



Order under Subsection 135 Residential Tenancies Act, 2006

Citation: Yevtushenko v Amirnezhad, 2023 ONLTB 65675

Date: 2023-10-05

File Number: LTB-T-057737-22

In the matter of: 24 TOWNSHIP AVENUE
RICHMOND HILL ONTARIO L4E0J6

Tenants

Between: Nikolay Yevtushenko
Elena Yevtushenko

And

Asghar Amirnezhad
Nina Safina

Landlords

Nikolay Yevtushenko and Elena Yevtushenko (the 'Tenants') applied for an order determining that Asghar Amirnezhad and Nina Safina (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on August 10, 2023.

The Landlords and the Tenants attended the hearing. Ludmila Stephanoff attended as support/translation for the Tenants.

Determinations:

1. The Tenants have filed an application with the Board alleging that the Landlords illegally increased rent, failed to pay the Tenants interest on their last month's rent deposit, and failed to refund a key deposit after the keys were surrendered to the Landlords on July 3, 2021.
2. The Tenants' T1 application was submitted to the Board on June 28, 2022.

Illegal Rent Increase

3. The Tenants allege that the Landlords illegally increase their rent by \$50.00 per month on June 1, 2020. The increase brought the rent from \$2,300.00/month to \$2,350.00/month.
4. The Tenants testified that they had paid the increase and are seeking reimbursement for the amount alleged to have been overpaid.

5. Section 136(1) of the *Residential Tenancies Act*, 2006 (the 'Act'), states:

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136 (1) Rent charged one or more years earlier shall be deemed to be lawful rent unless an application has been made within one year after the date that amount was first charged and the lawfulness of the rent charged is in issue in the application.

6. Since the increase was paid by the Tenants for a period of greater than one year, the rent of \$2,350.00/month is deemed to be the lawful rent. Since an application was not made within one year of the rent increase, the Board has no jurisdiction to order any repayment of the allegedly illegal rent. Therefore, the Tenants claim is dismissed.

Last Month's Rent Interest

7. The Tenants claimed that no interest was paid on the last month's rent deposit of \$2,350.00 collected on June 1, 2020.

8. The tenancy terminated on July 3, 2021.

9. Section 106(6) of the Act states:

(6) A landlord of a rental unit shall pay interest to the tenant annually on the amount of the rent deposit at a rate equal to the guideline determined under section 120 that is in effect at the time payment becomes due

10. The guideline rent increase for 2021 was 0.0%.

11. Since the last month's rent deposit was collected in 2020, the interest would not have become due to pay to the Tenants until May 31, 2021. Since the guideline rent increase for 2021 was 0%, there was no interest accrued on the last month's rent deposit. Therefore, there is no interest to be paid to the Tenants.

12. Since there is no interest to be paid to the Tenants, this claim is also dismissed.

Key Deposit

13. The Tenants claimed that at the end of the tenancy, the Landlords did not refund the \$200.00 key deposit despite having surrendered the keys to the Landlords.

14. The Landlords claimed that there were significant damages to the rental unit and withheld paying that to compensate for out-of-pocket expenses.
15. Pursuant to Section 17 of *O. Reg 516/06*, the Landlord is allowed to collect a key deposit that is to be refunded at the end of a tenancy.
16. Section 135(1) of the Act states:

135 (1) A tenant or former tenant of a rental unit may apply to the Board for an order that the landlord, superintendent or agent of the landlord pay to the

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tenant any money the person collected or retained in contravention of this Act...

17. Although Section 135(4) of the Act states that there is a limitation of one year from when the breach of the Act occurs, I find that if the Landlord continues to retain the key deposit, the statute of limitations does not expire.
18. Pursuant to section 105 of the Act, the only deposit allowed to be collected is a security deposit to be utilized towards rent for the last month of the tenancy. The Act does not allow for “damage deposits” to be collected.
19. The Landlords, by withholding the \$200.00 key deposit for damages to the unit, are, in effect, treating the key deposit as a damage deposit.
20. The Landlords, pursuant to section 89 of the Act, had a right to file their own application to the Board for damages that the Tenants have allegedly caused, however, this does not mean they can circumvent the Act and retain money that was not intended for damages that have not been proved before a court of competent jurisdiction.
21. Therefore, I find that the Landlords are illegally retaining the \$200.00 key deposit and shall be ordered to refund the Tenants the key deposit.

It is ordered that:

1. The total amount the Landlords shall pay the Tenant is \$253.00. This amount represents:
 - o \$200.00 for the illegal charge collected. o
 - \$53.00 for the cost of filing the application.

2. The Landlords shall pay the Tenants the full amount owing by October 16, 2023.
3. If the Landlord do not pay the Tenant the full amount owing by October 16, 2023, the Landlord will owe interest. This will be simple interest calculated from October 17, 2023, at 6.00% 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 5, 2023

Date Issued

Robert Brown

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.