



Order under Section 69
Residential Tenancies Act, 2006

File Number: SOL-19869-21

In the matter of: 411, 12 MOUNTAIN AVENUE
HAMILTON ON L8G 3P1

Between: The Effort Trust Company Landlord

and

Christopher Lucas Tenant

The Effort Trust Company (the 'Landlord') applied for an order to terminate the tenancy and evict Christopher Lucas (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by video hearing on July 6, 2021.

The Landlord, through the attendance of Kimberly Holleran, attended the hearing. The Tenant attended the hearing.

Determinations:

1. The Tenant has not paid the total rent the Tenant was required to pay for the period from December 1, 2019 to July 31, 2021. Because of the arrears, the Landlord served a Notice of Termination effective January 30, 2021.
2. The Landlord collected a rent deposit of \$1,120.00 and this deposit is still being held by the Landlord.
3. Interest on the rent deposit is owing for the period from September 1, 2018 to January 30, 2021.
4. The Tenant claims not to have rented a parking spot or two spots. He states that he does not have a driver's licence, nor does he have a vehicle. Rent charges include charges for two parking spots.
5. The Landlord states that the previous tenant of this unit, with whom the Landlord had a lease, rented two parking spots, and that this present Tenant took over the rental of this unit under the same terms and conditions.

6. In an *assignment*, the Landlord's position is undoubtedly correct. But whether there was an assignment here is not clear. The process of assignment is set out in the *Residential Tenancies Act, 2006* and starts off with the tenant (here, the previous tenant) requesting the Landlord's consent.
7. Here, the Mr. Lucas simply took over the unit. Mr. Lucas attended before the Board in a previous proceeding against the former tenant, asserted his status as the Tenant and was successful in doing so. Regardless of the correctness of this, the Landlord thereupon accepted Mr. Lucas as the Tenant of this unit. At this stage, Mr. Lucas is the Tenant and is responsible for the arrears of rent.
8. The Tenant, Mr. Lucas, is very likely responsible for the parking charges (\$70.00) per month, regardless of how "the tenant" in this tenancy, changed. The Landlord's position, that the same terms and conditions should apply, is reasonable. But as an expedient and, frankly, at the urging of the Board, the Landlord agreed to waive parking charges at \$70.00 per month for the period from December 1, 2019 to the date of hearing (19 months + 13 days).
9. The above waiver does not constitute a finding that the lawful rent was other than \$1,147.00 per month up until the date of this order. However, daily compensation from July 14, 2021 onward will be based on a rent of \$1,077.00 per month (\$1,147.00 - \$70.00 parking).
10. The Tenant has not paid any rent since December 2019. The Tenant's evidence that he *tried* to pay rent, but was somehow thwarted or impeded by the Landlord, is not believable and is not believed. I have considered the Landlord's actions in relation to section 83(6) of the *Residential Tenancies Act, 2006* and determined that the Landlord did not have another party with whom it could negotiate in good faith.
11. 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.

It is ordered that:

1. The two parking spots, or spaces, that the Landlord has as rented to this Tenant, as part of this tenancy, are not, or are no longer, rented to this Tenant and not part of this tenancy. The Landlord may retake full possession of both spots immediately, without notice to this Tenant and without notice to whomever may be unlawfully occupying these spots.
2. Unless the Tenant voids the order as set out below, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before July 20, 2021.

3. The Tenant shall pay to the Landlord \$19,656.50*, which represents the amount of rent owing and compensation up to July 13, 2021, less the rent deposit and interest the Landlord owes on the rent deposit, less a, without prejudice, credit for parking, plus the application filing fee.
4. The Tenant shall also pay to the Landlord \$35.41 per day for compensation for the use of the unit starting July 14, 2021 to the date the Tenant moves out of the unit.
5. If the Tenant does not pay the Landlord the full amount owing* on or before July 20, 2021, the Tenant will start to owe interest. This will be simple interest calculated from July 21, 2021 at 2.00% annually on the balance outstanding.
6. If the unit is not vacated on or before July 20, 2021, then starting July 21, 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 21, 2021.
8. If, on or before July 20, 2021, the Tenant pays the amount of \$21,494.45** 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 Tenant 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 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 July 21, 2021 but before the Sheriff gives vacant possession to the Landlord. The Tenant is only entitled to make this motion once during the period of the tenancy agreement with the Landlord.



Donald MacVicar
Member, Landlord and Tenant Board

July 13, 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 January 21, 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**

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2021 CanLII 107120 (ON LTJ)

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)	December 1, 2019 to January 30, 2021	\$15,811.29
Plus compensation: (from the day after the termination date in the Notice to the date of the order)	January 31, 2021 to July 13, 2021	\$6,184.44
Less the rent deposit:		-\$1,120.00
Less the interest owing on the rent deposit:	September 1, 2018 to January 30, 2021	-\$45.33
Less a, without prejudice, credit for parking from December 1, 2019 to July 13, 2021:		\$1,359.90
Amount owing to the Landlord on the order date: (total of previous boxes)		\$19,470.50
Plus daily compensation owing for each day of occupation starting July 14, 2021:		\$35.41 (per day)
Plus application filing fee:		\$186.00
Total the Tenant must pay the Landlord if the tenancy is terminated:		\$19,656.50 + \$35.41 per day starting July 14, 2021

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

(Lawful rent to July 13, 2021: \$1,147.00 per month)
(Lawful rent adjusted to \$1,077.00 per month as of July 14, 2021)
(*Pro rata* adjusted rent for the month of July 2021: \$1,106.35)

Reasons for amount owing	Period	Amount
Arrears:	December 1, 2019 to July 31, 2021	\$22,668.35
Plus: Application filing fee:		\$186.00
Less: Without prejudice credit for parking as above:		\$1,359.90
Total the Tenant must pay to continue the tenancy:	On or before July 20, 2021	\$21,494.45