



Order under Section 69  
**Residential Tenancies Act, 2006**

**File Number:** TEL-12249-20

**In the matter of:** 936 MOUNTCASTLE CRESCENT  
PICKERING ON L1V5J9

**Between:** Krishna Menon Landlords  
Lakshmi Achuthan

**and**

Mohaira Ali Tenant

Krishna Menon and Lakshmi Achuthan (the 'Landlords') applied for an order to terminate the tenancy and evict Mohaira Ali (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1 application).

The Landlords also applied for an order to terminate the tenancy and evict the Tenant because the Tenant or someone visiting or living with the Tenant has wilfully or negligently damaged the rental unit or the residential complex. The Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date (L2 application).

This application was heard by videoconference on April 27, 2021. The Landlord, Krishna Menon, the Landlords' Legal Representative, P. Narayan, and the Tenant attended the hearing.

**Determinations:**

L1 Application:

1. The Tenant has not paid the total rent the Tenant was required to pay for the period from August 1, 2020 to April 30, 2021. Because of the arrears, the Landlords served a Notice of Termination effective August 22, 2020.
2. The Tenant is in possession of the rental unit.
3. The lawful monthly rent is \$2,341.40.
4. The Landlords collected a rent deposit of \$4,600.00 from the Tenant and this deposit is still being held by the Landlords.
5. The Landlord is holding a last month's rent deposit that exceeds the current monthly rent, which is not permitted by the Act. The Tenant has been credited with \$2,258.60, which is

the difference between the amount currently held and the permissible amount. The last month's rent deposit now equals the current monthly rent.

6. The amount outstanding to April 30, 2021, inclusive of rent arrears (\$18,814.00), and costs (\$201.00), is \$19,015.00.

### Section 83

7. I have considered all of the disclosed circumstances in accordance with subsection 83 of the *Residential Tenancies Act, 2006* (RTA), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant, 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.
8. The Tenant proposed a payment plan that would have the arrears paid in full within 18 months. The Tenant has been living in the rental unit since 2018. She has 6 children, including a newborn. While the Tenant withheld her rent causing financial hardship to the Landlords, I was not satisfied that that the Landlords attempted to negotiate a repayment agreement with the Tenant. I find that the Tenant's proposed payment plan, which commences with a large lump sum payment of \$10,000.00, will reduce the financial hardship on the Landlord.

### L2 application

9. The Landlords served the Tenant an N5 notice of termination. The N5 notice alleges that the Tenant or someone living or visiting the Tenant wilfully or negligently damaged the rental unit or residential complex.
10. The Landlords' representative submitted several pictures of alleged damage to various areas of the rental unit depicting the following:
  - a. Shower head pulled out in the basement washroom.
  - b. Broken chipped hardwood floors.
  - c. Hole in the ceiling.
  - d. Missing dishwasher.
  - e. Paint on the blinds and pencil drawings.
  - f. Broken glass in the master bedroom closet door.
  - g. Broken light fixture in the master bedroom.
  - h. Broken drawer in the master bathroom.
  - i. Broken sink in the master bathroom.

11. I find that the damage to the shower head and chipped floors are a result of normal wear and tear rather than any wilful or negligent conduct of the Tenant, occupants or the Tenant's guest.
12. With regards to the hole in the ceiling, the Tenant testified that the property is an old house and the ceiling collapsed. The Landlords did not lead any evidence on what caused the hole in the ceiling. Therefore, I am not persuaded that on a balance of probabilities that the damage was caused by the Tenant.
13. With regards to the missing dishwasher, the Tenant testified that her husband took it out. The dishwasher is currently in the toolshed and can be put back in.
14. With regards to the broken glass in the master bedroom closet door, paint on blinds and pencil drawings on the wall, these were caused by the normal activities of daily living of Tenant's children rather than wilful or negligent conduct.
15. With regards to the ceramic sink, the Landlords' pictures show a sink with a hole in it. The Tenant's undisputed testimony was that she informed the Landlords about cracking in the sink in 2019. The Landlords did not act to fix the crack and eventually the crack began to grow and reached the size as depicted in the pictures. Accordingly, I find that the damage resulted from the Landlords' lack of maintenance rather than any wilful or negligent conduct of the Tenant.
16. With regards to the vanity drawer, the pictures show a missing faceplate. The Tenant's undisputed testimony was that the faceplate was loose and very old when they moved into the rental unit. It came off as a result of normal wear and tear. Based on the evidence presented at the hearing, I was not satisfied that the damage to the vanity drawer was caused by the wilful or negligent actions of the Tenant, an occupant or the Tenant's guest.
17. As the Landlords failed to prove on a balance of probabilities that the Tenant, occupants or the Tenant's guests wilfully or negligently damaged the rental unit, the L2 application shall be dismissed.

**It is ordered that:**

L1 application

1. The Tenant shall pay to the Landlords \$19,015.00, which represents the arrears of rent (\$18,814.00), and costs (\$201.00) outstanding for the period ending April 30, 2021.
2. The Landlords' application for eviction of the Tenant is denied on the condition that:
  - (a) The Tenant shall make the following payments to the Landlords in respect of the monies owing under paragraph 1 of this order:

Date Payment Due	Amount of Payment
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April 28, 2021	\$10,000.00 (costs and arrears)
June 1, 2021	\$500.00 (arrears)
July 1, 2021	\$500.00 (arrears)
August 1, 2021	\$500.00 (arrears)
September 1, 2021	\$500.00 (arrears)
October 1, 2021	\$500.00 (arrears)
November 1, 2021	\$500.00 (arrears)
December 1, 2021	\$500.00 (arrears)
January 1, 2022	\$500.00 (arrears)
February 1, 2022	\$500.00 (arrears)
March 1, 2022	\$500.00 (arrears)
April 1, 2022	\$500.00 (arrears)
May 1, 2022	\$500.00 (arrears)
June 1, 2022	\$500.00 (arrears)
July 1, 2022	\$500.00 (arrears)
August 1, 2022	\$500.00 (arrears)
September 1, 2022	\$500.00 (arrears)
October 1, 2022	\$500.00 (arrears)
November 1, 2022	\$515.00 (arrears)

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(b) The Tenant shall also pay the Landlords the rent for the months of May 2021 up to and including November 2022 in full, on or before the first day of each corresponding month.

3. If the Tenant fails to make any of the payments in accordance with paragraph 2, and by the dates required, then:
  - (a) The Landlords 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 2 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 interest at the post-judgment interest rate determined under subsection 207(7) of the Act.

L2 application:

4. The L2 application is dismissed.

**May 12, 2021**  
**Date Issued**

  
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Khalid Akram  
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.