



Order under Section 69
Residential Tenancies Act, 2006

File Number: SOL-16176-20

In the matter of: 2032 LAKESHORE ROAD WEST ROAD W
OAKVILLE ON L6L1G7

Between: Partha Guha Landlord

and

Brendan James J. Maeda-Sisternans Tenants
Judith R. Maeda

Partha Guha ('PG' or the 'Landlord') applied for an order to terminate the tenancy and evict Judith R. Maeda and Brendan James J. Maeda-Sisternans ('JRM' and 'BJJMS' or collectively, the 'Tenants') because the Tenants did not pay the rent that the Tenants owe. (L1 application)

The initial hearing for this L1 application was held on February 2, 2021 by videoconference, which was adjourned.

This L1 application was then heard on its merits over two videoconference hearings, the first on May 7, 2021 and the other on October 28, 2021.

At the May 7, 2021 videoconference hearing, the Landlord, the Landlord's Legal Representative, Ronald H.A. van der Steen ('LLR') and the Tenant, JRM, were in attendance and participated.

At the October 28, 2021 hearing, the Landlord, LLR, and the Tenants' Legal Representative, Syed Muzuffer ('TTR'), attended the hearing. As a preliminary matter, TTR requested an adjournment of the proceedings citing JRM's October 20, 2021 letter from a family doctor (Dr. C. Blair) which stated that JRM was not able to attend the hearing. Taking in submissions from both parties at this hearing, I determined the adjournment was not to be granted. My reasons for denying this additional adjournment were as follows.

The initial hearing of February 2, 2021 was adjourned at the behest of the Tenants so they could have more time to prepare their evidence and submissions. The arrears amount was sizable then and the Landlord objected to the adjournment due to the prejudice an adjournment would cause the Landlord. I granted the first adjournment nonetheless, but made it peremptory on the Tenants to be prepared/ready so the hearing process could be completed without further delay. Since then, the hearing process has been protracted due to scheduling challenges, but at all times, both sides have been adequately represented and all evidence had been duly disclosed/exchanged. Having regard to the Board's requirement to be efficient pursuant to section 183 of the *Residential Tenancies Act, 2006* (the 'Act'), both sides have had an adequate opportunity to know the issues and be heard on the matter at bar.

Procedural History (for February to May 2021 hearings):

1. This L1 application was first scheduled for a hearing by videoconference on February 8, 2021 and which was adjourned at the Tenants' (i.e. JRM's) request. The Tenants stated their firm intention to contest the amount of rent arrears claimed under the application and to present their own section 82 issues. That adjournment was made peremptory on the Tenants. Interim order SOL-16176-20-IN1 was issued on February 8, 2021 which required rent payments to be made by the Tenant (until the next hearing), and which set out disclosure requirements especially in respect of the Tenants' intent to raise issues under section 82 of the Residential Tenancies Act, 2006 (the 'Act').
2. The Tenants complied with most of the first interim order, but failed to pay the rent due on May 1, 2021, which should have been paid prior to the May 7, 2021 hearing.
3. This L1 application – as duly amended -- was then heard on its merits starting with the May 7, 2021 hearing. The amended L1 application clarified and confirmed the rental period starting on the 27th of each month to the 26th of the subsequent month (which the N4 correctly set out), with monthly rent being \$2,500.00. The Landlord's evidence in chief was completed on May 7, 2021, with five exhibits being led into evidence.
4. The evidence is as follows:
 - exhibit LL#1:- signed lease between the parties dated Nov. 21, 2019;
 - exhibit LL#2:- ledger for the tenancy from Nov 27/2019 to May 26/2021;
 - exhibit LL#3:- copy of signed N11 agreement to terminate tenancy Apr 30/2020;
 - exhibit LL#4:- arrears update sheet prepared by Jodie Barish for the hearing;
 - exhibit LL#5:- copy of Apr 30/2021 affidavit of Landlord with attachments.
5. Because the amount of arrears being claimed at this hearing (some \$28,750.00 at the time of that hearing), the Landlord declared that he was prepared to attorn to the \$35,000.00 jurisdiction of the Board, if needed.
6. The Tenant, JRM, was able to cross-examine the Landlord, and then she contested the quantum of arrears being claimed, stating the Landlord has not correctly calculated the amounts owing. JRM referred to the disclosure she had provided (relating to claimed bank fraud issues from June 2020 to December 2020, etc.). I indicated that the documents she had submitted were received by the Board. I acknowledged having reviewed them, but I indicated they do not reveal or identify anything about the actual amounts the Tenants paid to the Landlord in respect of monthly rents.
7. In any event, before we were able to begin hearing the Tenants' full evidence in chief, I had to adjourn the matter due to time constraints in the hearing block.
8. To ensure the prejudice to the parties were kept to a minimum, I issued a second interim order, namely order SOL-16176-20-IN2 dated May 10, 2021. Due to claimed pressures facing the Tenants, the second interim order reduced the amount of rent needed to be paid in order to continue proceeding with the Tenants' intention to raise section 82 issues. That is, I ordered that \$1,250.00 (half the monthly rent) would need to be paid every month – starting with \$1,250.00 on May 15, 2021, which was to pay for the rent owing for

