

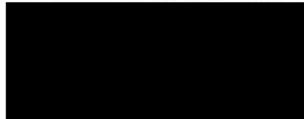
MAR 28 2019

Amended Order
Order under Section 135
Residential Tenancies Act, 2006

File Number: TST-64688-15-RV-AM

In the matter of: 42 DELAWARE AVENUE
TORONTO ON M6H2S7

Between:



and

Arlene Lee a.k.a. Ashleigh Lee

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

(Signature of Staff Member)

MAR 27 2019

Landlord and Tenant Board

Tenants

Landlord

Review Order

The Tenants applied for an order determining that **Arlene Lee a.k.a. Ashleigh Lee** (the 'Landlord') has collected or retained money illegally.

The Tenants also applied for an order determining that the Landlord harassed, obstructed, coerced, threatened or interfered with them, entered the rental unit illegally and substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of their household.

The Tenants also applied for an order determining that the Landlord failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards.

This application was heard over more than 7 dates in Toronto between October 20, 2015 and the date of the order.

The Tenants, and their legal representative, B. Ries and students, and the Landlord, and her legal representative, T. Walker, attended the hearing.

On March 22, 2019, the Board received a request from the Landlord for a clerical amendment. Upon reviewing the request, I am satisfied that the order contains a clerical error. This amended order is issued to correct a clerical error in the original order issued on March 15, 2019.

Determinations:

1. An original order issued on May 4, 2016 was reviewed by the Tenants. The request for review was granted and an interim order, TST-64688-15-RV-IN issued on January 4, 2017.
2. Member Rodrigues was seized of the hearing de novo, but became functus officio at the Board in April, 2018. The parties agreed that a new member could resume the hearing and listen to the hearing tapes of the previous testimony and that has been done.
3. The review order issued on January 4, 2018 determined the central issue of the Board's jurisdiction and sets out the factual context for the applications.

T1 application

4. Given the determination that the Board has jurisdiction, I find that the Landlord required and collected pre-payment of rent in excess of the last month's rent allowed pursuant to the Act.
5. The rent was advertised as \$1,890.00 per month. The "Booking Agreement" set out a front-loaded schedule of payments, of which the Tenants made the first two, before agreeing to terminate the tenancy on December 23, 2014.
6. The Tenants acknowledge that the lawful rent for their tenancy from August 21, 2014 through to the termination of the tenancy was \$7,746.41, and I agree with that calculation.
7. The Landlord has acknowledged receiving a total of \$13,800.00 in payments from the Tenants for rent, and I find that the Landlord therefore has received and must return to the Tenants \$6,053.59 in excess rent collected in contravention of the Act.
8. The Landlord also collected a damage and key deposit in the amount of \$500.00, which they paid but did not receive back from the Landlord at the termination of the tenancy. The damage deposit is not a lawful payment pursuant to the Act, and the Landlord has therefore received and must return to the Tenants the amount of \$500.00.
9. The testimony of the Tenants regarding extra charges they had paid was unclear, and it was apparent that their memories of the details of extra charges had faded.
10. The Tenants have also not made out their claim for pre-judgement interest on the amount wrongly retained by the Landlord and I find that no interest is payable, except for that ordered.
11. T2 Application
12. The testimony from the Tenants and the emails from the Landlord to the Tenants that were produced and spoken to by the Tenants, supports a finding, on a balance of probabilities, that the Landlord engaged in a course of conduct that was clearly unwelcome to the Tenants, and harassed them and interfered with their reasonable enjoyment of the rental unit.

13. Examples of the Landlord's actions which amount to harassment from the testimony of the Tenants are: more than eight threats of immediate eviction contained in emails starting in September until the Tenants ultimately agreed to terminate the tenancy; criticizing and admonishing the Tenants for personal habits regarding their personal spending, sleeping habits, and behaviour; and requiring the Tenants to act as interpreters for her with other tenants; and using the Tenants entering and exiting their unit as opportunities to harass and berate them.
14. The Tenants also described their concern that the Landlord was entering their rental unit without notice to them. The Tenants did not have recollection of the specific times and dates these entries occurred, but some entries are supported by emails which date issues the Landlord says she observed in the rental unit when she had not previously provided legal notice of entry.
15. The Landlord testified that she was not aware that the arrangement she had with the Tenants was a legal tenancy pursuant to the Act, and treated them as paying guests in her home. I find that the Tenants have not established, on a balance of probabilities, that illegal entries occurred for which they should receive compensation.
16. I find that the Tenants have established, on a balance of probabilities, that the Landlord interfered with their reasonable enjoyment of the rental unit and are deserving of a rent abatement to compensate him for some loss of reasonable enjoyment of the rental unit.
17. An abatement is a contractual remedy. It recognises the idea that a tenant is paying rent for a bundle of goods and services and if the tenant is not receiving everything being paid for then he or she is entitled to abatement proportional to the difference between what is being paid for and what is being received. It is also necessary, pursuant to section 16 of the Act, for a tenant to take reasonable steps to minimize any losses arising from the circumstances.
18. I find that the appropriate abatement in these circumstances, considering that the Tenants found the harassment so severe they chose to terminate the tenancy early, but that they were able to use the unit for its primary purpose, to be 10% of the monthly rent of \$1,890.00 per month, or \$189.00 per month from September 11, 2014 to the termination of the tenancy on December 23, 2014. (103 days x \$6.21/day = \$639.63)
19. The Tenants' were unable to satisfy me, on a balance of probabilities, that the Landlord breached the obligation of maintenance, and in particular, by the provision of heat. The Tenants' recollections of the issues with heat were not complete and lacked detail. The Landlord testified that she kept the heat at a reasonable temperature and that the Tenants opened windows so they could smoke in the rental unit. The Tenants' T6 application is therefore dismissed.

It is ordered that:

1. The Landlord shall pay to the Tenants the sum of \$6,553.59. This amount represents \$6,053.59 in excess rent, and \$500.00 unlawfully collected for a damage and key deposit.
2. The Landlord shall also pay to the Tenants the sum of \$639.63 in abatement of rent.
3. If the Landlord does not pay the Tenants the full amount owing of \$7,193.22 by March 31, 2019, the Landlord will owe interest. This will be simple interest calculated from April 1, 2019 at 3.00% annually on the outstanding balance.
4. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

March 15, 2019

Date Issued by Nancy Henderson



March 27, 2019

Date Amended

Toronto South-RO
79 St. Clair Avenue East, Suite 212, 2nd Floor
Toronto ON M4T1M6

Egya Sangmuah
Vice-Chair, Landlord and Tenant Board

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