



Order under Section 69
Residential Tenancies Act, 2006

File Number: SOL-19328-21

In the matter of: UNIT B, 94 LINCOLN STREET
WELLAND ON L3C5J7

Between: Melissa Dupuis Landlord

and

Dianne Fluter Tenant

Melissa Dupuis (the 'Landlord') applied for an order to terminate the tenancy and evict Dianne Fluter (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by video conference on June 29, 2021. The Landlord, the Landlord's Legal Representative, S. Smith, the Tenant's Legal Representative, L. Ridsdill and 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, 2020 to June 30, 2021. Because of the arrears, the Landlord served a Notice of Termination effective December 22, 2020.
2. The Tenant is in possession of the rental unit.
3. The lawful monthly rent is \$593.78.
4. The Tenant paid \$2,375.12 after the application was filed.
5. The Tenant testified that she entered a tenancy agreement with the previous Landlord in July 2014 and that agreement provided in paragraph 8 that the Landlord agrees to pay 6% interest annually on the last month's rent deposit.
6. The Tenant further testified that on receipt of legal advice, she withheld a portion of the rent in lieu of interest on the last month's rent deposit. As a result, the Landlord served the Notice to End your Tenancy Early for Non-payment of Rent, but the Tenant denies owing the Landlord.

7. The Tenant is not entitled to withhold rent for this purpose. I find the Landlord was within her rights to serve the notice of termination as the Tenant did not pay the full monthly rent.
8. The Landlord testified that the previous Landlord did not pay interest on the last month's rent deposit and argued that the agreement to pay interest at 6% annually on the deposit is unenforceable.
9. The Landlord collected a rent deposit of \$550.00 from the Tenant and this deposit is still being held by the Landlord.
10. Interest on the rent deposit is owing to the Tenant for the period from June 27, 2014 to December 22, 2020.

Analysis


11. Section 106 (6) of the Residential Tenancies Act, 2006 ('the Act') provides that a landlord of a rental unit shall pay interest to the tenant annually on the amount of the rent deposit at a rate equal to the guideline determined under section 120 that is in effect at the time payment becomes due.
12. Section 3 (1) provides that the Act, except Part V.1, applies with respect to rental units in residential complexes, despite any other Act and despite any agreement or waiver to the contrary.
13. Read together and applied to this case, the above sections demonstrate that interest on the last month's rent deposit is to be paid according to the guideline in effect each year and the parties cannot waive that provision. Hence, interest on the last month's rent deposit has been calculated in this order based on the yearly guidelines from July 2014.
14. 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 not be unfair to postpone the eviction until **July 31, 2021** pursuant to subsection 83(1)(b) of the Act. the Tenant requested a termination date of July 31, 2021.

It is ordered that:

1. 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 31, 2021.
2. The Tenant shall pay to the Landlord \$383.16*, 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.
3. The Tenant shall also pay to the Landlord \$19.52 per day for compensation for the use of the unit starting July 14, 2021 to the date the Tenant moves out of the unit.

4. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing* on or before July 31, 2021, the Tenant will start to owe interest. This will be simple interest calculated from August 1, 2021 at 2.00% annually on the balance outstanding.
6. If the unit is not vacated on or before July 31, 2021, then starting August 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 August 1, 2021.
8. If, on or before July 31, 2021, the Tenant pays the amount of \$1,543.31** 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 August 1, 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.

July 13, 2021
Date Issued



Jitewa Edu
Member, Landlord and Tenant Board

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 February 1, 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 106930 (ON LTB)

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, 2020 to December 22, 2020	-\$588.34
Less the amount the Tenant paid to the Landlord		-\$2,375.12
Plus, compensation: (from the day after the termination date in the Notice to the date of the order)	December 23, 2020 to July 13, 2021	\$3,962.56
Less the rent deposit:		-\$550.00
Less the interest owing on the rent deposit:	June 27, 2014 to December 22, 2020	-\$65.94
Amount owing to the Landlord on the order date: (total of previous boxes)		\$383.16
Additional costs the Tenant must pay to the Landlord:		\$186.00
Plus, daily compensation owing for each day of occupation starting July 14, 2021:		\$19.52 (per day)
Total the Tenant must pay the Landlord if the tenancy is terminated:		\$569.16, + \$19.52 per day starting July 14, 2021

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

Reasons for amount owing	Period	Amount
Arrears:	December 1, 2020 to July 31, 2021	\$3,732.43
Less the amount the Tenant paid to the Landlord		-\$2,375.12
Additional costs the Tenant must pay to the Landlord:		\$186.00
Total the Tenant must pay to continue the tenancy:	On or before July 31, 2021	\$1,543.31