



Order under Section 69
Residential Tenancies Act, 2006

File Number: HOL-07025-20

In the matter of: 808 CLAPHAM TERRACE
STITTSVILLE ON K2S2N8

Between: Biralkumar Patel Landlords
Harshkumar Patel2627408 Ontario Ltd.

and

Alyssa Franklin Tenants
Brent Franklin

Biralkumar Patel, Harshkumar Patel and 2627408 Ontario Ltd. (the 'Landlords') applied for an order to terminate the tenancy and evict Brent Franklin and Alyssa Franklin (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by way of video conference on November 20, 2020. The Landlord, Harshkumar Patel, the Landlord's Legal Representative, Sikandar Arora and the Tenants attended the hearing. The Tenants spoke to Tenant Duty Counsel prior to the commencement of the hearing.

Determinations:

1. The Tenants have not paid the total rent the Tenants were required to pay for the period from February 1, 2020 to November 30, 2020. Because of the arrears, the Landlords served a Notice of Termination effective March 9, 2020.
2. The monthly rent is \$2,000.00.
3. The Landlords collected a rent deposit of \$2,000.00 from the Tenants and this deposit is still being held by the Landlords.
4. Interest on the rent deposit is owing to the Tenants for the period from October 15, 2019 to March 9, 2020.
5. The Tenants paid \$4,000.00 after the application was filed.

Possession of the Rental Unit

6. The Tenant, Brent Franklin ('BF') testified that he and the other Tenant vacated the rental unit on June 30, 2020. BF testified that he sent written notice to the Landlords advising that they vacated the rental unit. BF did not provide any evidence of the alleged notice he gave the Landlord that he would be vacating the rental unit on June 30, 2020.
7. The Landlord, Harshkumar Patel ('HP') testified that the Tenants did not vacate the rental unit on June 30, 2020 and are still in possession of the rental unit. HP testified that the Tenants never returned the keys to the rental unit, and on October 15, 2020, BF was inside the rental unit. The Landlord provided the Board with a copy of all the text message exchanges between he and BF from the time Tenants moved into the rental until October 2020. In review of the evidence, I note, BF indicated that he planned on moving out in June 2020, but never confirmed a date. The text messages also confirm BF did not return the keys of the rental unit to the Landlord.
8. BF testified that he did attend the rental unit on October 15, 2020 to perform a check to see if the Landlords had re-rented the rental unit. BF said that when he entered the rental unit on October 15, 2020, he thought that perhaps he was illegally entering the unit. BF testified that he did not return the keys to the rental unit as it was inconvenient for him to travel from his new area of residence to the rental unit. BF testified that he intended to mail the keys to the Landlords but lost them.
9. The Landlord's Representative submitted that the Tenants are still in possession of the rental unit as they have not returned the keys, and they have been inside the rental unit, most recently on October 15, 2020, which supports the Landlords' evidence that the Tenants are in possession.
10. The Landlord's Representative submitted that the Landlords have not been able to re-rent the rental unit as the Tenants are in possession.
11. The Landlord's Representative further submitted that on October 19, 2020, the Landlord texted BF to ask when he would drop off the keys, and asked permission to change the locks of the rental unit. The Tenant did not confirm with the Landlord that it was acceptable to change the locks of the rental unit.
12. I have considered all of the evidence of both parties and find that on a balance of probabilities, the Tenants are in possession of the rental unit. In making this finding, I considered the evidence of BF that he attended and entered the rental unit on October 15, 2020. I do not accept BF's explanation that he only attended the unit to check to see if it was re-rented. If this was in fact the reason he attended the rental unit, I do not believe he would have also entered the unit, using the keys he had in his possession, but more likely than not would have knocked on the door, or used a less intrusive means to find out if the unit had been re-rented. Having found that the Tenants are in possession of the rental unit, I find they are responsible for the arrears of rent owing to the Landlords for the period of February 1, 2020 to November 30, 2020.

Relief from Eviction

13. 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. The Tenants did not make any submissions at the hearing that they wanted to preserve the tenancy or seek relief from eviction.

It is ordered that:

1. Unless the Tenants voids the order as set out below, the tenancy between the Landlords and the Tenants is terminated. The Tenants must move out of the rental unit on or before December 11, 2020.
2. The Tenants shall pay to the Landlords \$11,563.57*, which represents the amount of rent owing and compensation up to November 30, 2020, less the rent deposit and interest the Landlords owe on the rent deposit.
3. The Tenants shall also pay to the Landlords \$65.75 per day for compensation for the use of the unit starting December 1, 2020 to the date the Tenants move out of the unit.
4. The Tenants shall also pay to the Landlords \$175.00 for the cost of filing the application.
5. If the Tenants do not pay the Landlords the full amount owing* on or before December 11, 2020, the Tenants will start to owe interest. This will be simple interest calculated from December 12, 2020 at 2.00% annually on the balance outstanding.
6. If the unit is not vacated on or before December 11, 2020, then starting December 12, 2020, the Landlords 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 Landlords, on or after December 12, 2020.
8. If the Tenants wish to void this order and continue the tenancy, the Tenants must pay to the Landlords or to the Board in trust:
 - i) \$13,675.00 if the payment is made on or before November 30, 2020, or
 - ii) \$15,675.00 if the payment is made after November 30, but on or before December 11, 2020**.If the Tenants do not make full payment in accordance with this paragraph and by the appropriate deadline, then the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. The Tenants 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 December 12, 2020 but before the Sheriff gives vacant possession to the Landlords. The Tenants are only entitled to make this motion once during the period of the tenancy agreement with the Landlords.



Dawn Wickett
Member, Landlord and Tenant Board

November 30, 2020

Date Issued

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

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 June 12, 2021 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**

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

Reasons for amount owing	Period	Amount
Arrears: (up to the termination date in the Notice of Termination)	February 1, 2020 to March 9, 2020	\$91.78
Less the amount the Tenants paid to the Landlords		-\$4,000.00
Plus compensation: (from the day after the termination date in the Notice to the date of the order)	March 10, 2020 to November 30, 2020	\$17,489.50
Less the rent deposit:		-\$2,000.00
Less the interest owing on the rent deposit:	October 15, 2019 to March 9, 2020	-\$17.71
Amount owing to the Landlords on the order date: (total of previous boxes)		\$11,563.57
Additional costs the Tenants must pay to the Landlords:		\$175.00
Plus daily compensation owing for each day of occupation starting December 1, 2020:		\$65.75 (per day)
Total the Tenants must pay the Landlords if the tenancy is terminated:		\$11,738.57, + \$65.75 per day starting December 1, 2020

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

1. If the payment is made on or before November 30, 2020:

Reasons for amount owing	Period	Amount
Arrears:	February 1, 2020 to November 30, 2020	\$17,500.00
Less the amount the Tenants paid to the Landlords:		-\$4,000.00
Additional costs the Tenants must pay to the Landlords:		\$175.00
Total the Tenants must pay to continue the tenancy:	On or before November 30, 2020	\$13,675.00

2. If the payment is made after November 30, 2020 but on or before December 11, 2020:

Reasons for amount owing	Period	Amount
Arrears:	February 1, 2020 to December 31, 2020	\$19,500.00
Less the amount the Tenants paid to the Landlords:		-\$4,000.00
Additional costs the Tenants must pay to the Landlords:		\$175.00
Total the Tenants must pay to continue the tenancy:	On or before December 11, 2020	\$15,675.00