the April 27, 2021 to May 26, 2021 rental period. It was understood that while paying half-rents monthly, the quantum of arrears would likely rise by the time the next hearing could be held.

Determinations (from the final hearing on October 28, 2021):

1. The L1 application was filed with the Board on August 17, 2020, and was duly amended on February 2, 2021.
2. The Tenants have not paid the total rent the Tenants were required to pay for the period from December 27, 2019 to November 26, 2021. Because of the arrears, the Landlord served a Notice of Termination effective February 29, 2020.
3. It was evident from the most current update sheet provided by the Landlord dated October 20, 2021 (exhibit LL#6), the Tenants did not comply with the payment of rents (half-monthly rents) ordered under the second interim order, above referenced. Specifically, the Tenants made their payments in full to July 2021, but have not paid anything further from August 2021 to the date of the October 28, 2021 hearing.
4. After the filing of the L1 application on August 17, 2020, the Tenants have paid a total of \$11,675.00 to the Landlord.
5. The monthly rent is \$2,500.00 due on the 27th day of each month. There is no last month's rent deposit.
6. As the Tenants were not in compliance with the interim orders issued, I made a determination that the possible issues under section 82 were not to be considered under the L1 application at bar. TTR understood that the Tenants maintain their full rights at all times to file their own applications with the Board, and from the submissions already made, it appeared the Tenants have already begun using the Board's T2 and T6 application forms to do so.
7. TTR argued strongly that \$11,675.00 paid as submitted by the Landlord is incorrect, and requested that at least the Tenants should be permitted some additional time to submit their evidence to rebut the amount owing under the application. LLR objected strongly to this request.
8. I granted TTR's request as a last chance for the Tenants to produce any evidence to contradict the Landlord's submissions to date. I granted this request because the Tenants' submissions did show that they had experienced a bank fraud situation in 2020, and I believed it more correct than not, to permit TTR to collect and provide this information.
9. I set deadlines for TTR and LLR to submit relevant information post-hearing. TTR was given until 5:00 pm, November 5, 2021 to submit, and LLR was given until 5:00 pm, November 12, 2021 to submit, if needed.

