



Order under Subsection 87(1)
Residential Tenancies Act, 2006

File Number: SOL-21489-21

In the matter of: 301, 5521 DRUMMOND ROAD
NIAGARA FALLS ON L2G1G3

Between: Drummond Place Landlord

and

James Logan Tenants
Stacey Logan

Drummond Place (the 'Landlord') applied for an order requiring James Logan and Stacey Logan (the 'Tenants') to pay the rent that they owe.

This application was heard by video conference on June 22, 2021. Only the Landlord's Legal Representative, J. Kay attended the hearing. As of 11:14 a.m., the Tenants were not present or represented at the hearing although properly served with notice of this hearing by the Board.

Determinations:

1. The Tenants did not pay the total rent they were required to pay for the period from August 1, 2020 to March 31, 2021.
2. The Tenants vacated the rental unit on March 31, 2021. The Tenants were in possession of the rental unit on the date the application was filed.
3. The tenancy is for a fixed term which commenced on July 1, 2020. The Landlord stated that the Tenants gave a notice of termination on February 13, 2021 but this notice was not accepted by the Landlord because it contained a termination date of March 31, 2021.
4. The Landlord requested an order for the Tenants to pay the rent for the months of March and April 2021 with the last month's rent deposit applied to May 2021 because a new tenancy for the unit commenced on June 1, 2021.
5. The Landlord sent post hearing submissions to the Board to show the efforts made to minimize their loss as a result of the Tenants' inadequate notice of termination.
6. The Landlord collected a rent deposit of \$1,145.00 from the Tenants and this deposit is still being held by the Landlord.

Analysis

7. Based on all the evidence, for the Tenants to lawfully terminate the tenancy, the Tenants had to give a notice of termination in accordance with section 44 and 47 of the

Residential Tenancies Act, 2006. Those sections state that a Tenant who intends to terminate a tenancy for a fixed term, shall give a Notice of Termination to the Landlord at least 60 days before the date the termination is specified to be effective and that date is only effective on the expiration date of tenancy agreement. In this case, the earliest date that the Tenants could have terminated the tenancy was June 30, 2021.

8. Thus, in the normal course, the Tenants would be responsible for paying the rent until June 30, 2021. However, section 16 of the Act provides that when a landlord or a tenant becomes liable to pay any amount as a result of a breach of a tenancy agreement, the person entitled to claim the amount has a duty to take reasonable steps to minimize the person's losses. In this case the Landlord had a duty to minimize the loss arising from the Tenants' breach.
9. The evidence demonstrates that the Landlord became aware of the Tenants' intended breach on February 13, 2021, but nowhere in the Landlord's post hearing submission does it show that this specific unit was immediately advertised for rent. Based on the Landlord's internal email exchange, the earliest date of a discussion about a prospective tenant for the unit was March 19, 2021. This meant that for at least one month, the Landlord either did not take any steps to minimise their loss as required by section 16 of the Act or failed to provide proof that they did.
10. Due to the Landlord's failure to minimise their loss by advertising the unit for rent within a reasonable time, I find it fair in the circumstances to order the Tenants to pay the rent for March 2021 only. The last month's rent deposit of \$1,145.00 shall be applied to the month of April 2021.

It is ordered that:

1. The Tenants shall pay to the Landlord \$1,477.02, which represents the amount of rent owing up to April 30, 2021, less the last month's rent deposit (\$1,145.00) and interest (\$20.03) on the last month's rent deposit.
2. The Tenants shall also pay to the Landlord \$201.00 for the cost of filing the application.
3. If the Tenants do not pay the Landlord the full amount owing on or before August 13, 2021, the Tenants will start to owe interest. This will be simple interest calculated from August 14, 2021 at 2.00% annually on the balance outstanding.

July 13, 2021
Date Issued



Jitewa Edu
Member, Landlord and Tenant Board

Southern-RO
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.