



Order under Section 69
Residential Tenancies Act, 2006

File Number: HOL-07764-20

In the matter of: 304, 4040 UPPER MIDDLE ROAD
BURLINGTON ON L7M0H2

Between: Sonia Bhardwaj

and

Vanessa Le



Landlord

Tenant

Sonia Bhardwaj (the 'Landlord') applied for an order to terminate the tenancy and evict Vanessa Le (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on December 2, 2020. The Landlord attended the hearing. The Tenant attended at the beginning of the hearing block but left to consult with Tenant Duty Counsel ("TDC"). She did not return after this consultation and the hearing therefore proceeded on an uncontested basis.

Determinations:

Preliminary issues

1. In advance of the hearing the Tenant filed an e-mail with the Board, which she copied to the Landlord. In an attached document, the Tenant made two requests: first, she requested that the Board's hearing be held by telephone and not by video; second, she requested an alternate future hearing date due to medical reasons. The Tenant also provided unsolicited post-hearing submissions further addressing her adjournment request which were not considered in this decision.
2. The Tenant did not advance either of these two positions at the hearing. Although she called into the hearing by telephone, she chose to consult with TDC before proceeding. Before leaving the virtual hearing room in order to do so, TDC advised the Tenant to return to the call after the consultation. The Tenant did not return to the hearing and provided no explanation for her absence on the day of the hearing. I therefore determined that I would consider the Tenant's request based on the written materials.

Request for telephone hearing

3. In the Tenant's e-mail and attachment, she explained that she did not have reliable technological means for a video hearing. She therefore asked for a telephone hearing.

4. However, the Board's online hearing system allows parties to join by video, by telephone or both. This is in fact how the Tenant initially called into the virtual hearing room, and how she got connected with TDC. In these circumstances, I find that the Board did accommodate the Tenant's request to participate by telephone.

Request for adjournment

Tenant's request and evidence

5. In the Tenant's e-mail, the Tenant asks the Board to consider medical documentation "to support illness / medical circumstances and its impact on inability to work and financial situation --- for LTB consideration and review, in support for tenant request and pleading for no eviction order".
6. In the attachment, the Tenant explains her request for an adjournment by stating that she has been ill and on medical leave for many months, and unable to work. She writes that she has further medical follow-up and treatments at the end of November and early December. She requests that the hearing be cancelled and changed to a different date in the new year so that she will be well enough to participate. The attachment also contains a copy of an e-mail dated November 24, 2020, in which the Tenant requests the Landlord consent to a rescheduling of the hearing to January 2021. The Tenant writes that she would have preferred not to have the additional stress of a hearing when her circumstances are difficult and beyond her control, and that rent will not be a problem once she is able to return to work in the new year.
7. Also attached to the Tenant's e-mail is a copy of a November 26, 2020 letter from a physician. This letter states that the Tenant has been off work since the fall of 2019, was newly diagnosed with a cardiac condition in November 2019, and was hospitalized after a cardiac procedure. The letter states that the Tenant is off work until January 2021, pending further medical treatments, follow up and investigations. It goes on to state that the Tenant's current symptoms are shortness of breath, angina, chest pain and fatigue, and also that the stress of participating in a hearing places her at significant risk for possible heart attacks and stroke. There are also letters from physicians dated November 16, 2020, September 3, 2020, July 23, 2020, April 2, 2020, January 15, 2020, and December 23, 2019. These letters provided medical opinions that the Tenant needs to be away from work between January 2000 and January 2021.
8. The Tenant also provided letters from financial institutions detailing that several of her accounts are past due. There is also a letter from the College of Physicians and Surgeons of Ontario ("CPSO") indicating that the Tenant is an active Member and that she is enrolled in the CPSO's COVID-19 relief program, presumably to pay membership fees by installment.

Landlord's response

9. The Landlord opposed the Tenant's adjournment request due to financial prejudice. The Landlord filed an e-mail dated November 25, 2020 with the Board. The attachment to this e-mail is 90 pages of communications between the Landlord, her husband and the

Tenant. Without summarizing each document, it is fair to say that the Landlord informed the Tenant that her failure to pay the rent is causing financial prejudice. For example, on April 6, 2020, the Landlord's husband writes: "Right now Sonia and I don't have any money and have car payments, two mortgage payments, my son's expenses, insurance on two properties, and two lines of credit. At this point we are in the negative and do not have any money to cover our expenses. No one is loaning us money anymore and we are still making interest payments on previous loans. I am in a desperate situation and kindly urge you to please pay rent for April or find a creative way to borrow funds."

10. The Landlord's position at the hearing was that the outstanding rent is now more than \$12,000. In circumstances where the Tenant has had ongoing health issues for more than a year, and where there is no definitive prognosis for the Tenant's health improving or her ability to return to work in January 2021, and where there was no indication that the Tenant would be able to pay any rent, the Landlord requested that the hearing proceed in the Tenant's absence.

