

Order under Section 135
Residential Tenancies Act, 2006

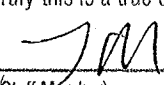
File Number: TST-89055-17

In the matter of: 1907, 90 STADIUM ROAD
TORONTO ON M5V3W5

Between: Josh Bourke

I hereby certify this is a true copy of the Order
(Name of Document)

Tenant


(Signature of Staff Member)

and

Emre Kamcili

DEC 04 2017

Landlord and Tenant Board

Landlord

Josh Bourke (the 'Tenant') applied for an order determining that Emre Kamcili (the 'Landlord') has collected or retained money illegally.

This application was heard in Toronto on December 1, 2017.

The Tenant attended the hearing with his legal counsel, C. Cheung ("CC"). The Landlord's legal representative, F. Zeki-Gray ("FZG") also attended the hearing.

Preliminary Issue:

1. The Landlord's legal representative, FZG, requested an adjournment of the application to allow the Landlord, who lives in Turkey, the opportunity to investigate whether or not the Landlord had illegally retained money through his real estate agent.
2. This request for an adjournment was denied. The Notice of Hearing was sent out on September 26, 2017, affording the Landlord ample opportunity to investigate this matter and to retain a legal representative.
3. FZG reiterated that the Landlord needed an adjournment as she had only been retained by the Landlord yesterday. She indicated that the Landlord is a "very busy man" who lives abroad and should be afforded the opportunity to investigate what occurred.
4. FZG's multiple requests for an adjournment were denied: this matter concerns a 12-month tenancy which is now over in which the Tenant alleges he paid the equivalent of 14 months of rent. The Landlord had sufficient time to follow-up the Tenant's allegations with his financial institutions and agents and to retain a legal representative. The fact that he failed to exercise due diligence in doing so is not a reasonable basis for adjourning this matter – which is reasonably straightforward.

Determinations:

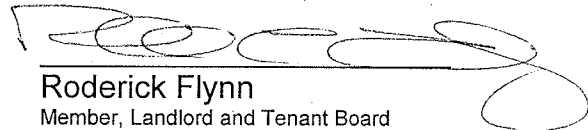
1. The residential complex is a two bedroom condominium.
2. The Tenant leased the unit from May 1, 2016 to April 30, 2017 and has now vacated it. The tenancy is over.
3. The monthly rent for the unit was \$2,425.00/month.
4. The Tenant testified that during April 2017, the Landlord's authorized agent required the Tenant to provide a cheque in the amount of \$7,275.00 - equivalent to three months of rent for the purposes of: a security deposit (1 month = \$2,425.00); the first month of rent (\$2,425.00); the last month of rent (\$2,425.00).
5. The Tenant testified that on or about April 23, 2016, he provided the Landlord's agent with a cheque in the amount of \$7,275.00 (the equivalent of 3 months of rent for the unit) ("the original cheque") as requested.
6. The Tenant, admittedly by his own inadvertence, wrote the Landlord 11 further post-dated cheques –each in the amount of \$2,425.00 – for the monthly rent for the unit.
7. The Tenant submitted into evidence his banking records showing that the original cheque and the 11 subsequent cheques – were negotiated by the Landlord.
8. The Tenant only resided in the unit for 12 months. The Tenant, however, paid 14 months of rent.
9. The Tenant therefore requested that the Landlord refund to him two months of rent equivalent to the security deposit – which cannot be required under the *Residential Tenancies Act, 2006* ("the Act") – and the one additional month of rent which he overpaid the Landlord.
10. FZG argued that the Tenant had provided at least one extra month of rent for the unit through his own inadvertence.
11. The fact that the Tenant may have made a mistake in the number of rent payments he made does not situate the Landlord to simply retain these funds.
12. The Landlord must return to the Tenant the amount of \$2,425.00 which was collected as a security deposit – a collection which is prohibited by the Act.
13. The Landlord must also return the one month of rent which was sent to the Landlord by the Tenant by virtue of a mistaken overpayment in the amount of \$2,425.00.
14. The Landlord must also pay interest on the last month rent deposit collected. At the hearing, FZG conceded that this amount had not been paid.

15. CC, on behalf of the Landlord, requested costs beyond the normal course, in view of his considerable efforts on behalf of the Landlord. At the hearing, I advised the Tenant and CC that I did not believe that this was a case for an award of costs beyond the Board's usual practice to award a successful party the filing fee.

It is ordered that:

1. The Landlord shall pay to the Tenant the sum of \$4,995.50. This amount represents \$4,850.00 -two months of rent – one collected as a "security deposit" contrary to the Act and an overpayment of one month of rent; and \$145.50 for interest on the last month's rent deposit.
2. The Landlord shall also pay to the Tenant \$50.00 for the cost of filing the application.
3. The total amount the Landlord owes to the Tenant is \$5,045.50.
4. If the Landlord does not pay the Tenant the full amount owing by December 15, 2017, the Landlord will owe interest. This will be simple interest calculated from December 16, 2017 at 2.00% 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.

December 4, 2017
Date Issued


Roderick Flynn
Member, Landlord and Tenant Board

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