



Order under Section 69
Residential Tenancies Act, 2006

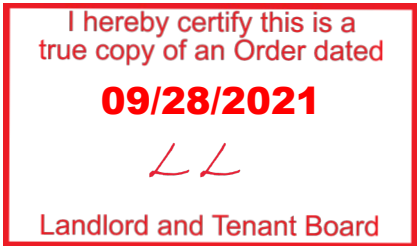
File Number: EAL-90587-20

In the matter of: 5, 225 PRESLAND ROAD
OTTAWA ON K1K2B7

Between: Albano Moreira
Supra Holdings Inc.

and

Meagan Berndt



Landlords

Tenant

Albano Moreira and Supra Holdings Inc. (the 'Landlords') applied for an order to terminate the tenancy and evict Meagan Berndt (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. (L1 application)

Albano Moreira and Supra Holdings Inc. (the 'Landlords') applied for an order to terminate the tenancy and evict Meagan Berndt (the 'Tenant') because she, another occupant of the rental unit or someone he permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlords or another tenant. The Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date. (L2 application)

This application was heard by way of video conference on September 15, 2021. The Landlord, Tyler Wilgress (owner of Supra Holdings Inc.), the Landlords' Legal Representative, Al Martin and the Tenant attended the hearing. The Tenant spoke to Tenant Duty Counsel prior to the commencement of the hearing.

Determinations:

Preliminary Issues

Who is the Landlord?

1. The Landlords' Representative submitted that the Albano Moreira sold the rental property to Supra Holdings Inc. on October 6, 2020. The Landlords' Representative requested to add Supra Holdings Inc. to the application because arrears of rent are owed to the former Landlord, Albano Moreira and to the new Landlord Supra Holdings Inc. I find it appropriate based on the Landlords' Representative's submissions to add the new Landlord to the application. The application is amended accordingly.

Section 82 Issues

2. The Tenant did not file her s.82 issues in accordance with the Board's Rules, and as set out in the Notice of Hearing. Her disclosure package was filed 6 days before hearing instead of 7 days. As the Tenant's disclosure package was not filed within 7 days, I found she could not raise her s.82 issues at the hearing. This finding does not preclude the Tenant from having her issues addressed by the Board. It means if the Tenant wants to have her issues addressed by the Board, she can file her own application.

L1 Application

3. The Tenant has not paid the total rent the Tenant was required to pay for the period from May 1, 2020 to September 30, 2021. Because of the arrears, the Landlord served a Notice of Termination effective May 26, 2020.
4. The Tenant is in possession of the rental unit.
5. The lawful monthly rent as of June 1, 2020 is \$1,014.38.
6. The Landlord collected a rent deposit of \$975.00 from the Tenant and this deposit is still being held by the Landlord.
7. Interest on the rent deposit is owing to the Tenant for the period from January 31, 2018 to May 26, 2020.
8. The Tenant paid \$823.26 after the application was filed.

Lawful Monthly Rent

9. The Tenant testified that she never received the notice of rent increase for June 1, 2020. As such, it is her position that the lawful monthly rent is \$992.55 and not \$1,014.38 as stated by the Landlords' Legal Representative.
10. The Landlords' Representative submitted that as per the interim order issued by the Board on January 20, 2021, the Tenant agreed with the quantum of arrears owing as per the L1/L9 update sheet. The Landlords' Representative submitted that the monthly rent of \$1,014.38 was indicated on that L1/L9 update sheet and the calculations were based on that amount of monthly rent.
11. The Tenant confirmed that at the Board's Case Management Hearing she agreed to the amounts indicated in the L1/L9 update sheet. The Tenant testified that on the day of the Case Management Hearing, she might not have fully paid attention to the amounts indicated in the L1/L9 update sheet.
12. The Landlords' Representative refuted the Tenant's testimony about her not paying attention to the L1/L9 update sheet during the Case Management Hearing. He submitted that on the day of the Case Management Hearing, all parties, along with the Dispute

Resolution Office went through the L1/L9 update sheet together to ensure the accuracy of the calculations.

13. On a balance of probabilities, I find the lawful monthly rent as of June 1, 2020 is \$1,014.38. In making this finding, I considered the interim order issued by the Board on January 20, 2021 which clearly states the Tenant did not dispute the quantum calculated in the L1/L9 update sheet. Further, I considered the Tenant's evidence that at the Case Management Hearing, she did agree to the amounts calculated in the Landlords' L1/L9 update sheet.

Relief from Eviction

14. The Tenant testified that she has not paid the monthly rent owed to the Landlords for three reasons. First, she withheld rent because the Landlords did not respond to her request for maintenance repairs. Secondly, the Tenant believes the Landlords' conduct constitutes harassment. Thirdly, the Tenant's monthly income was impacted by the COVID-19 pandemic, resulting in financial strain. The Tenant testified that her household income is approximately \$1,832.00/month (Child Tax Credit \$432.00 + spouse's EI-\$1,800.00-\$400.00 monthly child support payments). The Tenant testified that she and her spouse have financial obligations other than the monthly rent but did not provide details as to the nature of the other monthly expenses.
15. The Tenant claimed that she was not aware that she had to pay her monthly rent every month despite her maintenance concerns and her concerns about the Landlords' conduct. However, I note, in the interim order issued by the Board on January 20, 2021, it is indicated that the Tenant understood her obligation to pay the lawful monthly rent on or before the first day of each month for which rent is due.
16. The Tenant testified that if she and her family were evicted, they would have no place to go, despite having family in the area. The Tenant lives with her spouse and 3.5-year-old child. She has been looking for alternate housing but to date, her attempts have been unsuccessful. The Tenant advised that since before her child was born, she has been on a waitlist for subsidize housing.
17. The Tenant testified that she wants to stay in the rental unit. She is prepared to pay the monthly rent plus \$50.00 a month towards arrears. At a rate of \$50.00/month, it would take the Tenant approximately 331 months to repay the monies owed to the Landlord. The Tenant confirmed that she has not reached out to services in her community for financial assistance to repay the arrears of rent.
18. The Landlords' Representative submitted that the Tenant's proposed repayment plan is not reasonable. The Landlords' Representative submitted that the Landlords would be prejudice having to wait 331 months to receive the monies owed. The Landlords' Representative submitted that the Landlords are seeking a standard eviction order.
19. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the

