



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

File Number: SWL-52568-21-RV

In the matter of: 4, 148 FRONT STREET N
SARNIA ON N7T5S3

Between: Adam Maxwell

and

Andrea Eddleston

I hereby certify this is a
true copy of an Order dated

Jan 27, 2022

MS

Landlord and Tenant Board

Landlord

Tenant

Review Order

Adam Maxwell (the 'Landlord') applied for an order to terminate the tenancy and evict Andrea Eddleston (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order SWL-52568-21 issued on October 21, 2021.

On October 28, 2021, the Tenant requested a review of the order alleging she was not reasonably able to participate in the hearing due to technical difficulties.

On November 2, 2021, the Board issued interim order SWL-52568-21-RV-IN staying the order issued on October 21, 2021.

The request was heard by way of video conference on January 18, 2022. The Landlord, the Landlord's Legal Representative, Ted Smith, and the Tenant attended the hearing. The Tenant spoke to Tenant Duty Counsel prior to the commencement of the hearing.

Determinations:

Tenant's Request for Review

1. The Tenant testified that on the day of the hearing, she was present but due to technical issues, no one could hear her speak. The matter proceeded without hearing the evidence of the Tenant.
2. The Landlord's Representative submitted that the Tenant's account of events on the day of the hearing was accurate.
3. Given the Tenant intended to participate but technical issues prevented her from doing so, I find it reasonable to grant the Tenant's request to review.

4. The Tenant's request to review the order on the grounds she was not reasonably able to participate in the hearing held on September 2, 2021 is granted.

New Hearing of the Landlord's L1 Application

Preliminary Issues

5. The Tenant filed with the Board section 82 issues she wanted to raise at the hearing. The Tenant filed her section 82 issues only 4 days before the hearing and did not serve a copy to the Landlord. Pursuant to the Board's rule 19.4, a tenant who would like to raise section 82 issues at a hearing, must provide a copy to the Landlord and the Board at least 7 days before the scheduled hearing. As the Tenant did not provide a copy of her section 82 issues to the Landlord and did not file them with the Board at least 7 days before the hearing, I find the Tenant is not able to raise her section 82 issues at the hearing. This does not preclude the Tenant from having her issues heard by the Board as the Tenant can file her own application should she so chose.

L1 Application

6. The Tenant has not paid the total rent the Tenant was required to pay for the period from August 1, 2020 to January 31, 2022. Because of the arrears, the Landlord served a Notice of Termination effective June 29, 2021.
7. The Tenant is in possession of the rental unit.
8. The monthly rent is \$1,700.00.
9. The Landlord collected a rent deposit of \$300.00 from the Tenant and this deposit is still being held by the Landlord.
10. Interest on the rent deposit is owing to the Tenant for the period from April 15, 2020 to June 29, 2021.

Landlord's Evidence

11. The Landlord's Representative submitted that the Tenant has not made any payments since the application was filed. The amount the Tenant owes to the Landlord for the rental period ending January 31, 2022 is \$29,786.00. This amount is inclusive of arrears of rent (\$29,600.00) and the cost (\$186.00) of filing the application.
12. The Landlord's Representative submitted that he and the Landlord have reached out to the Tenant multiple time prior to the hearing in attempts to discuss repayment of the arrears of rent. The last time the Landlord's Representative reached out was by way of letter 2 weeks before the hearing of September 2, 2021. To date, the Tenant has not communicated a plan to repay the arrears of rent.

Tenant's Evidence

13. The Tenant testified that she does not agree with the amount of the arrears of rent as calculated by the Landlord. The Tenant testified that she has paid the rent almost every month by way of cash, except for the months of September, October, November, and December 2020 which she paid by e-transfer. The Tenant claimed to have bank statements to verify she withdrew the monthly rent from an ATM, and she had copies of the e-transfer payments. The matter was stood down for approximately 1.5 hours for the Tenant to provide the Board and the Landlord's Representative with this evidence. The Tenant sent the Landlord's Representative and the Board a disclosure package. The disclosure package did not contain bank statements or copies of e-transfer payments. Rather the disclosure package contained a Schedule A that appears to have been attached to an N5 Notice of Termination served by the Landlord, a two second pages of N4 Notices of Termination served by the Landlord.
14. When I questioned the Tenant about the disclosure package and that she did not provide proof of the rent she paid, the Tenant said she did not have the proof. When questioned by the Landlord's Representative as to why she did not provide a copy of the bank statements and e-transfers payments, the Tenant said she was confused and did not know that she needed to provide them.
15. The Tenant then testified that she submitted the evidence package with the N4 Notices of Termination and the Schedule A because the rent amounts indicated by the Landlord were incorrect which caused her to be confused about the amount she owed. The Landlord's Representative submitted that the Tenant was not confused because when he served the N4 Notice of Termination for which this application is based, he attached a letter explaining to the Tenant that the previous N4 Notices of Termination were incorrect and to disregard. The Tenant did not challenge the Landlord's Representative's submissions on this issue.

