



Order under Subsection 135 Residential Tenancies Act, 2006

Citation: BAINBRIDGE v LEGALLAIS PECHIE, 2023 ONLTB 64981

Date: 2023-09-29

File Number: LTB-T-059420-22

In the matter of: 204, 746 LAFLN ST
CORNWALL ON K6J3M5

Between: ERIC BAINBRIDGE Tenant

And

SKYLINE LIVING Landlord

ERIC BAINBRIDGE (the 'Tenant') applied for an order determining that MANDY LEGALLAIS PECHIE and SKYLINE LIVING (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on September 6, 2023.

The Landlord's Representative, Shannon Klekens, the Landlord's Agent, Robert J. Edwards, and the Tenant, Eric Bainbridge ("EB") attended the hearing.

Determinations:

Preliminary Issues

1. The Landlord requested that Mandy Legallais Pechie be removed as a party to the application. Skyline Living is the Landlord who received the Tenant's payments and Mandy Legallais Pechie is a direct employee of the Landlord and should not be named as a landlord.
2. The definition of landlord pursuant to section 2 of the *Residential Tenancies Act, 2006* (the "Act") includes:
 - (a) the owner of a rental unit or any other person who permits occupancy of a rental unit, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit,
 - (b) the heirs, assigns, personal representatives and successors in title of a person referred to in clause (a), and
 - (c) a person, other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the

rights of a landlord under a tenancy agreement or this Act, including the right to collect rent; (“locateur”)

3. I do not find Mandy Legallais Pechie to be a landlord in the context of this application and as such, I have amended the application pursuant to section 187(2) of the Act which states the Board may add or remove parties as the Board considers appropriate.
4. EB requested an adjournment to amend his T1 application. After speaking to Tenant Duty Counsel, EB submitted that Reason 4 on the application may be more appropriate. The application was filed for Reason 2. EB admitted that Reason 4 would also not be completely accurate as the Landlord did not refuse to allow him to move into the rental unit.
5. The Landlord contested the adjournment. The Landlord did not dispute the context of the application and the events cited on the application. The Landlord was prepared to present their case and whether Reason 2 or 4 was checked did not affect their arguments.
6. Based on the evidence before me, I denied the adjournment request. The Tenant had ample time to seek legal advice and to amend the application. The application was filed with the Board more than a year ago on August 5, 2022.
7. Section 183 of the Act requires the Board to adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter.
8. The Tenant claimed it would be a Human Rights Code violation if the adjournment was denied. I am not satisfied that denying the adjournment request would result in any prejudice to the Tenant or infringe on his rights. The merits of the application would not change with the Tenant amending the application. As such, the hearing proceeded with the parties' evidence.

Background Facts

9. EB applied for the rental unit on July 22, 2022. A rental application with a Scotiabank draft for the deposit in the amount of \$1,450.00 was submitted. The Landlord advised EB the payment would be the last month's rent deposit upon the rental application being accepted. The tenancy was to commence on August 15, 2022.
10. On July 26, 2022, the Landlord advised EB his rental application was approved and accepted. Later the same day, EB advised the Landlord he would not be proceeding with renting the unit and requested the return of his deposit.
11. The Landlord mailed a cheque in the amount of \$468.93 to EB refunding him a portion of the deposit as the rental unit was rented to another tenant for September 5, 2022. EB testified that he received the cheque on March 8, 2023 but decided not to cash the cheque due to legal advice he received.

12. As of the hearing date, the cheque would be considered stale-dated. The Landlord indicated that no matter the outcome of the hearing, a cheque in the same amount would be issued to EB.

Evidence

13. EB testified that he applied for the rental unit under duress and that he retracted his rental application due to his mental health conditions.
14. EB submitted that the Landlord did not re-rent the unit in a reasonable timeframe. He testified that the Landlord advised him during the rental application process that there was a waiting list, and he was put on the top of the list to get the unit.
15. The Landlord submitted that the Landlord complied with section 16 of the Act and took reasonable steps to minimize EB's losses.
16. The Landlord advertised the unit online and advised any potential applicants of the unit's availability. The Landlord testified that the unit was rented 17 days after August 15, 2022 when EB was to move in and the timeframe was reasonable due to the application and screening process. The duration included weekends and the process included credit checks.

Analysis

17. Based on the evidence before me, I find that there was a tenancy agreement in place when the Tenant sought the return of his rent deposit. As of July 26, 2022, when the Landlord informed the Tenant that his application was accepted, there was a mutual understanding and agreement by the parties on the essential terms of the tenancy. The parties agreed to the commencement date, the rental amount, and that the deposit would be used for the last month's rent deposit. The Landlord was willing to give EB possession of the rental unit on August 15, 2022. It was only after the Landlord told the Tenant that his application was accepted that EB informed them of his decision.
18. In *Musilla v. Avcan Management Inc.*, 2011 ONCA 502 (CanLII), the Court of Appeal noted that once the landlord had accepted the tenant's rental application, the parties entered into a legally binding agreement to rent. The Court held that s. 107(1) of the Act does not authorize a tenant to obtain the automatic return of a rent deposit where the landlord has done everything necessary to give the possession of the leased premises and the tenant has unilaterally repudiated the rental agreement. The Court also stated that to permit a tenant, who is legally obligated to take possession, to regain a rent deposit where the landlord has done everything it was required to do in order to give possession would render meaningless the concept of a rent deposit to secure the tenant's obligation to pay rent.
19. I am not satisfied EB entered into the agreement under duress. There is no evidence before me that the Landlord coerced or forced EB to submit a rental application or go to the bank to acquire a bank draft for the deposit. EB had four days between his rental application submission on July 22, 2022 to the Landlord's acceptance on July 26, 2022. At no time did EB contact the Landlord to notify them he did not wish to rent the unit. As

noted above, it was only after the Landlord reached out that EB informed them of his decision.

20. Accordingly, I find the tenancy agreement began on August 15, 2022.

21. 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.

22. This section of the Act allows for a last month's rent to be paid prior to entering into a tenancy agreement. The payment EB paid was equivalent to one month's rent. I find the deposit paid to the Landlord is lawful. Since, EB repudiated the tenancy agreement, there is no obligation for the last month's rent to be returned.

23. However, in accordance with section 16 of the Act, the Landlord had an obligation to minimize its losses by taking reasonable steps to re-rent the unit once EB informed them that he did not intend to move into the rental unit.

24. A new tenant was found and took possession of the unit September 5, 2022. There is no evidence before me that the Landlord delayed renting out the unit. Considering the time it takes for an applicant to respond to a listing, the time it takes for an applicant to schedule a viewing, the time it takes for an applicant to submit a rental application and supporting documentation, and the time it takes for a Landlord to review and complete its screening process, I am satisfied the Landlord took reasonable steps to minimize losses set out in section 16 of the Act.

25. Based on the evidence before me, I find EB liable for the rent for 21 days, from August 15, 2022 to September 4, 2022, in the amount of \$1,001.07. The deposit paid was \$1,450.00. Therefore, EB is entitled to a refund of \$448.93.

26. As EB elected not to cash the cheque he received from the Landlord in the amount of \$468.93, I am not ordering the Landlord to pay the costs of filing the application in the amount \$53.00.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$448.93 for the balance of the deposit collected.
2. The Landlord shall pay the Tenant the full amount owing by October 10, 2023.
3. If the Landlord does not pay the Tenant the full amount owing by October 10, 2023, the Landlord will owe interest. This will be simple interest calculated from October 11, 2023 at 7.00% annually on the balance outstanding.
4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

September 29, 2023
Date Issued

Vicky Liu
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.