Act. In making this finding, I considered the fact the Tenant was aware of her obligation to pay the monthly rent in full on or before the day which rent was due. This was agreed upon by the Tenant at the Board's Case Management Hearing and stipulated in the Board issued interim order of January 20, 2021. The Tenant's evidence suggests that she can afford to pay the monthly rent but chose not to pay it to the Landlords. Further, I find the arrears of rent owed to the Landlord are significant and the Tenant's proposed repayment plan of approximately 331 months is not reasonable. A 331-month payment plan would prejudice the Landlords as it would take approximately 27 years for them to recoup the monies owed.

L2 Application

20. At the hearing, the Landlords' Representative sought the consent of the Board to withdraw the Landlord's L2 application. The Board consented to this request.

It is ordered that:

L1 Application

1. Unless the Tenant voids the order as set out below, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before October 9, 2021.
2. The Tenant shall pay to the Landlord \$14,992.97*, which represents the amount of rent owing and compensation up to September 28, 2021, less the rent deposit and interest the Landlord owes on the rent deposit.
3. The Tenant shall also pay to the Landlord \$32.63 per day for compensation for the use of the unit starting September 29, 2021 to the date the Tenant moves out of the unit.
4. The Tenant shall also pay to the Landlord \$190.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing* on or before October 9, 2021, the Tenant will start to owe interest. This will be simple interest calculated from October 10, 2021 at 2.00% annually on the balance outstanding.
6. If the unit is not vacated on or before October 9, 2021, then starting October 10, 2021, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord, on or after October 10, 2021.
8. If the Tenant wishes to void this order and continue the tenancy, the Tenant must pay to the Landlord or to the Board in trust:
 - i) \$16,589.37 if the payment is made on or before September 30, 2021, or
 - ii) \$17,603.75 if the payment is made on or before October 9, 2021**.If the Tenant does not make full payment in accordance with this paragraph and by the

appropriate deadline, then the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

9. The Tenant may make a motion to the Board under subsection 74(11) of the Act to set aside this order if they pay the amount required under that subsection on or after October 10, 2021 but before the Sheriff gives vacant possession to the Landlord. The Tenant is only entitled to make this motion once during the period of the tenancy agreement with the Landlord.

L2 Application

10. The L2 application having been withdrawn, the Board's file is closed.



September 28, 2021
Date Issued

Dawn Wickett
Member, Landlord and Tenant Board

Eastern-RO
255 Albert Street, 4th Floor
Ottawa ON K1P6A9

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

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on April 10, 2022 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

- * Refer to section A on the attached Summary of Calculations.
- ** Refer to section B on the attached Summary of Calculations.

**Schedule 1
SUMMARY OF CALCULATIONS**

File Number: EAL-90587-20

A. Amount the Tenant must pay if the tenancy is terminated:

Reasons for amount owing	Period	Amount
Arrears: (up to the termination date in the Notice of Termination)	May 1, 2020 to May 26, 2020	\$848.43
Less the amount the Tenant paid to the Landlord		-\$823.26
Plus compensation: (from the day after the termination date in the Notice to the date of the order)	May 27, 2020 to September 28, 2021	\$15,988.70
Less the rent deposit:		-\$975.00
Less the interest owing on the rent deposit:	January 31, 2018 to May 26, 2020	-\$45.90
Amount owing to the Landlord on the order date: (total of previous boxes)		\$14,992.97
Additional costs the Tenant must pay to the Landlord:		\$190.00
Plus daily compensation owing for each day of occupation starting September 29, 2021:		\$32.63 (per day)
Total the Tenant must pay the Landlord if the tenancy is terminated:		\$15,182.97, + \$32.63 per day starting September 29, 2021

B. Amount the Tenant must pay to void the eviction order and continue the tenancy:

1. If the payment is made on or before September 30, 2021:

Reasons for amount owing	Period	Amount
Arrears:	May 1, 2020 to September 30, 2021	\$17,222.63
Less the amount the Tenant paid to the Landlord:		-\$823.26
Additional costs the Tenant must pay to the Landlord:		\$190.00
Total the Tenant must pay to continue the tenancy:	On or before September 30, 2021	\$16,589.37

2. If the payment is made after September 30, 2021 but on or before October 9, 2021:

Reasons for amount owing	Period	Amount
Arrears:	May 1, 2020 to October 31, 2021	\$18,237.01
Less the amount the Tenant paid to the Landlord:		-\$823.26
Additional costs the Tenant must pay to the Landlord:		\$190.00
Total the Tenant must pay to continue the tenancy:	On or before October 9, 2021	\$17,603.75