



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

Citation: Persad v Otto, 2023 ONLTB 65149

Date: 2023-09-29

File Number: LTB-T-008442-23

In the matter of: 2008, 15 Mercer Street
Toronto Ontario M5V1H2

Tenants

Between: Priyanka Persad
Marie Shah

And

Daniel Otto

Landlord

Priyanka Persad and Marie Shah (the 'Tenant') applied for an order determining that Daniel Otto (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on September 20, 2023.

Only the Tenants attended the hearing. The Tenants spoke to Tenant Duty Counsel prior to the hearing.

As of 2:30 pm, the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Tenant's evidence.

Determinations:

1. As explained below, the Tenants proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenants the amount of \$4800.00.
2. The parties entered into a tenancy agreement and the Landlord was not able to provide the Tenants access to the rental unit on the date the tenancy agreement was to commence.
3. The rental unit is a condominium and was being newly constructed.

Tenant's Uncontested Evidence

4. The Tenant's entered into a lease agreement with the Landlord on August 16, 2022. The lease agreement was for a period of twelve months commencing October 1, 2022 to

September 30, 2023. The monthly rent was \$2400.00 per month. The Tenants provided a copy of the signed lease agreement.

5. The Tenants testified that on August 17, 2022, they paid the Landlord the sum of \$2400.00 and on August 18, 2022, they paid the Landlord the sum of \$2400.00. These amounts represent first and last month rent deposit. The Tenants provided a copy of both email transfers that were sent to the Landlord, that indicate they were deposited. The Tenants also provided a rent receipt dated August 16, 2022 for the sum of \$4800.00, which indicates the amount is for first and last month rent deposit.
6. The Tenants testified that on September 16, 2022, they received an email from the Landlord advising the Tenants that there was a ninety-day delay with the construction of the rental unit. The Landlord provided the Tenants with two options on how they wanted to proceed with the lease agreement. The Tenants provided a copy of the email from the Landlord. The options were as follows:
 - a) Option 1- Mutually agree to cancel the lease agreement and the Tenants would receive a full refund of their first and last month rent.
 - b) Option 2- Defer the lease agreement for a period of ninety days, the Landlord would compensate the Tenants a monthly amount of \$3600.00.
7. The Tenants testified that after some consideration they emailed the Landlord on September 26, 2022, advising him that they have chosen to proceed with Option 1 to mutually agree to cancel the lease agreement. The Landlord replied and stated that he was sorry it did not work out and that he would send them a mutual lease cancellation and asked the Tenants to not sign it until October 1, 2022, the date the lease was to commence. The Tenants provided a copy of the email.
8. The Tenants provided a signed Lease Cancellation Agreement signed by the parties dated October 1, 2022. This agreement states the lease agreement will be terminated and any and all deposits paid by the Tenants shall be refunded.
9. The Tenants testified the Landlord sent them an email advising them that the return of funds had been sent to the Tenants on October 3, 2022 and that the Tenant, Maria Shah would be receiving the delivery notification as the Landlord put her phone number on the package.
10. The Tenants received an email from the Landlord on October 11, 2022, advising the Tenants that the package had been returned to him and stated that he had used Maria's phone number and did not understand why she did not pick up the package. The Tenants provided a copy of this email.
11. The Tenants testified the Landlord had placed the wrong phone number for Maria on the package and that is why the Tenants never received the package. An email from the Landlord verifies that after being told by the Tenants he used the wrong phone number, he realized he had used an old phone number for Maria. The Tenants testified they never received the package or a call to retrieve the package. They asked the Landlord if he

could send them the funds by email, however, the Landlord did not want to do that as he wanted to have a tracking number.

12. The Tenants testified they asked the Landlord to resend the package with the Tenant's proper contact information and he refused. They further testified that as of the date of the hearing the first and last month rent deposit has not been returned to them.
13. The Tenants testified that they stayed in an Airbnb for one month while they were looking for a new rental unit to secure.

Analysis

14. Section 135(1) states:

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 tenant any money the person collected or retained in contravention of this Act or the Tenant Protection Act, 1997.

15. Section 106(1) of the Act states:

A landlord may require a tenant to pay a rent deposit with respect to a tenancy if the landlord does so on or before entering into the tenancy agreement.

16. On the basis of the uncontested testimony and evidence of the Tenants I am satisfied that the Tenants paid the Landlord the sum of \$4800.00, in two separate payments on August 17, 2022 and August 18, 2022. I am satisfied this amount represents a first and last month rent deposit for the lease agreement that was to commence on October 1, 2022.
17. I am also satisfied that the sum of \$4800.00, has not been returned to the Tenants. While I accept that the Landlord tried to return the funds to the Tenants on October 2, 2022, it was no fault of the Tenants that the package did not arrive to them, given the fact the Landlord had included the incorrect phone number for the Tenant, Maria Shah.
18. I am also satisfied that the Landlord and Tenants mutually agreed to terminate the lease. The Landlord provided the Tenants with this option on September 16, 2022, and the Tenants emailed the Landlord on September 26, 2022, advising that they wished to mutually cancel the lease agreement. The cancellation was signed by the parties on October 1, 2022.

It is ordered that:

1. The total amount the Landlord shall pay the Tenants is \$4800.00. This amount represents the amount the Tenants paid the Landlord for first and last month rent deposit.
2. The Landlord shall also pay to the Tenants \$53.00 for the cost of filing the application.
3. The Landlord shall pay the Tenants the full amount owing by October 13, 2023.

4. If the Landlord does not pay the Tenants the full amount owing by October 13, 2023, the Landlord will owe interest. This will be simple interest calculated from October 14, 2023 at 7.00% annually on the balance outstanding.

September 29, 2023
Date Issued

Trish Carson
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.