



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

In the matter of: 5748 KELDREW AVENUE
MISSISSAUGA ON L5M7B9

Between: Leslie Lobo Landlords
Margaret Lobo

and

Abdelnaser Albalbisi Tenant

2021 CanLII 143858 (ON LTB)

Leslie Lobo and Margaret Lobo (the 'Landlords') applied for an order to terminate the tenancy and evict Abdelnaser Albalbisi (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on July 16, 2021. The Landlords and the Tenant attended the hearing. The Landlord was represented by Amanda Richards. The Tenant was represented by Shalini Puri. The Landlords were assisted by their daughter, Danielle Fernandes.

This amended order is issued to correct a clerical error in the original order issued on August 20, 2021. The Tenant's request for a stay of the order is denied.

Determinations:

1. The Tenant has not paid the total rent the Tenant was required to pay for the period from February 15, 2021 to August 14, 2021. Because of the arrears, the Landlords served a Notice of Termination effective March 13, 2021.
2. The Tenant is in possession of the rental unit.
3. The lawful monthly rent is \$2,950.00.
4. The Landlords collected a rent deposit of \$2,950.00 from the Tenant and this deposit is still being held by the Landlords.
5. Interest on the rent deposit is owing to the Tenant for the period from September 14, 2020 to March 13, 2021.
6. The Tenant made no payments since this application was filed.
7. The parties agree that the amount outstanding to August 14, 2021, inclusive of rent arrears (\$17,700.00), and costs (\$186.00) is \$17,886.00.

8. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of Covid-19 on the parties and whether the Landlords attempted to negotiate a payment agreement with the Tenant and find that it would not be unfair to postpone the eviction until November 14, 2021 pursuant to subsection 83(1)(b) of the Act subject to the condition(s) set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
9. The Tenant requested that the Board orders a payment plan whereby the Tenant would pay the monthly rent plus \$250 a month for 4 months and then the monthly rent plus \$550 until the arrears are paid off. As of the date of the hearing this payment plan would require approximately 3 years to complete. In the alternative, the Tenant requested that he be given 3 to 4 months to find a new place to live for him and his family. He testified that he would be able to pay the monthly rent going forward.
10. The Tenant requested relief from eviction so that he could concentrate on his business and so that his children could remain in their schools.
11. The Tenant testified that he moved into the rental unit in October, 2020 with his spouse and 5 children. The children are now 4, 8, 16, 20 and 25. He testified that he and his wife were both self-employed and lost their income due to Covid-19 shutdowns in November 2020. He testified that he was initially receiving government assistance but that the payments stopped in early 2021, and he was still waiting for CRA to clear their pending payments. He further testified that his family has been without income since February 2021 and that they have now depleted their savings. He testified that they were just starting to earn some income again as the economy was reopening. He testified that he will definitely be able to pay the monthly rent starting August 15, 2021 but that he would not be able to pay much towards arrears of rent for the next few months as his business is recovering.
12. The Tenant was unable to provide detailed information about his projected income as a lot of the variables that would determine his household income were still in a flux. He testified that his income prior to Covid-19 shutdowns was approximately \$15,000 a month but did not give clear projections about his expected income in the upcoming months. He also did not provide any evidence about his family or business expenses. On cross examination the Tenant admitted that he had been paying some bills after losing his income in February 2021 but testified that he was able to negotiate deferrals or reductions with his other creditors.
13. The Landlords opposed the Tenant's lengthy payment plan proposal but was not opposed to a delayed eviction conditional upon the Tenant paying monthly rent as it comes due. The Landlords testified the female Landlord had lost her job due to Covid-19 and that they were experiencing financial hardship themselves. The Landlords' evidence was that they could not afford to keep the rental unit without receiving any rent. This evidence was not challenged by the Tenant.
14. I will not grant the Tenant's request for a payment plan as I do not find it to be fair in the circumstances. The Tenant's proposed payment plan would take more than 3 times as long as the duration of this tenancy to date, and the Tenant has not made any rent payments since February. The Tenant was also unable to clearly explain what his income and expenses are at the moment and what they are expected to be in the near future. While this lack of information is understandable in the circumstances, it makes it difficult for the Board to determine how fair or realistic the proposed payment plan is. In light of all of the disclosed circumstances, I am not

persuaded that the Tenant would be able to even pay the monthly rent for the next 3 years. The business may or may not recover quickly and the economy may go through another shut down. The Tenants' ability to consistently pay an additional \$800.00 a month towards arrears is even less clear. The Landlords' own financial hardship is another factor weighing against granting the Tenant's request for a payment plan.

