



Order under Subsection 135 Residential Tenancies Act, 2006

Citation: Tremblay v Giddhe, 2023 ONLTB 64954

Date: 2023-10-03

File Number: LTB-T-004204-23

In the matter of: 23 Garibaldi Drive
Barrie ON L4N8C3

Tenants

Between: Marquis L Tremblay
Theresa M Tremblay

And

Taljinder S Giddhe

Landlord

Marquis L Tremblay and Theresa M Tremblay (the 'Tenants') applied for an order determining that Taljinder S Giddhe (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on May 17, 2023.

The Landlord and the Tenants attended the hearing.

Preliminary Issue:

Determinations:

1. The Tenants were told at the beginning of the hearing that allegations about the garage will not be considered. They should instead be raised in a T3 application because it concerns a reduction in a facility.
2. As explained below, the Tenant proved in part the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenant the \$500.00 he collected as a damage deposit plus costs.
3. The Tenant filed the application on September 30, 2022.

Security Deposit

4. The Tenants paid a security deposit for damage deposit to the Landlord on December 23, 2020 in the amount of \$500.00 in addition to the last month's rent in the amount of

\$1,800.00 collected by the Landlord.

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5. The Tenant, M.T. submitted into evidence the transaction detail of the e-transfer the Tenant sent to the Landlord in the amount of \$500.00, dated December 31, 2020.
6. The Landlord did not dispute the amount paid but argued that this was a key deposit.
7. The Tenancy is ongoing.

Analysis

8. Section 105(1) states:

The only security deposit that a landlord may collect is a rent deposit collected in accordance with section 106.

9. Pursuant to section 106(2), the amount of the 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.

10. Section 134(1)(a) of the Act states that a landlord may not:

collect or require or attempt to collect or require from a tenant, prospective tenant or former tenant of the rental unit a fee, premium, commission, bonus, penalty, key deposit or other like amount of money whether or not the money is refundable.

11. Section 17 of O.Reg 516/06 under the Act lists certain types of payments that are exempt from section 134(1) including "Payment of a refundable key, remote entry device or card deposit, not greater than the expected direct replacement costs".

12. I find that the Landlord collected a deposit more than the amount allowed by the Act. The payment cannot be considered a "Payment of a refundable key, remote entry device or card deposit, not greater than the expected direct replacement costs" because the Landlord treated the key deposit as an illegal security deposit for the purpose of a payment liability.

13. Therefore, the Landlord shall be ordered to return the \$500.00 to the Tenants.

Utilities paid by Tenants.

14. The Tenant lives in

15. The Tenants allege the Landlord agreed to pay 30% of the utilities for the lower unit from January 1, 2021 to September 30, 2021. The Tenant, M.T. stated that they should not be responsible to pay the utilities for the whole rental complex. The Tenants have paid all of the utilities since January 1st, 2021. M.T. testified that they felt pressure if they pushed the issue and felt that they could possibly lose their unit.

16. The Tenants submitted into evidence the Lease agreement Schedule A, contains a clause where the "Tenant agrees to pay 70% of all the utilities required on the premises during the term of the lease and any extension thereof".

17. The Tenants submitted into evidence billing details from Enbridge of the monthly amounts due from January 2021 to September 2021.
18. The Tenants submitted into evidence the Water billing statement in the Tenants names. The bill is for 63 days, and the bill date is October 21, 2021.
19. The Tenants submitted into evidence a spreadsheet showing the utilities the Tenants paid from January 1st 2021 to September 30, 2021.
20. The Tenants testified the Landlord occupied the basement unit during this time. The utilities are in the Tenants' name.
21. The Landlord argued that from January 1st, 2021 to September 30, 2021 no one was living in the basement unit. The Tenant never sent a bill to the Landlord and never addressed this with the Landlord. It was on January 10, 2023 the Tenant sent a message to the Landlord asking to pay the utilities.
22. Subsection 135(4) of the Act establishes that an order for payment of illegally collected monies cannot be made regarding applications filed greater than one year after the sum was collected.
23. The Tenants' application was filed more than one year after they made the utility payments in question. Therefore, the Board does not have the jurisdiction to consider the merits of this issue and this part of the application must be dismissed.

Payment Reduction

24. The Tenants allege the Landlord owes the Tenants \$200.00 because the Landlord deducted this amount from the monthly \$480.00 payment the Landlord pays the Tenants.
25. It was undisputed that the Landlord paid the Tenants \$480.00 a month starting September 1, 2021 to December 31, 2022. This amount was paid for the Tenants who in return provided property maintenance and did minor repairs.
26. One of the clauses in the lease agreement states that the Tenants would pay the Landlord up to \$200.00 for any minor maintenance occurrences at the rental property.
27. It was undisputed that the Tenants had to replace a shower valve in the basement unit after the new tenants moved into the basement unit. The Tenants called the plumber and paid the plumbing bill. The Landlord then deducted \$200.00 from the monthly \$480.00 payment to the Tenants. The Tenants argued that the repair was not a minor repair and that it was the Landlord's responsibility to cover the entire cost of the plumbing and repairs.
28. The Landlord argued that this was part of the agreement the Tenants signed and that it why he deducted the \$200.00.
29. Pursuant to section 20(1) of the Act a landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.

30. In this case, I find that the nature of the owed payment is related to the Landlord's obligation he has under s.20 of the Act. The Landlord did not pay the Tenants the \$200.00 out of pocket repair cost, on the basis of a clause in the lease, which is clearly void as being contrary to the Act. Whether or not it was a minor repair is irrelevant.

31. Based on the relevant evidence, I find the Landlord must pay the Tenants the \$200.00 he withheld because of a maintenance issue within the residential complex.

It is ordered that:

1. The total amount the Landlord shall pay the Tenants is \$753.00. This amount represents:
 - \$500.00 deposit the Landlord collected and the \$53.00 for the cost of filing the application;
 - \$200.00 the Landlord withheld;
 - \$53.00 application fee
2. The Landlord shall pay the Tenants the full amount owing by October 14, 2023.
3. If the Landlord does not pay the Tenants the full amount owing by October 14, 2023, the Landlord will owe interest. This will be simple interest calculated from October 15, 2023 at 7.00% annually on the balance outstanding.
4. If the Landlord does not pay the Tenants the full amount owing by October 14, 2023, the Tenant may recover this amount by deducting \$553.00 from the rent from November 1, 2023.

October 3, 2023

Date Issued

Nicole Huneault

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.

