



Order under Section 69
Residential Tenancies Act, 2006

File Number: SOL-17539-20

In the matter of: MAIN & 2ND FLOOR, 14 EVELYN STREET
BRANTFORD ON N3R3G9

Between: 1782855 Ontario Ltd Landlord

and

Rob Hewitson Tenants
Stephanie Hewitson

1782855 Ontario Ltd (the 'Landlord') applied for an order to terminate the tenancy and evict Stephanie Hewitson and Rob Hewitson (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe (the 'L1 application').

The Landlord also applied for an order to terminate the tenancy and evict the Tenants because: 1) the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex have substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant; and 2) because the Tenants have been persistently late in paying their rent (the 'L2 application').

This combined L1/L2 application was heard by way of a video conference on June 16, 2021. The Landlord's Legal Representative, J. Struthers, attended the hearing on behalf of the Landlord. J. Postma and S. Postma also attended the hearing as agents of the Landlord. As of 11:19 a.m., the Tenants were not present or represented at the hearing, although properly served with notice of this hearing by the Board.

Determinations:

L1 application

The Board's monetary jurisdiction

1. The total amount owed by the Tenants to the Landlord exceeds the Board's monetary jurisdiction. Subsection 207(1) of the *Residential Tenancies Act, 2006* (the 'Act') limits the monetary jurisdiction of the Board to that of the Small Claims Court; that amount is \$35,000.00.

2. At the outset of the hearing, the Landlord agreed to waive any amount that exceeds the Board's monetary jurisdiction and agreed that the amount owing is limited to \$35,000.00, which is the monetary jurisdiction of the Board.

Determinations and Reasons

3. The Tenants have not paid the total rent the Tenants were required to pay for the period from June 1, 2016 to June 30, 2021. Because of the arrears, the Landlord served a Notice of Termination effective September 29, 2020.
4. The Tenants are in possession of the rental unit.
5. The current monthly rent is \$1,400.00.
6. The Landlord collected a rent deposit of \$1,400.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit is owing to the Tenants for the period from May 24, 2016 to September 29, 2020.
7. As of the date of the hearing, the Tenants had paid a total of \$4,880.35 after the application was filed.
8. The Landlord sent two letters to the Tenants, dated September 10, 2020 and June 4, 2021, in attempts to resolve this application by way of an agreement. However, no agreement has been reached between the parties.

L2 application

9. The Landlord's L2 application is based on two notices of termination:
 - a. an N5 Notice of Termination (the 'N5 Notice') which alleged that the Tenants owed outstanding utilities in the amount of \$9.66, and that the Tenants' failure to pay the utility bills regularly was a substantial interference on the Landlord's reasonable enjoyment and legal interest with respect to the property.
 - b. an N8 Notice of Termination (the 'N8 Notice') which alleged that the Tenants had been persistently late in paying their rent to the Landlord.
10. Both notices were served on the Tenants on September 10, 2020.
11. Regarding the N5 Notice, the Landlord's Legal Representative submitted that the Tenants had not voided the N5 Notice within the requisite seven-day voiding period but had paid the outstanding utility bill in full since the application was filed.
12. Regarding the N8 Notice, the Landlord's Legal Representative submitted the Landlord's ledger for the rental unit as evidence. This showed that the Tenants had not paid their rent on time for at least one year prior to the date of the application.

13. The Landlord's Legal Representative submitted that this was the Landlord's first application to terminate the tenancy for persistent late payment of rent.
14. I have considered all of the disclosed circumstances in accordance with section 83 of the Act, including the impact of the COVID-19 pandemic upon the parties and whether the Landlord attempted to negotiate an agreement regarding the arrears, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The arrears of rent are at the maximum monetary jurisdiction of the Board, and as such, it would be highly prejudicial to the Landlord to postpone this eviction any further.
15. In the event that the Tenants are able to successfully void the order pertaining to the L1 application, I find that a conditional order requiring the Tenants to pay their rent on time for a period of one year to be appropriate under the circumstances, as this is the Landlord's first application to terminate the tenancy for persistent late payment of rent. I am not prepared to grant an order regarding the outstanding utilities that existed at the time of the application, as the total outstanding amount was small and therefore not a substantial interference with the Landlord's legal interest or reasonable enjoyment of the property. In any event, the outstanding utilities had been paid in full prior to the date of the hearing.

It is ordered that:

L1 application

1. Unless the Tenant voids 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 August 6, 2021.
2. The Tenants shall pay to the Landlord \$35,000.00*, which represents the amount of rent owing and compensation up to July 26, 2021, less the rent deposit and interest the Landlord owes on the rent deposit.
3. If the Tenants do not pay the Landlord the full amount owing* on or before August 6, 2021, the Tenants will start to owe interest. This will be simple interest calculated from August 7, 2021 at 2.00% annually on the balance outstanding.
4. If the unit is not vacated on or before August 6, 2021, then starting August 7, 2021, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
5. 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 7, 2021.
6. If the Tenants wish to void this order and continue the tenancy, the Tenants must pay to the Landlord or to the Board in trust:
 - i) \$54,849.90 if the payment is made on or before July 31, 2021, or
 - ii) \$56,249.90 if the payment is made on or before August 6, 2021**.If the Tenants do not make full payment in accordance with this paragraph and by the

appropriate deadline, then the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

7. 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 August 7, 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.

L2 application

8. If the Tenants successfully void the L1 portion of this order in accordance with paragraphs 6 or 7 of this order, then the Tenants shall pay the monthly rent on or before the first day of every month beginning September 1, 2021 through to August 31, 2022.
9. If the Tenants fail to make any one of the payments in accordance with paragraph 8 of this order, the Landlord may, without notice to the Tenants, apply to the Board pursuant to section 78 of the Act, within 30 days of the breach, for an order terminating the tenancy and evicting the Tenants.

July 26, 2021
Date Issued



Arnab Quadry
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 7, 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**

File Number: SOL-17539-20

2021 CanLII 106398 (ON LTB)

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)	June 1, 2016 to September 29, 2020	\$45,464.04
Less the amount the Tenants paid to the Landlord		-\$4,880.35
Plus compensation: (from the day after the termination date in the Notice to the date of the order)	September 30, 2020 to July 26, 2021	\$13,809.00
Less the rent deposit:		-\$1,400.00
Less the interest owing on the rent deposit:	May 24, 2016 to September 29, 2020	-\$113.15
Amount owing to the Landlord on the order date: (capped by the Board's monetary jurisdiction)		\$35,000.00
Additional costs the Tenants must pay to the Landlord:		\$201.00
Plus daily compensation owing for each day of occupation starting July 27, 2021:		\$46.03 (per day)
Total the Tenants must pay the Landlord if the tenancy is terminated:		\$35,000.00

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

1. If the payment is made on or before July 31, 2021:

Reasons for amount owing	Period	Amount
Arrears:	June 1, 2016 to July 31, 2021	\$59,529.25
Less the amount the Tenants paid to the Landlord:		-\$4,880.35
Additional costs the Tenants must pay to the Landlord:		\$201.00
Total the Tenants must pay to continue the tenancy:	On or before July 31, 2021	\$54,849.90

2. If the payment is made after July 31, 2021 but on or before August 6, 2021:

Reasons for amount owing	Period	Amount
Arrears:	June 1, 2016 to August 31, 2021	\$60,929.25
Less the amount the Tenants paid to the Landlord:		-\$4,880.35

Additional costs the Tenants must pay to the Landlord:		\$201.00
Total the Tenants must pay to continue the tenancy:	On or before August 6, 2021	\$56,249.90