



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

Citation: CAPARACHIN v PEDLAR, 2023 ONLTB 45628

Date: 2023-06-23

File Number: LTB-T-061770-22

In the matter of: BASEMENT, 299 WEST 5TH STREET HAMILTON
ON L9C3P2

Between: CHRIS PEDLAR Landlord

And

DANITZA CAPARACHIN Tenant

DANITZA CAPARACHIN (the 'Tenant') applied for an order determining that CHRIS PEDLAR (the 'Landlord') did not use the Tenant's deposit to pay for the last rental period of the tenancy and did not return the deposit to the Tenant.

This application was heard by videoconference on May 11, 2023. Only the Tenant attended the hearing. As of 1:30 p.m., 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 Landlord's evidence.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must return the last month's rent deposit to the Tenant.

Rent deposit not applied to last month of tenancy

2. The Tenant testified that the tenancy began on May 1, 2021 for a fixed term ending April 30, 2022.

3. In early November 2022, the Tenant had a family emergency and advised the Landlord that she needed to terminate the tenancy via text message. The Tenant requested to terminate December 1, 2021 and that her last payment be for November and a return of her deposit. The Landlord replied on November 4, 2021 that he left her an N9 Notice for her to complete so that he knows the date she was leaving, so he could retrieve the keys and to try to re-rent the unit. The Tenant gave an N9 Notice to terminate the tenancy on November 6, 2021 with a termination date of November 29, 2021.
4. On November 8, 2021, the Tenant sent a text message requesting the return of her deposit. On November 10, 2021, the Landlord replied that once she has moved out, returned the

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keys, and cleaned, he will inspect the unit and will discuss returning any unused portion of the rental agreement. The Landlord also stated that there were many interested renters wanting to see the Tenant's room and asked her how much notice she needed for showings.

5. On November 28, 2021, the Tenant returned the keys. The Landlord noticed damages to the unit and advised the Tenant that the Tenant owes rent to the end of January, and compensation for the damages. Submitted into evidence were text messages outlining the above conversation.
6. Section 44 of the *Residential Tenancies Act* (the 'Act') states that a notice to terminate a fixed term tenancy shall be given at least 60 days before the expiration date specified in the tenancy agreement, to be effective on that expiration date.
7. Section 88 of the Act states that:

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.[emphasis added].
8. I find that the Landlord did not use the Tenant's rent deposit to pay for the last rental period of the tenancy and did not return the deposit to the Tenant. This is prohibited by the *Residential Tenancies Act, 2006* (the 'Act').

9. The Tenant did not provide sufficient notice to the Landlord to terminate the tenancy. However, in consideration of the text messages exchanged between the parties, I find that the Landlord agreed to terminate the tenancy early. I base this on the Landlord's text message on November 4, 2021 that the Tenant provide him with an N9 Notice so that he knows what date she was leaving. This text message was in reply to the Tenant's explicit request to apply her last month's rent to November. In my view, the Landlord's reply demonstrates he was consenting to the vacate date.
10. Further, the actions of the Landlord demonstrate that he intended for the tenancy to terminate early. The November 10, 2021 text messages showed that he intended to discuss returning any unused portion of the rent and he was already trying to show the unit. In my view, the Landlord decided to change his mind about terminating the tenancy early when he saw damage. The appropriate remedy is to seek an application for damages, and not to withhold the deposit. As such, I find that the tenancy ended by agreement for the termination date of November 29, 2021. Therefore, the Tenant is entitled to the return of her last month's rent deposit.

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It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$478.00. This amount represents:
 - \$425.00 for the last month's rent deposit.
 - \$53.00 for the cost of filing the application.
2. If the Landlord does not pay the Tenant the full amount owing by July 4, 2023, the Landlord will owe interest. This will be simple interest calculated from July 5, 2023 at 6% annually on the balance outstanding.

June 23, 2023

Date Issued

Camille Tancioco

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.