



## Order under Subsection 135 Residential Tenancies Act, 2006

**Citation:** BENNETT v TOOR, 2023 ONLTB 63422

**Date:** 2023-09-26

**File Number:** LTB-T-059904-22

**In the matter of:** BASEMENT UNIT - 146 HOWLAND AVENUE  
TORONTO ONTARIO M5R3B5

**Between:** JUSTIN BENNETT  
NATALIE PAN

Tenants

**And**

JESSIE TOOR

Landlord

JUSTIN BENNETT and NATALIE PAN (the 'Tenants') applied for an order determining that JESSIE TOOR (the 'Landlord') collected or retained money illegally.

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

The Landlord, Jessie Toor ("JT"), and the Tenants, Natalie Pan ("NP") and Justin Bennett ("JB") attended the hearing.

### **Preliminary Issues:**

1. At the onset of the hearing, the Tenants requested the application be amended to include "basement unit" in the address of the application and be amended to seek the illegal retention of a \$25.00 key deposit and the recovery of the last month's rent deposit in the amount of \$1,450.00. The application filed seeks recovery of the last month's rent deposit in the amount of \$1,485.00. The Landlord consented to the amendments. Therefore, I granted the amendments.

### **Determinations:**

2. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenants \$745.38.
3. The tenancy agreement commenced August 15, 2021 for a fixed term ending August 31, 2022.

### *Tenants' Evidence*

4. The Tenants gave the Landlord a N9 notice with a termination date of February 28, 2022.



5. The Tenants sought to end the tenancy even earlier and advised the Landlord they would post advertisements online to assist the Landlord in finding a new tenant. On January 5, 2022, NP responded to a online message from a person named Tayania who was interested in the rental unit. NP provided the Landlord's contact information to Tayania.
6. NP testified the Tenants moved out January 21, 2022 and advised the Landlord the keys were left in the storage room in the basement on January 22, 2022. Furniture was left in the unit as the Landlord had indicated there was a possibility of the new tenant wanting the furniture. After the Landlord informed them the new tenant did not want the furniture, the Tenants removed all belongings on January 29, 2022.
7. There was a group chat with all the tenants of the property. NP submitted a screenshot of a message from another tenant in the property on February 9, 2022 advising the group: "the new downstairs tenant Tayania thinks she has heard rodent noises."
8. The Tenants allege that the Landlord re-rented the unit and there was a new tenant in the unit as of February 9, 2022. Therefore, the Landlord should refund them their last month's rent deposit of \$1,450.00 and their key deposit of \$25.00.

#### *Landlord's Evidence*

9. JT testified the Tenants' furniture was not removed until the first week of February 2022 and she eventually got the keys back but could not recall the date.
10. The unit was re-rented but the new tenant could not move in due to a mice problem that was discovered by the Landlord's maintenance person the first week of February 2022. JT submitted that JB and NP caused the mice problem by leaving the door or vent open while they were moving in the cold weather. JT had to address the mice issue before the new tenant could move in.
11. JT testified that while the new tenant was able to drop off belongings in the unit, the new tenant could not move in until February 15 or 20, 2022 and JT could not charge rent until such date. The unit was re-rented for \$1,500.00 inclusive of utilities. JT collected \$3,000.00 for first and last month's rent deposit but could not recall what date the payment was made.
12. The Landlord alleges that the Tenants broke the lease as the fixed term ends August 2022 and she incurred costs to re-rent the unit due to the Tenants' unilateral decision to vacate early. The Tenants gave notice with a termination date of February 28, 2022 and the unit was not occupied until after mid-February 2022 and as such, the Landlord should not have to refund the Tenants the last month's rent deposit and the application should be dismissed.

#### *Analysis*

13. Section 88 (1) of the *Residential Tenancies Act, 2006* (the 'Act') stipulates: If a tenant abandons or vacates a rental unit without giving notice of termination in accordance with this Act and no agreement to terminate has been made or the landlord has not given

notice to terminate the tenancy, a determination of the amount of arrears of rent owing by the tenant shall be made in accordance with the following rules:

1. If the tenant vacated the rental unit after giving notice that was not in accordance with this Act, arrears of rent are owing for the period that ends on the earliest termination date that could have been specified in the notice, had the notice been given in accordance with section 47, 96 or 145, as the case may be.
14. Section 47 of the Act states that: A tenant may terminate a tenancy at the end of a period of the tenancy or **at the end of the term of a tenancy for a fixed term** by giving notice of termination to the landlord in accordance with section 44. [emphasis added]
15. Pursuant to the Act, the Tenants are liable for the rent for the period of notice they could have given to the landlord to properly terminate the tenancy. In this case, that would at the end of the fixed term and the Tenants are potentially liable for rent up to and including August 31, 2022.
16. I say “potentially” because I must also consider whether or not the parties took steps to mitigate their losses. Section 16 of the Act states: When a landlord or a tenant becomes liable to pay any amount as a result of a breach of a tenancy agreement, the person entitled to claim the amount has a duty to take reasonable steps to minimize the person’s losses.
17. There is no dispute NP offered to assist the Landlord in finding a new tenant and that the unit was occupied by a new tenant sometime in February 2022.
18. Based on the evidence before me, I find that the two tenancies overlap as of February 15, 2022. I am not satisfied that the Tenants proved that the new tenant moved in February 9, 2022.
19. The Tenants submitted a screenshot of a message from another tenant residing in the property on February 9, 2022 but the author of the message was not in attendance to provide direct evidence nor was any other tenants that was residing at the property at that time in attendance.
20. The Tenants did not provide additional evidence that would lead me to a finding that the new tenant moved in or the Landlord was paid rent monies as of February 9, 2022 or earlier.
21. I find the Landlord’s testimony to be ambiguous as she could not remember the date for when the new tenant moved in, the date the new tenant paid the deposit, the date the mice problem was discovered and corrected, and the date she ultimately acquired the keys left by the Tenants.
22. However, the Landlord admitted that the unit was re-rented and the new tenant moved in February 15 or 20, 2022. Therefore, I find it, more likely than not, the unit was re-rented and the new tenant moved in as of February 15, 2022.

23. The Landlord cannot collect rent from different tenants for the same rental period. Therefore, I find that the Tenants are entitled for a refund of their last month's rent deposit in the amount of \$667.38, representing 14 days of rent at a daily rent of \$47.67 from February 15, 2022 to February 28, 2022 the Landlord collected from the new tenant.
24. With respect to the \$25.00 key deposit, section 17 of O.Reg. 516/06 under the Act states that a Landlord can collect payment of a refundable key, remote entry device or card deposit, not greater than the expected direct replacement costs.
25. I find the Landlord, by her own admission, eventually acquired the keys to the rental unit from the Tenants. Therefore, the key deposit of \$25.00 must be refunded to the Tenants.
26. As the Tenants' application is successful, the Tenants are entitled to reimbursement for their costs of filing the application in the amount of \$53.00.

**It is ordered that:**

1. The total amount the Landlord shall pay the Tenants is \$745.38. This amount represents:
  - \$667.38 for the last month's rent deposit.
  - \$25.00 for the key deposit.
  - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenants the full amount owing by October 7, 2023.
3. If the Landlord does not pay the Tenants the full amount owing by October 7, 2023, the Landlord will owe interest. This will be simple interest calculated from October 8, 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.

**September 26, 2023**

**Date Issued**

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Vicky Liu

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.