



Order under Section 21.2 of the  
**Statutory Powers Procedure Act**  
and the **Residential Tenancies Act, 2006**

**File Number:** CEL-92567-20-RV

**In the matter of:** 127 LIDDARD STREET  
BRACEBRIDGE ON P1L1M5

**Between:** Blue Planet Properties Landlord

**and**

Cassandra Rimmington Tenants  
Mike Vanekelenburg

**Review Order**

Blue Planet Properties (the 'Landlord') applied for an order to terminate the tenancy and evict Cassandra Rimmington ('CR') and Mike Vanekelenburg ('MV') (collectively, the 'Tenants') because the Tenants did not pay the rent that the Tenants owe. This application was resolved by order CEL-92567-20 issued on October 30, 2020.

On November 23, 2020, the Tenants requested a review of the order. An interim order was issued on December 4, 2020 staying the order issued on October 30, 2020 until the Tenants' request is resolved.

The request was heard by video conference on March 1, 2021. The Tenants, the Landlord's legal representative, Natasha Mizzi, and the Landlord's agent, Minna Hu, attended the hearing. The Tenants spoke with Duty Counsel prior to the commencement of the hearing.

**Determinations:**

**Request to Review**

1. The Tenants allege that they were not reasonably able to participate in the hearing held on October 19, 2020. The Tenants stated that the first they learned that a hearing was held in this matter was when the Landlord sent them an email advising of the outcome. They indicated that they never received the Notice of Hearing.
2. Case law instructs that whether a party was able to reasonably participate should be interpreted broadly to ensure natural justice and, where a party shows that they genuinely intended to participate in a hearing but was prevented from doing so, be entitled to a hearing. The genuine intent, however, must be borne out by the evidence, such as actions and conduct by the party, which clearly demonstrates the intent to participate.

3. A review of the Board's records indicate that the Notice of Hearing was not mailed to the Tenants and only emailed to CR. CR testified that she checked all of her email folders, including the spam and junk folders, and never received the email.
4. Based on the submissions of the parties and the evidence before me, I find that the Tenants genuinely intended to participate in the hearing but was unable to as they did not receive the Notice of Hearing. Accordingly, the review is granted and I proceeded to hearing the Landlord's application de novo.

### **L1 Application**

5. The Tenants have not paid the total rent the Tenants were required to pay for the period from January 1, 2020 to October 31, 2020. Because of the arrears, the Landlord served a Notice of Termination effective January 23, 2020.
6. The monthly rent is \$1,900.00.
7. The Tenants paid \$18,600.00 after the application was filed.
8. The Landlord collected a rent deposit of \$1,900.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit is owing to the Tenants for the period from September 26, 2019 to January 23, 2020.

### *Section 83 considerations*

9. I have considered all of the disclosed circumstances in accordance with section 83 of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenants, and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
10. MV testified that they fell into arrears back in 2019 because CR was not working due to a pregnancy and MV was without employment income at the end of the year. MV stated that they tried to get caught up with their arrears when the COVID-19 pandemic hit.
11. MV indicated that he is now back to work full-time as a stonemason and brings home approximately \$850.00 a week. CR is now caring for children in the home and earns approximately \$350.00 a week. MV stated that in addition to their employment income, they receive \$468.32 in Child Tax Benefits.

12. MV requested the Board's exercise its discretion in this case as they have no where to live in the event they were to be evicted. He proposed the following payment plan:
  - \$1,100.00 on March 8, 2021
  - \$250.00 on March 15, 2021
  - \$2,000.00 on March 22, 2021
  - \$250.00 on March 29, 2021
  - \$1,675.00 on March 31, 2021
  - \$1,100.00 on April 5, 2021
  - \$250.00 on April 12, 2021
  - \$2,000.00 on April 20, 2021
  - \$250.00 on April 26, 2021
  - \$200.00 on April 30, 2021
13. MV stated that that they will also be able to pay the April 2021 rent on April 1, 2021. MV indicated that he is confident that they will be able to make the payments as proposed.
14. The Landlord's concern with the payment plan is that the Tenants have made promises in the past that they did not keep. The Landlord's legal representative submitted that the Landlord has a mortgage to pay and young children and that the Tenants' failure to pay the rent has had a financial impact.
15. Based on the Tenants' proposal, the arrears would be paid off with two months. I find this proposal to be reasonable and realistic given the Tenants' evidence of the household income and circumstances. While the payment plan may result in the Landlord having to wait for full payment of the arrears, I must weigh this against the consequential effects that an eviction will have on a family with three young children, which in my view would be devastating.
16. By the time the parties receive this order, the first of the proposed payment dates will have passed. Given the Tenants' proposal, it is reasonable to conclude that they would still have these funds available to them. As such, I have amended their proposal taking into consideration the passage of time.

**It is ordered that:**

1. Order CEL-92567-20 issued on October 30, 2020 is cancelled and replaced by the following:
2. The Landlord's application to terminate the tenancy and evict the Tenants for non-payment of the rent is denied, subject to the following conditions.

3. The Tenants owe the Landlord \$9,075.00 in arrears and costs to March 31, 2021. The Tenants shall pay the Landlord the total amount owing as follows:

Payment Due Date:	Payment Amount:
March 17, 2021	\$1,350.00
March 22, 2021	\$2,000.00
March 29, 2021	\$ 250.00
March 31, 2021	\$1,675.00
April 5, 2021	\$1,100.00
April 12, 2021	\$ 250.00
April 20, 2021	\$2,000.00
April 26, 2021	\$ 250.00
April 30, 2021	\$ 200.00

4. The April 2021 rent shall be paid, in full, on or before April 1, 2021.
5. If the Tenants fail to make any one of the payments in accordance with paragraphs 3 and 4 of this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenants to the Landlord pursuant to paragraph 2 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenants, and within 30 days of any breach of the order, apply to the Board pursuant to section 78 of the *Residential Tenancies Act, 2006* for an order terminating the tenancy and evicting the Tenants and requiring that the Tenants pay any new arrears and related charges that became owing after March 1, 2021.

**March 9, 2021**  
**Date Issued**



Dawn Sullivan  
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.