



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

Citation: Mohamed v Holly, 2023 ONLTB 60236

Date: 2023-09-07

File Number: LTB-T-065188-22

In the matter of: 1908, 35 KINGSBRIDGE GARDEN CIR
MISSISSAUGA ON L5R3Z5

Between: Nadia Mohamed Tenants
Mohammad Mohammed-Chakar

And

Megan Holly Landlord

Nadia Mohamed and Mohammad Mohammed-Chakar (the 'Tenants') applied for an order determining that Megan Holly (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on August 24, 2023.

The second-named Tenant above and the Landlord attended the hearing.

Determinations:

1. As explained below, I find the Landlord failed to pay the Tenants compensation pursuant to s. 48.1 of the *Residential Tenancies Act, 2006* (the 'Act'), and failed to return a refundable key deposit to them. The Landlord is ordered to pay to the Tenants \$2,000.00 for unpaid compensation, and \$200.00 for the return of the refundable key deposit.

PRELIMINARY ISSUE

2. At the beginning of the hearing the Landlord asked that all of the Tenants' applications arising from this tenancy be heard together. That request was denied. As I explained, the T6 application contained in Board file LTB-T-023786-22 was closed as withdrawn prior to the hearing of this application. The T2 application contained in Board file LTB-T-042593-22 is unrelated. (I note that the Board's records show that after the hearing of this application,

the T2 application contained in Board file LTB-T-042593-22 was also withdrawn by the Tenants.)

THE CLAIMS FOR COMPENSATION AND THE RETURN OF THE KEY DEPOSIT

3. There is no dispute between the parties that the Landlord served two N12 notices of termination on the Tenants pursuant to s. 48 of the Act. The first was withdrawn. The second had a date of termination on it of July 31, 2022.

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4. There is also no dispute that the Tenants exercised their rights under ss. 48(3) and (4) and served notice to terminate earlier than the date of termination on the Landlord's N12. The Tenants served notice to terminate in Form N9 by giving it to the Landlord's lawyer on May 31, 2022, with a date of termination of June 30, 2022.
5. The lawful monthly rent at all material times was \$2,000.00. The Tenants paid the Landlord the rent due for the month of May, 2022 and applied their last month's rent deposit of \$2,000.00 to the rent due June 1, 2022.
6. The Tenants then moved out June 30, 2022 and returned the keys to the Landlord. As a result, pursuant to s. 37(2) the tenancy terminated June 30, 2022.
7. Pursuant to s. 48.1 a landlord shall compensate a tenant in an amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant if the landlord gives the tenant a notice of termination of the tenancy under section 48.
8. The Landlord here did not pay to the Tenants the \$2,000.00 in compensation owed under s. 48.1 or offer an alternative unit acceptable to the Tenants.
9. The Landlord says she did not pay the compensation to the Tenants, despite the fact her lawyer told the Tenants she would, because the Tenants damaged the rental unit and their tenancy was so stressful and distressing for her she did not believe it was fair that she have to pay the compensation to them.
10. The Landlord never filed an application or action against the Tenants for any damage and the Tenants never agreed to any settlement of a potential claim. As a result, there is no potential set off available to the Landlord that would reduce the amount she owes to the Tenants.

11. Pursuant to s. 135(1.1) a landlord is deemed to have retained money in contravention of the Act if the landlord is required to compensate a tenant under section 48.1 and fails to do so. As the Landlord failed to pay the Tenants the compensation, an order shall issue requiring the Landlord to pay to the Tenants \$2,000.00 for compensation owing.
12. There is also no dispute that the Landlord collected a refundable key deposit from the Tenants of \$200.00 and failed to return it to them when the keys were returned to her along with vacant possession of the rental unit.
13. Pursuant to paragraph 3 of s. 17 of Ontario Regulation 516/06 the only key deposit a landlord can collect is a refundable one. So her failure to return the key deposit is a contravention of the Act. She retained the deposit and was not entitled to do so.
14. Therefore, an order shall issue requiring the Landlord to pay to the Tenants \$200.00 for the refundable key deposit.
15. The Tenants incurred no costs for filing the application so no order for costs shall issue.
16. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

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It is ordered that:

1. The Landlord shall pay to the Tenants \$2,200.00 for compensation owing pursuant to s. 48.1 and for the return of the refundable key deposit.
2. The Landlord shall pay the Tenants the full amount owing by September 18, 2023.
3. If the Landlord does not pay the Tenants the full amount owing by September 18, 2023, the Landlord will owe interest. This will be simple interest calculated from September 19, 2023 at 6.00% annually on the balance outstanding.

September 7, 2023

Date Issued

Ruth Carey

Vice Chair, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor Toronto
ON M7A 2G6

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