Analysis

11. I denied the Tenant's request for adjournment for the following reasons.
12. In deciding whether to grant the Tenant's adjournment request, I considered Rule A5.1 as well as Rules 21.7 and 21.8. Rule A5.1 states, in part, that a party is entitled to accommodation of Human Rights Code-related needs and should notify the Tribunal as soon as possible if accommodation is required. Rules 21.7 and 21.8 permit a party to request an adjournment at the beginning of a hearing, and state that relevant factors that may be considered include: the reason for the adjournment and position of the parties; the issues in the application; any prejudice that may result from granting or denying the request; the history of the proceeding including other adjournments or rescheduling; and the LTB's obligation to adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter. I also considered the Board's Interpretation Guideline 1, which deals with adjournments and rescheduling requests.
13. My main concern was whether an adjournment was necessary to permit meaningful participation in the hearing.
14. First, because the Tenant did not return to the hearing, I had to consider the request based solely on the Tenants documents submitted prior to the hearing. This evidence is entirely hearsay, which prevented the Landlord from asking any clarifying questions she might have had. This was prejudicial to the Landlord.
15. Second, although it is clear from the Tenant's request and the attached materials that she is suffering financial hardship due to her illness, the materials themselves did not describe how the Tenant's illness prevented her from meaningfully participating in the scheduled hearing. The Tenant's e-mail states that it is the lack of reliable technology that makes it very difficult to submit evidence. However, the Tenant was able to send a comprehensive submission outlining her medical and financial circumstances.

16. While I understand from the November 26, 2020 letter that the Tenant is diagnosed with cardiac issues and that she experiences symptoms of shortness of breath, angina, chest pain and fatigue, there were too many unanswered questions for me to accept the physician's letter as sufficient to warrant an adjournment of the scheduled hearing in the Tenant's absence. The physician did not address whether anything could be done by the Tenant (e.g. obtain legal representation) or the Board (e.g. provide accommodation that is not undue hardship) to minimize or mitigate against the risk associated with the Tenant participating in the hearing. The physician also did not provide any opinion on when the Tenant would be able to participate in a hearing. In the Tenant's absence, I had no information before me about the Tenant's health-status and disability related needs at the time of the hearing. In short, I did not have enough information to conclude that the Tenant could not meaningfully participate in the hearing as a result of her disability-related issues.
17. Third, the Landlord demonstrated financial prejudice. The alleged arrears are significant, and the Tenant's own materials suggested that the arrears are likely to increase if the hearing was delayed.

Rent arrears

18. The Tenant has not paid the total rent the Tenant was required to pay for the period from June 1, 2020 to December 31, 2020. Because of the arrears, the Landlord served a Notice of Termination effective June 30, 2020.
19. The Tenant is in possession of the rental unit.
20. The monthly rent is \$1,900.00.
21. The Tenant paid \$500.00 after the application was filed.
22. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to grant relief from eviction subject to the condition(s) set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act. In particular, the Landlord attempted to negotiate terms of payment with the Tenant and so fulfilled the obligation under subsection 83(6) of the Act. However, the medical evidence suggests that there is a possibility that the Tenant will return to work as a physician in January 2021. Should this occur, it is very possible that she will be able to afford the rent as well as a contribution towards the arrears. However, it is fair in the circumstances to provide recourse to the Landlord if the Tenant cannot maintain the ordered repayment schedule, because the Landlord is experiencing financial prejudice.

It is ordered that:

- 1. The Tenants shall pay the Landlord \$14,386.00, which represents the arrears (\$14,200.00), and costs (\$186.00), for the period June 1, 2020 to January 31, 2020.
- 2. The Tenant shall pay the amount set out in paragraph 1 according to the following table, on or before the specified dates:

January 31, 2021	\$1,000.00
February 28, 2021	\$1,000.00
March 31, 2021	\$1,000.00
April 30, 2021	\$1,000.00
May 31, 2021	\$1,000.00
June 30, 2021	\$1,000.00
July 31, 2021	\$1,000.00
August 31, 2021	\$1,000.00
September 30, 2021	\$1,000.00
October 31, 2021	\$1,000.00
November 30, 2021	\$1,000.00
December 31, 2021	\$1,000.00
January 31, 2022	\$1,000.00
February 28, 2022	\$1,000.00
March 31, 2022	\$386.00

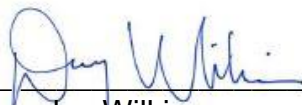
- 3. The Tenant shall pay the lawful monthly rent for January 2021 on or before January 17, 2021.
- 4. Until the amount set out in paragraph 1 is paid in full, the Tenant shall pay the lawful monthly rent in full and on time on or before the first of the month, commencing February 1, 2021.

5. If the Tenants fail to make any of the payments in accordance with paragraphs 2 to 4 of this order 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 Tenants, and for the payment of any new arrears of rent and NSF charges not already ordered under paragraph 1 of this order; and,
 - (b) the balance owing under paragraph 1 of this order shall become payable on the day following the date of default.

Monies owing under this paragraph shall bear interest at the post-judgement interest rate determined under subsection 207(7) of the Act.

January 6, 2021
Date Issued

Head Office
777 Bay Street, 12th Floor
Toronto Ontario M5G2E5



Douglas Wilkins
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.