



Order under Section 21.2 of the
Statutory Powers Procedure Act
and the **Residential Tenancies Act, 2006**

File Number: HOL-10275-21-RV

In the matter of: 319 DELRAY DRIVE
MARKHAM ON L6E0P9

Between: Ivone Souza Landlord

and

Aaron Haile Tenants
Crystal Miller

2021 CanLII 149983 (ON LTB)

Review Order

Ivone Souza (the 'Landlord') applied for an order to terminate the tenancy and evict Crystal Miller and Aaron Haile (the 'Tenants') because the Landlord requires possession of the rental unit for the purpose of residential occupation. The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was resolved by order HOL-10275-21 issued on September 17, 2021.

On October 6, 2021, the Tenants requested a review of the order.

The request was heard by video/teleconference on December 2, 2021.

The Landlord, the Landlord's legal representatives, Avi Rosen and Ann Hosein, and the Tenant, Crystal Miller, attended the hearing. Crystal Miller will be referred to as the Tenant singular in this order.

Determinations:

1. The Tenant raised two issues in her request to review. First, that she was not reasonably able to participate in the proceedings, and second, that the order contained a serious error, because it ordered the Tenant to "pay the Landlord \$5,129.23, which represents compensation for the use of the unit from June 1, 2021 to September 30, 2021, the rent deposit and interest the Landlord owes on the rent deposit."

Were the Tenants reasonably able to participate in the proceedings?

2. The Tenant submitted that she could not attend the hearing on August 18, 2021 because she was preparing for a hearing in Family Court scheduled for August 25, 2021. The

Tenant informed the Landlord's legal representative that she would be vacating the rental unit on September 30, 2021 and that she would not be attending the hearing due to her family circumstances.

3. Based on the evidence before me, I am not satisfied that the Tenant was not reasonably able to attend the hearing on August 18, 2021. Rather, the Tenant made a choice not to attend the hearing.

Was there a serious error in the order?

4. Tenant had paid rent up to September 30, 2021 and relied on the Landlord's legal representative to communicate this to the Board.
5. It was not disputed that the Tenant vacated the rental unit on or about September 30, 2021 and that she had paid all the rent that was due to the Landlord. It was also not disputed that the issue of rent was not raised at the hearing on August 18, 2021. The only issue before the Board at the hearing on that day was termination of tenancy for Landlord's own use.
6. Nevertheless, the Board issued an order directing the Tenant to pay the Landlord: "\$5,129.23, which represents compensation for the use of the unit from June 1, 2021 to September 30, 2021, the rent deposit and interest the Landlord owes on the rent deposit."
7. There was no factual finding or analysis in the Determinations that would give rise to this order. The Tenant paid all the rent that was due. The Landlord has no right to demand monies already paid.
8. As such, I find that there is a serious error in the order. Accordingly, the review will be granted, and the order will be varied by deleting the paragraphs setting out compensation for the use of the rental unit.

It is ordered that:

1. Order HOL-10275-21 issued on August 26, 2021 is varied in the following manner:
2. Paragraphs 2, 3, and 4 of the order setting out compensation for the use of the rental unit shall be deleted, they are of no force and effect.



December 17, 2021
Date Issued

Jana Rozehnal
Member, Landlord and Tenant Board

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