



Order under Section 69
Residential Tenancies Act, 2006

File Number: HOL-07138-20

In the matter of: 60 WANNAMAHER CRESCENT
CAMBRIDGE ON N3E0C5

Between: Wilma D'Souza Landlords
Alwyn D'Souza

and

Fred Perry Tenants
Jaimey Robertson

Wilma D'Souza and Alwyn D'Souza (the 'Landlords') applied for an order to terminate the tenancy and evict Fred Perry and Jaimey Robertson (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on November 23, 2020. Alwyn D'Souza (A.D.) attended on behalf of both Landlord and Jaimey Robertson (J.R.) attended on behalf of both Tenants. The Landlords were represented by Micah Remedios. J.R. spoke to Duty Counsel prior to the Hearing.

Determinations and reasons:

1. The Tenants have not paid the total rent the Tenants were required to pay for the period from February 29, 2020 to November 28, 2020. Because of the arrears, the Landlords served a Notice of Termination effective March 25, 2020.
2. The lawful monthly rent is \$2,250.00.
3. The Landlords collected a rent deposit of \$2,250.00 from the Tenants and this deposit is still being held by the Landlords.
4. Interest on the rent deposit is owing to the Tenants for the period from May 28, 2019 to March 25, 2020.
5. The Tenants paid \$3,375.00 after the application was filed.

Disputed payment

6. At the outset of the Hearing J.R. (the 'Tenant') stated that she did not dispute the amount owing as calculated by the Landlord, which was \$16,875.00 as of November 23, 2020. She then changed her evidence and stated that the Tenants made a payment on February 29, 2020, which was not credited by The Landlord.
7. This testimony potentially brought into question the validity of the Landlords' Notice of Termination as the notice claims arrears of rent for the period starting February 29, 2020 and indicates that the Tenants did not make any payments between February 29, 2020 and March 28, 2020.
8. A.D. (the 'Landlord') testified that he did not receive any payment on or about February 29, 2020 and that the information contained in the Notice of Termination was accurate. The Landlord did not provide any documentary evidence to support his position other than a ledger that was prepared in anticipation of this Hearing and shared with the Tenants.
9. The Landlords bear the overall legal burden of proof in this application as the Landlords are the applicants. However, as it effectively impossible for the Landlords to prove that a payment was not made, the Tenants have an evidentiary burden of proof to prove that a particular disputed payment was made (see *Mauti v. Gibbs*, 2019 ONSC 3355 (CanLII)).
10. I did not find the Tenants' evidence, which consisted solely of oral testimony, to be sufficient to satisfy this evidentiary burden of proof with respect to this disputed payment. I did not find the Tenants' testimony on this issue reliable and plausible. JR did not dispute the amount owing at the beginning of the hearing and did not provide any documentary evidence of the disputed payment despite being served with a copy of the Landlords' ledger which clearly indicated that the Tenants were not credited with any payment for that date.

Request for relief

11. 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 grant relief from eviction subject to the condition(s) set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
12. The Tenant testified that the Tenants lost their employment due to COVID-19. She testified that her husband will start new job in February, 2021 earning approximately \$68,000 a year. She further testified that she was unable to go back to work due to her 18-month-old son's medical condition, but that this would no longer be the case in 2021 after her son's surgery which was taking place in November 2020. Finally, the Tenant testified that she had leads on a new job and that she was confident that she would start receiving income by the end of January 2021. She was previously earning \$110,000 a year.

13. The Tenant asked the Board to order a payment plan whereby The Tenants would pay back the full amount owing by the end of July 2021 with a minimum payment of \$1,000.00 a month in addition to regular monthly rent starting February, 2021. She testified that their financial issues were temporary in nature and that the Tenants would have a great difficulty moving during the pandemic with their two young children and without any funds available for a rent deposit.
14. The Landlords opposed the Tenants' request. They testified that they had financial difficulties as a result of the pandemic and the Tenants' non-payment of rent and that the property has gone into legal recovery as a result of non-payment of mortgage by the Landlord.
15. I will grant the Tenants' request for a payment plan as I do not find it to be unfair in the circumstances. The payment plan is realistic in light of the Tenants' uncontradicted evidence about their income, and it will prevent the Tenants and their two young children from being evicted and potentially homeless during the pandemic. I am mindful of the Landlords' financial difficulties and as such this order will require the Tenants to make a payment on or before January 15, 2021 so that the Tenants do not fall further behind. At the hearing the Tenants proposed that they pay half of December's rent but this Order will require that they pay it in full.
16. As such, the payment plan will ensure that the Tenants do not fall further behind and if the Tenants make the payments on schedule, the Landlords will recover the full amount owing by the end of July 2021.
17. I also note even if I were to grant termination of the tenancy as requested by the Landlords this would likely not resolve their current financial difficulties. If the Tenants were evicted for non-payment off rent it is unlikely that the rental unit could be re-rented in time for the Landlords to collect enough rent to catch up on their mortgage arrears.
18. This order contains all the reasons for this matter. No further reasons will issue.

It is ordered that:

1. The Tenants shall pay to the Landlord \$21,550.00, which represents that arrears of rent and costs outstanding for the period ending January 28, 2021.
2. The Landlords' application for eviction of the Tenants is denied on the condition that the Tenants pay to the Landlords the following amounts in respect of the monies owing under paragraph 1 of this order:
 - (a) \$2,250.00 on or before January 15, 2021;
 - (b) \$1,000.00 on or before February 28, 2021;
 - (c) \$1,000.00 on or before the 29th of every month for 4 months starting March 29th, 2021 and ending on June 29th, 2021; and

- (d) \$14,300.00 on or before the July 29th, 2021.
3. The Tenants shall also pay to the Landlords the rent for the months of January 2021 to July, 2021 in full, and on or before the 29th of each corresponding month.
4. If the Tenants fail to make any of the payments in accordance with paragraphs 2 or 3 of this order, then:
- (a) The Landlords may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenants, and for the payment of any new arrears of rent and NSF charges not already ordered under paragraph 1 of this order. The Landlords must make an application within 30 days of a breach of a condition set out in paragraphs 2 or 3 of this order.
- (b) The balance owing under paragraph 1 of this order shall become payable on the day following the date of default. The monies owing shall bear interest at the post-judgment interest rate determined under subsection 207(7) of the Act.

December 30, 2020
Date Issued



Vladimir Nikitin
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.