10. I confirm that TTR did provide me submissions post-hearing as directed. I note that the Landlord/LLR made no post-hearing submissions. The majority of TTR's submissions relate to section 83 circumstances (e.g. JRM's health and the Tenants' desire to maintain the tenancy under a possible repayment plan), but there was nothing submitted to rebut the quantum of arrears that I had specifically requested evidence on.
11. TTR made reference to the various previous submissions the Tenants have already made, and for which I have already seen/considered, but nothing was proffered to identify any amounts paid that were arguably missed by the Landlord during the May 7, 2021 or October 28, 2021 hearings and in specific reference to exhibit LL#6. As a result, I find that from the two hearings on May 7, 2021 and October 28, 2021, the Landlord's submissions on the rent arrears owing are correct and will be used for the basis of the arrears/voiding order hereunder.
12. TTR's submission has been entered as exhibit TT#1 into the legal record.
13. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of 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 postpone the eviction until January 26, 2022, pursuant to subsection 83(1)(b) of the Act.
14. Both sides have presented evidence to show that there has been a criss-crossing of communications between the parties in respect of discussions to pay off the arrears. Indeed, the rent arrears exceed the Board's maximum amount permissible under its jurisdiction and I do not believe any Board-ordered payment plan is justified hereto. The Tenants have not complied with previous interim orders respecting payments of rent (or partial rent payments). I have taken into consideration the Tenants' most recent request for a payment plan – per exhibit TT#1 in which they propose paying a lump sum of \$17,000.00 in 30-60 days (no information/proof where the money will come from) – but I believe it most equitable in law for the L1 application to give the Tenants some time to void the L1 application if they wish to continue the tenancy; that is why I am postponing the “void” date under this order to January 26, 2022.

It is ordered that:

If the Tenants wish to terminate the tenancy immediately

1. Unless the Tenants void the order as set out below, the tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before January 26, 2022.
2. The Tenants shall pay to the Landlord \$35,000.00 (from a total owing of \$43,638.88)*, which represents the amount of rent owing and compensation up to December 30, 2021 (the date of this order).
3. The Tenants shall also pay to the Landlord \$82.19 per day for compensation for the use of the unit starting December 31, 2021 to the date the Tenants move out of the unit.

4. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
5. If the Tenants do not pay the Landlord the full amount owing* on or before January 26, 2022, the Tenants will start to owe interest. This will be simple interest calculated from January 27, 2022 at 2.00% annually on the balance outstanding.
6. If the unit is not vacated on or before January 26, 2022, then starting January 27, 2022, the Landlord 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 Landlord, on or after January 27, 2022.

If the Tenants wish to continue the tenancy by voiding the order

8. If, on or before January 26, 2022, the Tenants pay the amount of **\$35,000.00** (of the \$46,011.00 owing)** to the Landlord or to the Board in trust, this order for eviction will be void. This means that the tenancy would not be terminated and the Tenants could remain in the unit. If this payment is not made in full and on time, the Landlord 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 January 27, 2022 but before the Sheriff gives vacant possession to the Landlord. The Tenants are only entitled to make this motion once during the period of the tenancy agreement with the Landlord.



Alex Brkic
Member, Landlord and Tenant Board

December 30, 2021

Date Issued

Southern-RO
119 King Street West, 6th Floor
Hamilton ON L8P4Y7

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 July 11, 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: SOL-16176-20

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 N4 Notice of Termination)	December 27, 2019 to February 29, 2020	\$246.58
Less the amount the Tenants paid to the Landlord		-\$11,675.00
Plus compensation: (from the day after the termination date in the Notice to the date of the order -i.e. Dec 30/21)	March 1, 2020 to December 30, 2021	\$55,067.30

Amount owing to the Landlord on the order date:(total of previous boxes)	\$43,638.88
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Additional costs the Tenants must pay to the Landlord:	\$186.00
Plus daily compensation owing for each day of occupation starting December 31, 2021:	\$82.19 (per day)

Total the Tenants must pay the Landlord if the tenancy is terminated (CAPPED at the maximum \$35,000.00	\$35,000.00 +\$82.19 per day starting December 31, 2021
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B. Amount the Tenants must pay to void the eviction order and continue the tenancy:

Reasons for amount owing	Period	Amount
Arrears:	December 27, 2019 to November 26, 2021	\$52,500.00
Arrears (after Oct 28/2021 hearing)	November 27, 2021 to January 26, 2022	\$5,000.00

Less the amount the Tenants paid to the Landlord		-\$11,675.00
Additional costs the Tenants must pay to the Landlord (filing fee):		\$186.00
Subtotal:		\$46,011.00
Total the Tenants must pay to continue the tenancy (CAPPED at the maximum \$35,000.00):	On or before January 26, 2022	\$35,000.00