



Order under Section 69
Residential Tenancies Act, 2006

File Number: SWL-42653-20

In the matter of: 254 SHEPHERD STREET
SARNIA ON N7T3J5

Between: Michael Kraan Landlords
Susan Kraan

and

Crystal Fillion Tenants
Matt Jacklin

Michael Kraan and Susan Kraan (the 'Landlords') applied for an order to terminate the tenancy and evict Matt Jacklin and Crystal Fillion (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe (the 'L1 application').

The Landlords also applied for an order to terminate the tenancy and evict the Tenants because the Tenants have been persistently late in paying their rent (the 'L2 application').

The combined L1/L2 application was heard by on July 5, 2021. The Landlords attended the hearing, along with the Landlords' Legal Representative, Gail Kukor Lang. The Tenants attended the hearing.

Determinations:

1. The application is amended to reflect that Matt Jacklin ('MJ') and Crystal Fillion are the Tenants at the rental unit. Jacob Jacklin is a child and an occupant of the rental unit.

L1 application

2. At the hearing, the Landlords requested the consent of the Board to withdraw the L1 application.
3. In accordance with subsection 200(4) of the *Residential Tenancies Act, 2006* (the 'Act'), I consent to the withdrawal of the L1 application.

L2 application

4. The parties agree that the Tenants have been persistently late in paying the rent to the Landlords since March 2019. The rent is due on or before the fifth day of every month.

5. Based on the uncontested evidence before the Board, I find that the Tenants have persistently failed to pay the rent on the date that it was due.

Section 83 considerations

6. The Landlords sought a termination of the tenancy based on the Tenants' persistent late payment of rent. This is the Landlords' first application to terminate the tenancy for persistent late payment of rent.
7. The Tenants requested that the tenancy be preserved and that they be given another opportunity to pay their rent on time on an ongoing basis.
8. In response to the Landlords' application, MJ stated that he had been diagnosed with some serious medical conditions shortly after the Tenants moved into the rental unit, as a result of which he had to take time off work and consequently 'got behind' on the rent payments. MJ stated that, despite his conditions, the Tenants had made every effort to make sure that the rent was fully paid whenever they were able to do so. MJ stated that paying their rent was the Tenants' "top priority regardless of anything else" in the Tenants' lives. MJ stated that the Tenants had received independent legal advice prior to this hearing and were simply seeking another opportunity to preserve the tenancy and pay the rent on time.
9. 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 find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act. This is the Landlords' first application to terminate the tenancy for persistent late payment of rent and the Divisional Court has stated in the case of *Sutherland v. Lamontagne*, [2008] O.J. No. 5763 (Div. Ct.) that eviction is a remedy of last resort. As such, I find that it is appropriate to grant a conditional order requiring the Tenants to pay the rent on time for a period of twelve months.

It is ordered that:

1. The Landlords' L1 application is dismissed as withdrawn.
2. Starting on November 1, 2021, and continuing through October 31, 2022, the Tenants shall pay the monthly rent on or before the fifth day of each month.
3. If the Tenants fail to make any one of the payments in accordance with paragraph 2 of this order, the Landlords may, within 30 days of the breach and without notice to the Tenants, apply to the Board under section 78 of the Act for an order terminating the tenancy and evicting the Tenants.
4. The Tenants shall pay to the Landlords \$190.00 for the cost of filing the application.

5. If the Tenants do not pay the Landlords the full amount owing on or before November 1, 2021, they will start to owe interest. This will be simple interest calculated from November 2, 2021 at 2.00% annually on the balance outstanding.

October 21, 2021
Date Issued



Arnab Quadry
Member, Landlord and Tenant Board

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