

## Raja v Sharpe, 2021 CanLII 79180 (ON LTB)

Date: 2021-03-30  
File number: EAL-91864-20  
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### Order under Section 69 Residential Tenancies Act, 2006

**File Number:** EAL-91864-20



**In the matter of:** 196 NORICE STREET  
NEPEAN ON K2G2Y4

**Between:** Kanwardev Raja Singh Bal Landlord

**and**

Linda Sharpe Tenants  
Shawn Sharpe

Kanwardev Raja Singh Bal (the 'Landlord') applied for an order to terminate the tenancy and evict Linda Sharpe and Shawn Sharpe (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on March 2, 2021.

The Landlord and the Tenants attended the hearing.

#### **Determinations:**

1. The Landlord and the Tenants agreed about many of the material facts.
2. The Tenants have not paid the total rent the Tenants were required to pay for the period from March 1, 2020 to March 31, 2021. Because of the arrears, the Landlord served a Notice of Termination effective September 17, 2020.
3. The Tenants are in possession of the rental unit.

4. The lawful monthly rent was \$1,700.00 until it increased to \$1,737.40 effective December 1, 2020.

#### Effect of assignment in bankruptcy

5. The parties disagreed about the effect of the Tenants' assignment in bankruptcy, although they did agree that this assignment occurred on November 4, 2020.

6. Pursuant to [section 69.1\(3\)](#) of the *Bankruptcy and Insolvency Act R.S.C., 1985, c. B-3* (the 'BIA'), the Tenants' assignment stayed the Landlord's L1 Application with respect to the arrears subject to the assignment.

7. What the parties disagreed about were the arrears the Landlord was entitled to claim following the assignment in bankruptcy. The Landlord sought to calculate the arrears outstanding beginning November 5, 2020 using a pro-rated rent for November 2020 whereas the Tenants' position was that all of November's rent was included in their bankruptcy proceeding.

8. To resolve this issue, I first looked to the Landlord's N4 Notice of Termination. The N4 itself is dated September 2, 2020 and claims that the Tenants owe the Landlord \$8,862.60 after paying \$3,037.40 of the \$11,900.00 rent due for the period March 1, 2020 to September 30, 2020. This reflects the fact that the entire rent for the month of September 2020 is due on the first of the month, according to the tenancy agreement between the parties. The parties agreed and I accept that the rent is due on the first of the month.

9. In my view, by the same logic, the entire rent for November 2020 was due and owing when the Tenants made their assignment in bankruptcy on November 4, 2020. What follows from this is that the stay under the BIA prevents me from considering arrears for the period November 5, 2020 to November 30, 2020 since the rent came due on November 1, 2020. All arrears for the period November 1, 2020 to November 30, 2020 are captured by the assignment in bankruptcy.

10. Incidentally, I note that this appears to be what the Tenants contemplated when their trustee indicated on the Form 79, Statement of Affairs (Non-Business Bankruptcy), that the amount owing to the Landlord was \$12,000.00. The Landlord's L1/L9 update sheet, which includes a pre and post-bankruptcy ledger, indicates that the Landlord would have been entitled to claim \$12,262.60 for the period March 1, 2020 to November 30, 2020 but for the assignment in bankruptcy. If Statement of Affairs had been pro-rated, as the Landlord suggests would be appropriate, the amount included on Form 79 ought to have been significantly less:  $\$10,786.16 (8 \times \$1,700.00 + \$1,700 \times 12/365 \times 4 - \$3,037.40)$ .

11. The Tenants paid the Landlord \$5,550.00 after the Landlord filed the application and after their assignment in bankruptcy.

12. I therefore find that the Tenants owe the Landlord \$1,399.60 ( $4 \times \$1,737.40 - \$5,550.00$ ), which represents the outstanding rent for the period December 1, 2020 to March 31, 2020.

13. The Tenants also owe the Landlord \$186.00 for the cost of filing the application.

#### Relief from eviction

14. The parties generally agreed that relief from eviction would be appropriate if the Tenants paid April 2021's rent on time and if the Tenants could pay the amount outstanding on or before April 30, 2021. Again, their disagreement was about the amount outstanding. In my view, it is not unfair to the Landlord in these circumstances to provide relief from eviction on similar terms to those proposed by the parties, with a brief extension of the deadline to pay April 2021's rent due to the date of issuance of this order.

**It is ordered that:**


1. The Landlord's application for eviction is denied on the condition that:

A) The Tenants shall pay to the Landlord the rent for April 2021 in full and on time on or before April 15, 2021.

B) The Tenants shall pay to the Landlord \$1,585.60, which represents the arrears of rent (\$1,399.60) and costs (\$186.00) for the period December 1, 2020 to March 31, 2021, on or before April 30, 2021.

2. If the Tenant fails to make any of the payments set out in paragraph 1, and by the dates required, then:

A) The Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant, and for the payment of any new arrears of rent and NSF charges not already ordered under paragraph 1 of this order. The Landlord must make the application within 30 days of a breach of a condition set out in paragraph 1 of this order.

 B) The balance owing under paragraph 1 of this order shall become payable on the day following the date of default. The monies owing shall bear simple interest calculated at 2.00% annually on the balance outstanding.

**March 30, 2021**

**Date Issued**

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Douglas Wilkins

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.