



Order under Subsection 135 Residential Tenancies Act, 2006

Citation: Okujagu v Chow, 2023 ONLTB 71634

Date: 2023-11-02

File Number: LTB-T-001837-23

In the matter of: Basement Room Unit 4, 3511 Ashcroft Crescent
Mississauga ON L5C2E6

Between: Tamunobeoralolia Okujagu Tenant

And

Nicholas Chow Landlord

Tamunobeoralolia Okujagu (the 'Tenant') applied for an order determining that Nicholas Chow (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on May 3, 2023. The Landlord and the Tenant attended the hearing.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord shall pay the Tenant \$653.00 representing the excess amount of rent collected by the Landlord and costs.
2. The Tenant filed the T1 application on September 11, 2022.
3. As of the hearing date, the Tenant was still in possession of the unit.
4. The Tenant testified that he is an international student and moved into the unit in September 2021 with a one-year lease. The unit is a bedroom located in the basement of the rental complex. The unit shares a kitchen, bath and living areas with a total of 4 occupants. The Landlord does not live at the rental complex. He testified that his lease ended August 31, 2022. He expressed his interest to continue the Tenancy to the Landlord a couple of months prior to the end of his lease term. In July 2022, the Landlord sent him a new lease which included the rent being increased to \$650.00, which is of \$50.00 per month. Unaware of the Ontario housing laws, he agreed to the increase and signed the document July 29, 2022. His parents wired the full year's rent to the landlord on October 18, 2022 in the amount of \$7,800.00 (\$650.00 x12).
5. The Landlord argues that the rental unit is exempt from rent control rules pursuant to section 6.1(3) of the *Residential Tenancies Act, 2006*, (the 'Act') because the basement unit was created in an existing semi-detached bungalow after November 15, 2018.

6. The Landlord testified that he created the basement unit in the summer of 2019, which consists of 4 bedrooms, washroom, kitchen, laundry and furnace/electrical room. He does not live at the rental complex. There were no documents or records produced to support the Landlord's claim.

Analysis

7. Subsection 6.1(3) states:

Rental units in detached houses, semi-detached houses or row houses- Sections 120, 121, 122, 126, 127, 129, 131, 132 and 133 do not apply on and after the commencement date with respect to a rental unit if all of the following requirements are met:

1. The rental unit is located in a detached house, semi-detached house or row house which, on or at any time before November 15, 2018, contained not more than two residential units.
2. The rental unit is a residential unit that meets all of the following requirements:
 - i. The unit has its own bathroom and kitchen facilities
 - ii. The unit has one or more exterior or interior entrances
 - iii. At each entrance, the unit has a door which is equipped so that it can be secured from the inside of the unit
 - iv. At least one door described in subparagraph iii is capable of being locked from outside of the unit
3. The rental unit became a residential unit described in paragraph 2 after November 15, 2018.
4. One or both of the following circumstances apply:
 - i. At the time the rental unit was first occupied as a residential unit described in paragraph 2, the owner or one of the owners, as applicable, lived in another residential unit in the detached house, semi-detached house or row house.
 - ii. The rental unit is located in a part of the detached house, semi semi-detached house or row house which was unfinished space immediately before the rental unit became a rental unit described in paragraph 2.
8. Subsection 6.1(6) states that the onus is on the landlord to prove that the subsection applies when the application of subsection (3) is at issue.
9. Notwithstanding the provisions of subsection 6.1(3) of the Act, the Landlord must provide proper 90 days' written notice of a rent increase pursuant to section 116 of the Act which states:

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.

Same

(2) Subsection (1) applies even if the rent charged is increased in accordance with an order under section 126.

Contents of notice

(3) The notice shall be in a form approved by the Board and shall set out the landlord's intention to increase the rent and the amount of the new rent. 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.

10. Nevertheless, section 135.1 of the Act sets out the circumstances in which a “void” notice is deemed not to be void:

135.1 (1) An increase in rent that would otherwise be void under subsection 116(4) is deemed not to be void if the tenant has paid the increased rent in respect of each rental period for at least 12 consecutive months.

(2) Subsection (1) does not apply with respect to an increase in rent if the tenant has, within one year after the date the increase was first charged, made an application in which the validity of the rent increase is in issue.

(3) For greater certainty, if subsection (1) applies with respect to an increase in rent, section 116 is deemed to have been complied with.

(4) For greater certainty, nothing in this section limits the application of section 136.

(5) This section applies with respect to an increase in rent even if it was first charged before the day the *Protecting Tenants and Strengthening Community Housing Act, 2020* receives Royal Assent, provided the validity of the rent increase was not finally determined by the Board before that day.

11. I am not satisfied that the Landlord led sufficient evidence to establish that the unit is exempt from the rent rules pursuant to subsection 6.1(3). The Landlord failed to produce documents or records to support his assertion that the unit was created after November 15, 2018. I would expect there to be sufficient evidence to be produced if the Landlord intended to argue exemption. Absent this, I find that the unit is not exempt from rent control rules. Even if I am incorrect in this determination, the Landlord failed to increase the rent in accordance with the Act, being 90 days' notice on a Board approved form.

12. The Tenant filed the application September 11, 2022, 11 days after the increase in rent took effect, therefore, the Tenant brought an application within the one year after the date the increase was first charged pursuant to subsection 135.1 (2).
13. For the reasons given, I find that the increase in rent is void and accordingly, the Landlord collected rent in excess of the amount allowed by the Act.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$653.00. This amount represents:
 - \$600.00 for excess rent collected on a monthly basis (\$50x12) from September 1, 2022 to August 31, 2023.
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by November 13, 2023.
3. If the Landlord does not pay the Tenant the full amount owing by November 13, 2023, the Landlord will owe interest. This will be simple interest calculated from November 14, 2023 at 7.00% annually on the balance outstanding.
4. If the Landlord does not pay the Tenant the full amount owing by November 13, 2023, the Tenant may recover this amount by deducting \$600.00 for the month of December 2023 and \$53.00 for the month of January 2024.
5. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

November 2, 2023
Date Issued

Donna Adams
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.

