant to s. 116(4) of the Act. The Tenants are entitled to the illegally

collected rent from that date.

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5. The Tenants submitted evidence of all of the illegal rent they paid from January 1, 2022 (Tenants Exhibit 1, pp. 5-26) as well as text messages from the current Landlord demanding an increase in the rent:

“Good morning Sonia,

Only 1 check left. Like we discussed last year, we would like to increase the rent. As you know the market price is \$3500+. We cannot rent to you anything less than \$2,850. Please advise on what you would like to do. Thank you. (Tenants Exhibit 1, p. 3)

[emphasis added]

6. At the hearing, the Landlord submitted that there was never actually a rent increase. Since they purchased the property from the former landlord that they did not actually impose a rent increase and the tenancy agreement was not with them. The fact is the Tenants previously paid \$2,300 and they were now being told to pay \$2,850 which is an increased amount. Furthermore, it is the Landlords who are imposing the rent increase, specifically Vivian Sara who sent the above text message.
7. Second, the Landlords submitted that the Tenants were the one who were asking them to increase the rent in order to extend the term of their tenancy as a result of an L2 application based on an N12 notice that was filed. Not only is this inconsistent with their first argument that there was never a rent increase, but it is also contradicted by the text message above which the Landlord never disputed that she sent or cross-examined in any way.
8. Section 135.1 of the Act also does not apply in these circumstances. The Landlords increased the rent on January 1, 2022 and the application was filed on November 13, 2022 which is less than 12 consecutive months that the Tenants paid the increased rent.
9. In summary, the Landlords imposed an illegal rent increase by not serving a NORI in accordance with s. 116 and it is also an above guideline increase contrary to s. 120. And even if the Tenants did agree to a rent increase (which I do not find they did), this does not override the requirements of the Act.
10. The tenancy ended in August 2023 when the Tenants moved out.

It is ordered that:

1. The total amount the Landlords shall pay the Tenants is \$11,053.00. This amount represents:
 - \$11,000.00 for illegal rent collected (\$550 per month for 20 months from January 2022 to August 2023).
 - \$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.

November 10, 2023

Date Issued

Elan Shemtov

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.