15. I will, however, grant the Tenant's request for an approximately 3-month delay. This relief from eviction is contingent upon the Tenant paying the monthly rent for August, September and October. This minimizes the prejudice to the Landlord and allows the Tenant, his spouse and his 5 children additional time to find a place to live without immediate interruption to his family business and his children's school.

It is ordered that:

1. Unless the Tenant voids the order as set out below, the tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before November 14, 2021.
2. On or before August 31, 2021, the Tenant shall pay the Landlords the rent that came due August 15, 2021 in full if the Tenant hasn't already done so.
3. The Tenant shall pay the Landlords the rent for the months of September 2021 and October, 2021 in full and on or before the 15th of each corresponding month.
4. If the Tenant fails to make any of the payments in accordance with paragraphs 2 or 3 of this order, 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 Tenant prior to November 14, 2021, and for the payment of any new arrears of rent and NSF charges not already ordered under paragraph 2 of this order. The Landlord must make an application within 30 days of a breach of a condition set out in paragraphs 2 or 3 of this order.
 - (b) The balance owing under paragraph 5 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*
5. On or before November 15, 2021, the Tenant shall also pay to the Landlords \$14,603.62*, which represents the amount of rent owing and compensation up to August 14, 2021, less the rent deposit and interest the Landlords owe on the rent deposit.
6. The Tenant shall also pay to the Landlords \$186.00 for the cost of filing the application.
7. The Tenant shall also pay to the Landlords \$96.99 per day for compensation for the use of the unit starting August 15, 2021 to the date the Tenant moves out of the unit.
8. If the Tenant does not pay the Landlords the full amount owing* on or before November 15, 2021, the Tenant will start to owe interest. This will be simple interest calculated from November 16, 2021 at 2.00% annually on the balance outstanding.

- 9. If the unit is not vacated on or before November 14, 2021, then starting November 15, 2021, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
- 10. 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 November 15, 2021.
- 11. If the Tenant wishes to void this order and continue the tenancy, the Tenant must pay to the Landlords or to the Board in trust:
 - i) \$20,836.00 if the payment is made on or before September 14, 2021, or
 - ii) \$26,736.00 if the payment is made on or before November 14, 2021**.
 If the Tenant does 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.
- 12. 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 November 15, 2021 but before the Sheriff gives vacant possession to the Landlords. The Tenant is only entitled to make this motion once during the period of the tenancy agreement with the Landlords.

2021 CanLII 143858 (ON LTB)

August 20, 2021

Date Issued



Vladimir Nikitin

Member, Landlord and Tenant Board

November 22, 2021

Date Amended

Central-RO
3 Robert Speck Pkwy, 5th Floor
Mississauga ON L4Z2G5

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 May 15, 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**

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)	February 15, 2021 to March 13, 2021	\$2,618.63
Plus compensation: (from the day after the termination date in the Notice to the date of the order)	March 14, 2021 to August 14, 2021	\$14,936.46
Less the rent deposit:		-\$2,950.00
Less the interest owing on the rent deposit:	September 14, 2020 to March 13, 2021	-\$1.47
Amount owing to the Landlords on the order date: (total of previous boxes)		\$14,603.62
Additional costs the Tenant must pay to the Landlords:		\$186.00
Plus daily compensation owing for each day of occupation starting August 15, 2021:		\$96.99 (per day)
Total the Tenant must pay the Landlords if the tenancy is terminated:		\$14,789.62, + \$96.99 per day starting August 15, 2021

B. Amount the Tenant must pay to void the eviction order and continue the tenancy:**1. If the payment is made on or before September 14, 2021:**

Reasons for amount owing	Period	Amount
Arrears:	February 15, 2021 to September 14, 2021	\$20,650.00
Additional costs the Tenant must pay to the Landlords:		\$186.00
Total the Tenant must pay to continue the tenancy:	On or before September 14, 2021	\$20,836.00

2. If the payment is made after September 14, 2021 but on or before November 14, 2021:

Reasons for amount owing	Period	Amount
Arrears:	February 15, 2021 to November 14, 2021	\$26,550.00
Additional costs the Tenant must pay to the Landlords:		\$186.00
Total the Tenant must pay to continue the tenancy:	On or before November 14, 2021	\$26, <u>736</u> .00