Findings

16. On a balance of probabilities, I find that the arrears of rent as calculated by the Landlord are correct. In making this finding, I considered the fact the Tenant was given ample opportunity during the hearing to provide supporting evidence with respect to payments she alleges to have made to the Landlord. Despite having been given nearly 1.5 hours, the Tenant never provided evidence supporting her position that she paid almost all her rent by cash and at least 4 payments by way of e-transfer. On the contrary, the Landlord provided a clear rent ledger attached to the L1/L9 update sheet demonstrating the rent charged each month and no payments made by the Tenant.

Section 83 Considerations

Landlord's Evidence

17. The Landlord's Representative submitted that the Landlord is a small landlord and the arrears of rent are substantial. As the Tenant has not made any arrangement to repay the arrears of rent owed, the Landlord would like the tenancy terminated within 7 days of the order being issued.

Tenant's Evidence

18. The Tenant testified that she lives alone. Her 16-year-old daughter visits her as she has shared custody.
19. The Tenant has lived in the rental unit for 2 years and does not want to move out.
20. The Tenant testified that if she had to move out of the rental unit, she would need at least 6 months to find a new place as she would need time to save for the first and last month rent deposit.
21. The Tenant's monthly income is approximately \$2,600.00/month (Ontario Works, support, and employment income).

Findings

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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. In making this finding, I considered the significant amount of arrears of rent owed to the Landlord and that any delay in eviction would further prejudice the Landlord as arrears of rent would most likely continue to accumulate. I also considered the fact the Tenant has made no attempt at salvaging the tenancy. She has not made any good faith payments and she has not communicated to the Landlord a plan for repayment of the arrears of rent. It is clear from the evidence presented at the hearing that this tenancy is not viable and that there has been a breakdown in the Landlord and Tenant relationship.

It is ordered that:

1. The Tenant's request for review is granted.
2. Order SWL-52568-21 issued on October 21, 2021 is cancelled and replaced by the following:
3. 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 February 7, 2022.
4. The Tenant shall pay to the Landlord \$29,169.15*, which represents the amount of rent owing and compensation up to January 27, 2022, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenant shall also pay to the Landlord \$55.89 per day for compensation for the use of the unit starting January 28, 2022 to the date the Tenant moves out of the unit.
6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.

7. If the unit is not vacated on or before February 7, 2022, then starting February 8, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. 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 February 8, 2022.
9. 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) \$29,786.00 if the payment is made on or before January 31, 2022, or
 - ii) \$31,486.00 if the payment is made on or before February 7, 2022**.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.
10. 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 February 8, 2022 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.

January 27, 2022
Date Issued



Dawn Wickett
Member, Landlord and Tenant Board

South West-RO
150 Dufferin Avenue, Suite 400, 4th Floor
London ON N6A5N6

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 August 8, 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: SWL-52568-21-RV

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) | August 1, 2020 to June 29, 2021 | \$17,620.82 |
| Plus compensation: (from the day after the termination date in the Notice to the date of the order) | June 30, 2021 to January 27, 2022 | \$11,848.68 |
| Less the rent deposit: | | -\$300.00 |
| Less the interest owing on the rent deposit: | April 15, 2020 to June 29, 2021 | -\$0.35 |
| Amount owing to the Landlord on the order date: (total of previous boxes) | | \$29,169.15 |
| Additional costs the Tenant must pay to the Landlord: | | \$186.00 |
| Plus daily compensation owing for each day of occupation starting January 28, 2022: | | \$55.89 (per day) |
| Total the Tenant must pay the Landlord if the tenancy is terminated: | | \$29,355.15, + \$55.89 per day starting January 28, 2022 |

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

1. If the payment is made on or before January 31, 2022:

| Reasons for amount owing | Period | Amount |
|---|------------------------------------|---------------|
| Arrears: | August 1, 2020 to January 31, 2022 | \$29,600.00 |
| Additional costs the Tenant must pay to the Landlord: | | \$186.00 |
| Total the Tenant must pay to continue the tenancy: | On or before January 31, 2022 | \$29,786.00 |

2. If the payment is made after January 31, 2022 but on or before February 7, 2022:

| Reasons for amount owing | Period | Amount |
|---|-------------------------------------|---------------|
| Arrears: | August 1, 2020 to February 28, 2022 | \$31,300.00 |
| Additional costs the Tenant must pay to the Landlord: | | \$186.00 |
| Total the Tenant must pay to continue the tenancy: | On or before February 7, 2022 | \$31,486.00 |