



Order under Section 69
Residential Tenancies Act, 2006

File Number: EAL-90699-20

In the matter of: 183 URBANCREST PRIVATE
NEPEAN ON K2J2S7

Between: Devi Renganathan Landlord

and

Kerrylynn Dilabio, Tenants
Mark Dilabio

Devi Renganathan (the 'Landlord') applied for an order to terminate the tenancy and evict Mark Dilabio ('MD') and Kerrylynn Dilabio ('KD')(the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by video conference on June 1, 2021. The Landlord, the Landlord's legal representative, David Lyman, and the Tenants' legal representative, Kathy Edouard-Thales, attended the hearing.

Request for Adjournment:

1. The Tenant's legal representative requested an adjournment as the Tenants were at the hospital visiting KD's mother. The request was denied as this is the third request to adjourn by the Tenants. The Tenants' legal representative may make submissions and present evidence on the Tenants' behalf.

Determinations:

1. The Tenants are in possession of the rental unit.
2. The monthly rent is \$1,530.00.
3. The Tenants have not paid the total rent the Tenants were required to pay for the period from March 1, 2020 to December 31, 2020. Because of the arrears, the Landlord served a Notice of Termination effective May 12, 2020.
4. The Tenants paid \$15,300.00 after the application was filed.

5. The Landlord was required to pay the Tenants \$1,530.00 on or before August 31, 2020 in connection to an N12 notice of termination (related file HOL-08203-20). The Landlord stated that she credited the Tenants' rental account on August 1, 2020 in the amount of \$490.40, which represents \$1,530.00 less \$1,039.00 the Tenants owed for damage to the garage.
6. The Tenants' legal representative submitted that \$1,039.00 should not have been deducted from the one-month compensation the Landlord owed as the Tenants disputed the damage claim as the Tenants wanted an opportunity to repair the damage themselves.
7. I do not believe the Landlord was entitled to deduct the garage damage from the amount she was required to pay the Tenants under section 48.1. I say this because there was no compelling evidence before me indicating the Tenants agreed to the amount claimed for the damage or agreed to pay the Landlord for the damage.
8. It is the Board not a landlord who determines whether a tenant owes compensation for damage. The Landlord could have filed the appropriate application to seek compensation for damage. The Landlord, however, was not entitled to deduct this amount from the amount she was required to pay under section 48.1. Accordingly, I find that the Tenants are entitled to a credit of \$1,530.00.
9. The Landlord collected a rent deposit of \$1,500.00 from the Tenants and this deposit is still being held by the Landlord.
10. Interest on the rent deposit is owing to the Tenants for the period from August 16, 2015 to May 12, 2020.

Relief from eviction

11. The Tenants' legal representative requested that the Board exercise its discretion by postponing the eviction to August 31, 2021. She stated that in the related matter (HOL-08203-20) the parties agreed to terminate the tenancy on August 31, 2021. She submitted that the Tenants are not able to move earlier than August 31, 2021 due to financial stress.
12. The Tenants' legal representative indicated that KD does not work and MD has been without employment income due to COVID. The Tenants currently receive Ontario Works ('OW') and Canada Emergency Response Benefits ('CERB'), which will change mid-June. She stated that the Tenants have reached out to the city for help with the arrears and that the Tenants are prepared to pay the July 2021 rent in full along with some money towards the arrears.

13. The Landlord's legal representative submitted that while the parties agreed to end the tenancy on August 31, 2021 at a previous proceeding, the parties acknowledged that the Landlord's L1 application would proceed if the rent had not been paid in full. He stated that the Landlord has no home as that she has been waiting to move into the rental unit and that this has caused her significant stress. In addition to arrears, the Tenants have not paid the water bill and the Landlord has had to pay the City \$2,203.65 for the Tenants' outstanding water charges.
14. I am of the view that it would be overly prejudicial to the Landlord to delay the eviction to August 31, 2021. I say this because it appears that the Tenants' ability to pay the arrears and ongoing rent is based on receiving funding from the City. No evidence was presented indicating that the City is prepared to pay the arrears for a tenancy that will terminate. The arrears are significant, and I believe it would be unfair to the Landlord to allow the Tenants to remain in the rental unit given their inability to pay the arrears and the utilities.
15. I have considered all of the disclosed circumstances in accordance with section 83 of the *Residential Tenancies Act, 2006* (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 June 30, 2021 pursuant to subsection 83(1)(b) of the Act to allow the Tenants additional time to move.

It is ordered that:

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 June 30, 2021.
2. The Tenants shall pay to the Landlord \$2,966.73*, which represents the amount of rent owing and compensation up to June 30, 2021 less the rent deposit and interest the Landlord owes on the rent deposit.
3. The Tenants shall also pay to the Landlord \$50.30 per day for compensation for the use of the unit starting July 1, 2021 to the date the Tenants move out of the unit.
4. The Tenants shall also pay to the Landlord \$175.00 for the cost of filing the application.
5. If the Tenants do not pay the Landlord the full amount owing* on or before June 30, 2021, the Tenants will start to owe interest. This will be simple interest calculated from July 1, 2021 at 2.00% annually on the balance outstanding.
6. If the unit is not vacated on or before June 30, 2021, then starting July 1, 2021, 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 July 1, 2021.
8. If, on or before June 30, 2021, the Tenants pay the amount of \$4,765.00** 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 July 1, 2021 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.
10. This order terminates the tenancy and permits the Landlord to file the order with Court Enforcement Office (Sheriff) to evict the Tenant. However, as of the date this matter was heard, the Sheriff cannot enforce this order as a result of Ontario Regulation 266/21 made under the *Emergency Management and Civil Protection Act* on April 8, 2021. The Tenant cannot be evicted from the rental unit while this regulation is in force. Eviction by the Sheriff may occur after the regulation is removed by the Ontario Government.

2021 CanLII 93432 (ON LTB)

June 8, 2021
Date Issued

Dawn Sullivan
Member, Landlord and Tenant Board

Eastern-RO
255 Albert Street, 4th Floor
Ottawa ON K1P6A9

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 December 20, 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**

File Number: EAL-90699-20

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 Notice of Termination)	March 1, 2020 to May 12, 2020	\$603.62
Less the amount the Tenants paid to the Landlord		-\$16,830.00
Plus compensation: (from the day after the termination date in the Notice to the date of the delayed eviction)	May 13, 2020 to June 30, 2021	\$20,824.20
Less the rent deposit:		-\$1,500.00
Less the interest owing on the rent deposit:	August 16, 2015 to May 12, 2020	-\$131.09
Amount owing to the Landlord: (total of previous boxes)		\$2,966.73
Additional costs the Tenants must pay to the Landlord:		\$175.00
Plus daily compensation owing for each day of occupation starting July 1, 2021:		\$50.30 (per day)
Total the Tenants must pay the Landlord if the tenancy is terminated:		\$3,141.73, + \$50.30 per day starting July 1, 2021

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

Reasons for amount owing	Period	Amount
Arrears:	March 1, 2020 to June 30, 2021	\$21,420.00
Less the amount the Tenants paid to the Landlord		-\$16,830.00
Additional costs the Tenants must pay to the Landlord:		\$175.00
Total the Tenants must pay to continue the tenancy:	On or before June 30, 2021	\$4,765.00

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