



Order under Subsection 135
Residential Tenancies Act, 2006

Citation: Ignacio v Hossain, 2023 ONLTB 67410

Date: 2023-10-13

File Number: LTB-T-062890-22

In the matter of: 2 Colborn Street Guelph
Ontario N1S2M3

Tenant

Between: Christina Ignacio
Christian Kyle Ignacio
Jeanne Monique Ignacio
Patricia Anne Ignacio

And

MD Jahanggir Hossain

Landlord

Christina Ignacio, Christian Kyle Ignacio, Jeanne Monique Ignacio and Patricia Anne Ignacio (the 'Tenant') applied for an order determining that MD Jahanggir Hossain (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on May 29, 2023.

The Landlord and the Tenant, C. Ignacio 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 must pay the tenant \$4,253.00.
2. The Tenant met with the Landlord on May 23, 2020 to sign a lease for the unit. She paid \$2,100.00 in consideration for a last month's rent deposit on that same date. On May 25, 2020, she paid an additional \$2,100.00 for first month's rent. The Tenancy was to commence on July 1, 2020.
3. The Tenant rented the unit for her children to live in. They were out of the country and were supposed to be in Canada by the start date of the lease.

4. Due to the Covid-19 pandemic, the children's flight was cancelled and rebooked for July 3, 2020, however, she was advised by her travel agent that if this flight was cancelled, rebooking might not happen until September or October 2020. She panicked and called the Landlord to explain the situation. She did not want to be in a situation where she was paying rent on a unit that was not being used. She asked the Landlord if she could get out of the lease. The Landlord told her that there is no way she can get out of the contract.

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The July 3, 2020 flights ended up being cancelled so she rebooked another flight with a different airline at an additional expense so that her children would arrive in Canada on June 29, 2020.

5. The Tenant messaged the Landlord to inquire if the unit could be ready for before July 1, 2020 and the Landlord advised her that it wouldn't be. She asked if she could see the unit one more time before July 1, 2020. She went to the unit on June 27, 2020 and the unit was in disarray. She told the Landlord about the state of the unit, and he became angry and told her that he would not give her a key to the unit and to take him to court.
6. On June 29, 2020, the Landlord advised the Tenant that he would only give her a key to the unit if she provided Canadian issued I. Ds for the rest of the Tenants as well as employment documents and car information. She inquired as to why he did not require these things when the lease was signed and after the deposits were given, and he replied that he would not give the keys without those documents. Th Tenant submitted the text messages as evidence.
7. The Tenant never went to pick up keys from the Landlord because the Landlord advised her that if she did not provide the documents he requested, she would not give her the keys.
8. The Landlord testified that he is a Real Estate agent and because of that he knows all the rules and regulations concerning tenancies. He testified that he met with the Tenant and signed a lease on May 23, 2020. He received a last month's rent deposit and first month's rent in the amount of \$4,200.00.
9. The Landlord testified that when he entered the lease, he told the Tenant that she had to provide him with an employment letter and the Tenant requested 15 days to provide it due to Covid-19. He testified that he kept calling her requesting the document and she didn't have it.
10. The Landlord submitted a text message into evidence sent to the Tenant on June 29, 2020 that said:

The apartment will be ready tomorrow night. You can pick the key 1 July. List of documents need during the pick up keys 1. Every Tenant government issued ID for insurance purposes. 2. Car information such number plate for parking purpose 3. Your employment letter. See you July first before 10 am.
11. He testified that had the Tenant come to the unit to pick up the keys without the documents he said he required; he would have given her the keys to the unit.

12. The Landlord testified that he called the Tenant on July 1, 2020 and advised her that the unit was ready and to come and pick up the keys. He testified that the Tenant said she doesn't want the unit and asked for her money back.
13. The Landlord testified that he did not re rent the unit until July 1, 2021 as the Tenant never gave notice to vacate so he was under the understanding that the agreement signed with the Tenant was still in affect.

Analysis

14. This application s brought pursuant to subsection 107 (1) of the Residential Tenancies Act, 2006 which states:

A landlord shall repay the amount received as a rent deposit in respect of a rental unit if vacant possession of the rental unit is not given to the prospective tenant

15. Based on the evidence before me, I find on a balance of probabilities, that the Landlord did not give vacant possession of the unit to the Tenant, therefore the Tenant is entitled to her deposits back.
16. The lease was signed on May 23, 2020. If the Landlord required documents form the Tenant to enter into a lease, then he shouldn't have signed the lease and collected the deposit without receiving them, but he did.
17. The relationship between the parties seemed to deteriorate when the Tenant attempted to get out of the lease on June 1, 2020. The Landlord advised the Tenant at that point that he was holding her to the lease, so the Tenant made arrangements for her children to arrive in Canada by June 28, 2020.
18. Upon inspecting the unit on June 27, 2020, the Tenant contacted the Landlord to express her displeasure at the state of the unit. At that point, the Landlord texted the Tenant and told her that keys would be handed over if she provided a list of documents. I find that this amounted to the Landlord not giving vacant possession of the unit to the Tenant. It is more likely than not that the Landlord's relationship with the Tenant broke down to the point where he did not want her to move in and essentially put conditions in place that he knew the Tenant objected to in order to get the keys to the unit. This is clear from the text messages both parties submitted into evidence. On June 29, 2023, the text message exchange between the parties is as follows:

Tenant: I don't trust you to give you my documents and i already signed the Lease. You have two months rent

Landlord: Does not matter. Need documents before handover the key. Tenant: you even saw our bank account information and bank statement

Landlord: I don't have any documents of you.

Tenant: And I have the right to refuse you for any personal document to give as this was not discussed and you didn't require when I signed the lease.

Landlord: Anyway decision is yours. Without ID no one can stay. Bye.

19. It is reasonable for the Tenant to interpret the Landlord's text message to mean that unless she provided what he was asking for, he would not provide her with the keys to the unit. I do not accept the Landlord's testimony that had she arrived at the unit to get the keys, he would have given them to her absent the documents, as that is not what his text message to her says.
20. The Landlord collected a rent deposit and did not provide the Tenant with vacant possession of the rental unit. Therefore, the Landlord is required to repay the rent deposit.

It is ordered that:

1. The total amount the shall pay the Tenant is \$4,253.00. This amount represents:
 - o \$53.00 for the cost of filing the application.
 - o \$4,200.00 representing the deposit paid by the Tenant.
2. The Landlord shall pay the Tenant the full amount owing by October 24, 2023.
3. If the Landlord does not pay the Tenant the full amount owing by October 24, 2023, the Landlord will owe interest. This will be simple interest calculated from October 25, 2023 at 7.00% annually on the balance outstanding.

October 13, 2023

Date Issued

Emily Robb

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.