

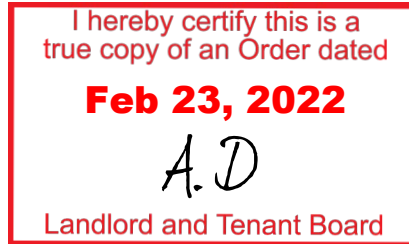


Order under Section 69
Residential Tenancies Act, 2006

File Number: TSL-21121-21

In the matter of: 1308, 25 THE ESPLANADE
TORONTO ON M5E1W5

Between: Benjamin Skalnik
Michelle Skalnik



Landlords

and

David T. Rosen

Tenant

Benjamin Skalnik and Michelle Skalnik (the 'Landlords') applied for an order to terminate the tenancy and evict David T. Rosen and Aisha Rosen (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard in Passcode: 698 7565 6669# on July 7, 2021 and concluded on February 7, 2022.

The Landlords and the Tenant, David Rosen attended the hearings.

The parties agree Aisha Rosen is an Occupant of the rental unit. The style of cause has been amended accordingly.

The Tenant's written notes were submitted to the Board and he was asked to specify the documentary evidence as he made reference to specific claims and emails in his notes. Submissions/Notes given to the Board is not evidence unless it's presented in the context of the hearing so that the other side has an opportunity to cross examine that evidence. The Tenant was frustrated with the process. The Tenant was given several opportunities and time to organize his evidence. This was a second appearance and the Tenant had plenty of time to prepare.

Determinations:

1. The Tenant was in possession of the rental unit when the application was filed.
2. The Landlord initially claimed that the Tenant vacated the rental unit on May 23, 2021 but at the hearing on February 7, 2022 concedes that the Tenant vacated on April 24, 2021.
3. The Tenant challenged the arrears owing and argues that the Landlords were indifferent with the arrears of rent owing as long as he vacated the rental unit. He referred to an email exchanged on March 28, 2021 between, the Occupant and Landlord, involving

negotiations about ending the tenancy where the Occupant was told the tenant can do what he wants with the rent as long as they get the unit back.

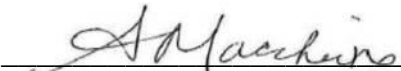
4. The emails exchanged between the Occupant and Landlord is irrelevant as she is not the Tenant. The communication also appears to be part of negotiations and does not establish there was a meeting of the minds. There's nothing in the communications between the Landlords and Tenant that showed they had an agreement to terminate or that the Landlord waived the rent arrears.
5. The Tenant also argues he owes less rent because the Landlord waived rent between April 23, 2020 and September 2020 because of Covid-19 pandemic. The Tenant did not establish the Landlord applied a credit to the Tenant's rent charges for this period. There's no dispute the rent was reduced during this period as a means of accommodation given Covid-19. It was clear from the Landlord's email to the Tenant dated May 6, 2020 at 9:05 pm that balance of unpaid rent was deferred. The Landlord specifically uses the word "defer" which means put off to a later time. Differing a payment doesn't mean that it's waived entirely. It's clear from the email and the N4 Notice that the Tenant would be responsible for paying the unpaid rent and that message was communicated right up to the date the application was filed on March 24, 2021.
6. The Tenants have not paid the total rent the Tenants were required to pay for the period from March 23, 2020 to April 24, 2021. Because of the arrears, the Landlords served a Notice of Termination effective March 19, 2021.
7. The Landlords collected a rent deposit of \$3,400.00 from the Tenants and this deposit is still being held by the Landlords.
8. Interest on the rent deposit is owing to the Tenants for the period from April 5, 2020 to March 19, 2021.
9. The Tenant also owes \$186.00 for the cost of the application fee.
10. The Landlord issued multiple N4 Notices which was unwelcomed and was viewed by the Tenant as harassment. The Landlord has right to exercise their rights under the Act and issue a notice of termination if there's reasonable cause. In this case, the Tenant had unpaid arrears and the Landlord had reasonable cause to issue the N4 Notices. There was not enough evidence that the Tenant was forced and harassed to vacate the rental unit.

It is ordered that:

1. The tenancy between the Landlords and the Tenant is terminated on April 24, 2021.
2. The Tenant shall pay to the Landlords \$12,753.66*, which represents the amount of rent owing and compensation up to April 24, 2021, less the rent deposit and interest the Landlords owe on the rent deposit.
3. The Tenant shall also pay to the Landlords \$186.00 for the cost of filing the application.

4. If the Tenant does not pay the Landlords the full amount owing* on or before March 6, 2022, the Tenant will start to owe interest. This will be simple interest calculated from March 7, 2022 at 2.00% annually on the balance outstanding.

February 23, 2022
Date Issued


Sandra Macchione
Member, Landlord and Tenant Board

Toronto South-RO
15 Grosvenor Street, 1st Floor
Toronto ON M7A 2G6

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

* Refer to section A on the attached Summary of Calculations.

**Schedule 1
SUMMARY OF CALCULATIONS**

File Number: TSL-21121-21

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)	March 23, 2020 to March 19, 2021	\$12,442.44
Plus compensation: (from the day after the termination date in the Notice to the date of the order)	March 20, 2021 to April 24, 2021	\$3,714.48
Less the rent deposit:		-\$3,400.00
Less the interest owing on the rent deposit:	April 5, 2020 to March 19, 2021	-\$3.26
Amount owing to the Landlords on the order date: (total of previous boxes)		\$12,753.66
Additional costs the Tenants must pay to the Landlords:		\$186.00
Total the Tenants must pay the Landlords if the tenancy is terminated:		\$12,939.66, + \$