



Order under Section 135 Residential Tenancies Act, 2006

Citation: Trivedi v Matta, 2023 ONLTB 39814

Date: 2023-05-29

File Number: LTB-T-076822-22
(formerly TST-19920-21)

In the matter of: 72 Harwood Avenue North Ajax
ON L1T4W4

Between: Tejas Trivedi Tenant

And

Amit Matta Landlord

Your file has been moved to the Landlord and Tenant Board's new case management system, the Tribunals Ontario Portal. Your new file number is LTB-T-076822-22

Tejas Trivedi (the 'Tenant') applied for an order determining that Amit Matta (the 'Landlord') has collected or retained money illegally.

This application was heard by videoconference on January 22, 2023 at 9:00 a.m.

The Landlord and the Tenant attended the hearing.

Determinations:

1. This is a T1 Tenant Application for a Rebate of Money the Landlord Owes where the Tenant alleges that they paid the Landlord an illegal charge of \$4,400.00 on August 25, 2020.
2. Uncontested submissions by the Tenant were that he and his brother-in-law rented and moved into the rental unit with their families on April 25, 2020. The tenancy agreement was for one year.
3. The monthly rent was \$2,200.00 and was payable on the 25th day of each month.

4. Due to family issues the Tenant informed the Landlord on August 24, 2020 that he was “breaking the lease” and moving out of the rental unit on August 25, 2020.
5. The Tenant submitted a email chain, dated August 24, 2020 and August 25, 2020, between himself and the Landlord, where the Tenant asserts that he has vacated the rental unit and “I will not be in the lease anymore after 25th October, 2020.” Further discussion in the email chain indicates that the Tenant’s family will be staying in the rental unit for 2 months, until October 24, 2020.
6. The Tenant’s own submissions, and as confirmed by the Landlord, are that his family remained in the rental unit until and vacant possession of the rental unit was returned to the Landlord on October 24, 2020.
7. The Tenant submitted proof of e-transfer to the Landlord of \$2,200.00 on August 24, 2020 and \$2,200.00 on August 25, 2020. The Landlord confirmed that he received both payments.
8. The Landlord confirmed that he was hold a last month’s rent deposit of \$4,400.00
9. The Landlord confirmed that the rental unit was re-rented on December 1, 2020

Residential Tenancies Act 2006, (the “Act”)

10. Subsection 3(1) of the Act says that the Act applies with respect to rental units in residential complexes, despite any Act and despite any agreement or waiver to the contrary. This provision means that landlords and tenants cannot contract out of their obligations under the Act.

11. Section 106 of the Act states the following;

“(1) 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.

Amount of rent deposit

(2) The amount of a rent deposit shall not be more than the lesser of the amount of rent for one rent period and the amount of rent for one month.”

12. In this case, there is also no dispute that the Tenants paid the Landlord 2 month’s rent or \$4,400.00 as a last month’s rent deposit.
13. The Landlord is not legally entitled to retain the 2nd months rent deposit the Tenants paid in advance for the rental period September 25, 2020 to October 24, 2020.
14. Accordingly, the Landlord shall be ordered to pay the Tenants \$2,200.00.

15. In this case, although a fixed term tenancy, one of the Tenants individually decided to try to end the tenancy by providing the Landlord with 60 days' written notice. There is no dispute that the sole Tenant provided the Landlord with written notice on August 24, 2020, and that he and his family left the rental unit. However, the Tenant cannot individually terminate the rental agreement.
16. Accordingly I am of the opinion that the lease was not properly terminated.
17. Section 88 (2) of the Act applies when a Tenant abandons or vacates a rental unit without notice. This section states the following:

“Arrears of rent when a tenant abandons or vacates without notice.

If the tenant abandoned or vacated the rental unit without giving any notice, arrears of rent are owing for the period that ends on the earliest termination date that could have been specified in a notice of termination had the tenant, on the date that the landlord knew or ought to have known that the tenant had abandoned or vacated the rental unit, given notice of termination in accordance with section 47, 96 or 145, as the case may be.”
18. In this case the Tenant may have left the rental unit on August 25, 2020 however his family remained until October 25, 2020 and as confirmed by the Landlord returned vacant possession to the Landlord on that date without proper notice.
19. Furthermore the e-transfers that were sent to the Landlord on August 24 and August 25, 2020 do not specify to which months they are to be applied; the wording of the message is “Penalty Amount”. In this case it appears that Landlord applied one month rent to the August 25 to September 24, 2020 timeframe, applied \$2,200.00 of the last months rent deposit to the September 25 to October 24, 2020 timeframe, as the last month of tenancy, and accepted the 2nd email transfer for the October 25 to November 25, 2020 timeframe, the “penalty”, at which time, according to his testimony, he attempted to mitigate lose for himself and the Tenants by re-renting the rental unit for December 1, 2020.
20. Accordingly, I will not be awarding the Tenant 50%, or \$2,200.00 of \$4,400.00 claimed in this application

It is ordered that:

1. The Landlord shall pay the Tenant the sum of \$2,200.00 that the Landlord was not legally able to request or retain.
2. The Landlord shall also pay to the Tenant the sum of \$53.00 for the cost of filing the application.

3. The total amount the Landlord shall pay to the Tenant is \$2,253.00
4. If the Landlord do not pay the Tenant the full amount owing by June 16, 2023 the Landlord will owe interest. This will be simple interest calculated from June 17, 2023 at 6.00% annually on the outstanding balance.
5. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

June 5, 2023

Date Issued

Peter Pavlovic

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.