



**Order under Subsection 135
Residential Tenancies Act, 2006**

Citation: Hunter v Rashid, 2023 ONLTB 68075

Date: 2023-10-26

File Number: LTB-T-009487-23

2023 ONLTB 68075 (CanLII)

In the matter of: 47 DRYDEN WAY
TORONTO ON M9R0B2

Between: Michael Hunter
Stacey Hunter Tenants

and

Sahalia Rashid Landlord

Michael Hunter and Stacey Hunter (the 'Tenant') applied for an order determining that Sahalia Rashid (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on October 4, 2023.

The Landlord, the Landlord's Support person, Haroon Qureshi, The Tenants' Legal Representatives, Adam Fraccaro and Francisco Gomez, and the Tenants attended the hearing.

Determinations:

1. At the hearing, the Tenants alleged that the Landlord collected more than one month's rent deposit and that the Landlord did not apply the last month's rent deposit to the last month of the tenancy.

Illegal Deposit

2. The monthly rent is \$3,650.00. The Tenants provided the Landlord with the sum of \$21,900.00 for the rent for the first four months of the tenancy and the last two month's rent deposit.
3. The Landlord did not dispute that she collected in excess of the last month's rent deposit from the Tenants but asserted that the Tenants offered to do so.

4. Section 3 of *Residential Tenancies Act, 2006* (the 'Act') states that the Act “applies with respect to rental units in residential complexes despite any other Act and despite any agreement or waiver to the contrary”. What this means is, that even though the parties may have agreed that the Tenants would pay in excess of the last month’s rent deposit, it is contrary to the Act, and the Act applies.
5. Pursuant to subsection 106(2) of the Act, the amount of a rent deposit shall not be more than the lesser of the amount of rent for one rent period and the amount of rent for one month.
6. Based on the evidence before me, the Landlord collected a last month’s rent deposit in excess of the amount allowed by the Act. As the first three months of the deposit were applied towards the Tenants’ rent payments, the Tenants are entitled to reimbursement of \$7,300.00, representing month four and the second last month deposit that the Landlord collected in contravention of the Act.

Last month’s rent deposit not applied to the last month of the tenancy

7. The Tenants testified that on October 19, 2022, they requested consent from the Landlord to assign the tenancy. The Landlord responded on October 20, 2022 declining to consent to an assignment of the tenancy.
8. Pursuant to section 95(4) of the Act, the Tenants’ previous counsel, Julia Toso, served the Landlord with an N9 notice of termination, with a termination date of November 25, 2022. Section 96(2) provides that the termination date must be at least 30 days “after the date of the notice”. The Tenants’ counsel first served the Landlord with the N9 notice by email on October 26, 2022.
9. The Tenants’ Representative submitted that the tenancy agreement contains an agreement that notices may be exchanged by email. I do not find that the tenancy agreement contains this consent. The clause of the tenancy agreement that the Tenants’ Representative relied on is an acknowledgement of when service is deemed effective if sent by email. Even if I did find that this amounted to a consent to send notices by email, the clause relied on requires that notices be sent to the Landlord’s Listing brokerage, and not the Landlord.
10. Section 191(2) of the Act states:

A notice or document that is not given in accordance with this section shall be deemed to have been validly given if it is proven that its contents actually came to the attention of the person for whom it was intended *within the required time period*.
[Emphasis Added]

11. The Landlord testified that the email did not come to her attention for several days as it went to her junk mail and confirmed that she did respond to JT on November 1, 2022, after

receiving the email containing the notice. Based on the evidence before me, I find that the N9 notice did not come to the attention of the Landlord within the required time period.

12. JT also sent a copy of the N9 notice of termination to the Landlord by courier. According to the certificate of service signed by JT, the N9 notice was sent to the Landlord by courier on October 27, 2022. Rule 3.9 of the *Board's Rules of Procedure*, a document served on a party by courier is considered served on the day after it was given to the courier. Therefore, the notice was served effective October 28, 2022, being only 28 days' notice. As the Tenants provided less than the required 30 days' notice, I find that the N9 notice was deficient.
13. However, subsection 88(1) of the Act provides that if the tenant vacated the rental unit after giving notice that was not in accordance with the Act, arrears of rent are owing for the period that ends on the earliest termination date that could have been specified in the notice, had the notice been given in accordance with section 94. In this case, had the notice been given in accordance with section 94 of the Act, the earliest termination that could have been specified on the notice is November 27, 2022.
14. Accordingly, the Tenants' last month rent deposit is to be applied to the period of November 11, 2022 to November 26, 2022. Since the Landlord retained the remaining portion of the Tenants' last month rent deposit, which is prohibited under section 135 of the Act, the Tenants are entitled to repayment of these funds.

Costs

15. The Tenants' Legal Representative submitted that the Tenants should be awarded costs for the undue delay and expense of having to bring this application to collect money that is rightfully theirs.
16. Rule 23.3 of the *Board's Rules of Procedure* state "A party who engages in unreasonable conduct which causes undue delay or expense may be ordered to pay costs to another party". Interpretation Guideline 3 states that the power to order a party to pay another party's costs should be used sparingly and only in situations where the party's conduct was unreasonable.
17. The only allegation of unreasonable conduct submitted by the Tenants' Legal Representative was the conduct that gave rise to this application. I do not find that the Landlord acted unreasonably during these proceedings. The Tenants' request for costs is denied.

It is ordered that:

1. The total amount the Landlord shall pay the Tenants is **\$9,083.00**. This amount represents:
 - \$1,730.00 for the pro-rated portion of the last month's rent deposit.
 - \$7,300.00 for the illegal charge collected.

- \$53.00 for the cost of filing the application.
- 2. The Landlord shall pay the Tenants the full amount owing by October 30, 2023.
- 3. If the Landlord does not pay the Tenants the full amount owing by October 30, 2023, the Landlord will owe interest. This will be simple interest calculated from October 31, 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.

October 26, 2023

Date Issued

Candace Aboussafy

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.