

Order under Section 135 Residential Tenancies Act, 2006

File Number: TST-02826-19

In the matter of:

88 HUMBER BLVD TORONTO ON M6M

Between:

[Redacted]

and [Redacted]

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

DB

(Signature of Staff Member)

Tenants

JUN 25 2019

Landlord and Tenant Board

Landlord

[Redacted] Wellwood and [Redacted] Wellwood (the 'Tenants') applied for an order determining that [Redacted] (the 'Landlord') has collected or retained money illegally.

This application was heard in Toronto on May 15, 2019.

The Tenants, the Tenants' representative, K. Farrell, the Landlord's agent, [Redacted] and the Landlord's representative, A. Algieri, attended the hearing.

Determinations:

1. The Tenants claim that the Landlord raised the rent on September 1, 2009 from \$600.00 a month to \$900.00, and then again on September 1, 2012 from \$900.00 to \$1,100.00. The Tenants also claim that the Landlord has not paid interest on the Tenant's \$600.00 rent deposit, which the Tenants paid when the tenancy began in 1992.
2. The Tenants' claim that the Landlord raised the rent illegally is not barred by subsection 135(4) of the Residential Tenancies Act, 2006 (the 'Act'). In Price v. Turnbull's Grove Inc., [2007] O.J. No. 2177 (C.A.), the Court of Appeal for Ontario determined that a rent increase that is collected without first giving a proper notice of rent increase is void, and is therefore a legal nullity. As such, the Court of Appeal determined that the one-year limitation period under subsection 135(4) is not applicable, as a limitation period cannot apply to a legal nullity.
3. Furthermore, despite predecessor legislation, the Act governs residential tenancies in the Province of Ontario. The Board may therefore exercise jurisdiction over the Tenants' application.
4. However, subsection 17(1) of the Ontario Real Property Limitations Act imposes a six year limitation period on the Tenants' claim. The subsection reads: "No arrears of rent, or of interest in respect of any sum of money charged upon or payable out of any land or rent, or in respect of any legacy, whether it is or is not charged upon land, or any damages in respect of such arrears of rent or interest, shall be recovered by any distress or action but within six years".


5. The Tenants' claim for interest on the rent deposit, and for rent collected illegally, is therefore limited to the six year period before the Tenants filed their application with the Board on January 21, 2019.
6. The Landlord collected rent in excess of the amount allowed by the Act. The Landlord did not serve the Tenants a notice of rent increase to raise the rent from \$900.00 a month to \$1,100.00 a month, effective September 1, 2012. However, because of the six year limitation period under the *Real Property Limitations Act*, the Tenants' claim for excess rent is limited to rent collected starting February 1, 2013.
7. The total excess rent the Landlord collected from the Tenants from February 1, 2013 to May 31, 2019 is \$12,800.00.
8. The Landlord did not pay interest on the Tenants' \$600.00 rent deposit. The Tenants' claim for interest is limited to the period 2013 to September 1, 2018.
9. The Landlord shall pay to the Tenants \$51.20 for interest owing on the Tenants' \$600.00 rent deposit for the period September 1, 2013 to August 31, 2018.

It is ordered that:

1. **The Landlord shall pay to the Tenants the sum of \$12,800.00. This amount represents \$ excess rent the Landlord collected from September 1, 2013 to May 31, 2019.**
2. The Landlord shall also pay to the Tenants \$51.20 for interest owing on the Tenants' rent deposit for the period September 1, 2013 to August 31, 2018.
3. The Landlord shall also pay to the Tenants \$50.00 for the cost of filing the application.
4. The total amount the Landlord owes to the Tenants is \$12,901.20.
5. If the Landlord does not pay the Tenants the full amount owing by July 6, 2019, the Landlord will owe interest. This will be simple interest calculated from July 7, 2019 at 3.00% annually on the outstanding balance.
6. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

June 25, 2019
Date Issued

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



Harry Cho
Member, Landlord and Tenant Board

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