



Order under Section 69  
**Residential Tenancies Act, 2006**

**File Number:** TSL-18498-20

**In the matter of:** 905, 500 DAWES ROAD  
TORONTO ON M4B2G1

**Between:** Havcare Investments Inc

Landlord

**and**

Jeff Findlay  
Ricarda Amaral

Tenants

Havcare Investments Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Jeff Findlay and Ricarda Amaral (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on May 12, 2021.

The Landlord's agent Carolyn Krebs and the Tenants attended the hearing.

**Determinations:**

1. The Tenants have not paid the total rent the Tenants were required to pay for the period from November 1, 2019 to May 31, 2021. Because of the arrears, the Landlord served a Notice of Termination effective September 18, 2020.
2. The Tenants are in possession of the rental unit.
3. There was a dispute about the lawful rent.
4. While the Tenants agreed that the lawful rent was \$1,090.00, they testified that a \$40.00 charge for parking should not be included in the rent for some of the months at issue. In particular, they testified that an agent of the Landlord told them not to park in the parking lot and that they discontinued their parking in either October 2020 or November 2020 as a result.
5. Section 125 of the *Residential Tenancies Act, 2006* (the 'Act') requires landlords to decrease the rent charged to tenants of a rental unit "as prescribed" if the landlord and the tenant agree that the landlord will cease to provide, among other things, a parking space. In general, subsection 16(1) of O. Reg. 516/06 sets the minimum rent decrease as the actual cost to the landlord, or where that actual cost cannot be established or where there is no cost to the landlord, a reasonable amount based on value.

6. In this case, the Landlord did not contest the Tenants' evidence that the rent included a \$40.00 parking charge and that the Tenants discontinued the use of their parking space as a result of an instruction by an agent of the Landlord. In the circumstances, I accept that the parties formed an agreement by conduct and that the rent should be reduced by \$40.00. However, as the Tenant's evidence lacked specificity on the date that they discontinued their use of the parking, the best evidence I had was that the Tenants had definitely discontinued their use of the parking by December 1, 2020.
7. The lawful rent was \$1,090.00 between November 1, 2019 and November 30, 2020 and \$1,050.00 from December 1, 2020 onwards.
8. The Tenants paid nil rent after the Landlord filed the application.
9. The Landlord collected a rent deposit of \$1,090.00 from the Tenants and this deposit is still being held by the Landlord.
10. Interest on the rent deposit is owing to the Tenants for the period from March 1, 2019 to September 18, 2020.
11. The remaining issue is whether refusal of or postponement of eviction should be granted under subsection 83(1) of the *Residential Tenancies Act, 2006* (the 'Act'). Pursuant to subsections 83(2) and (6) of the act, this inquiry requires me to consider all of the disclosed circumstances of both parties including whether the Landlord has attempted to negotiate an agreement with the Tenants, including terms of payment for the Tenants' arrears.
12. The Tenants in this case requested conditional relief from eviction in the form of a repayment plan that would require them to pay their rent on time as well as a contribution towards the arrears every month. They proposed that this contribution would be equivalent to the lawful rent. In other words, the Tenants proposed doubling their rent payment until their arrears and the costs incurred by the Landlord to bring this application were paid in full. The Landlord was opposed to this plan and requested a standard order, meaning termination of the tenancy 11-days from the issuance of this order. In large part, the Landlord's position was informed by the long history of nil payments, which in the Landlord's view demonstrated a lack of good faith. The Landlord was also skeptical of one of the Tenant's claims to have found recent employment.
13. In terms of the Tenants' circumstances, the Tenants testified that they have lived in the rental unit for 9-years. They have four children, aged 12, 13, 14 and 15. On the issue of the Tenants' finances, Ms. Amaral testified that she previously worked in an administrative role for a non-profit organization. She lost her job just prior to the COVID-19 pandemic and she therefore did not qualify for the Canada Emergency Response Benefit. Ms. Amaral testified that she found a new administrative position with less hours a couple of months prior to the hearing and that she is now earning approximately \$1,000.00 to \$1,200.00 per month. Mr. Findlay testified that his work background is in custom carpentry and that he specializes in interior work. His company went bankrupt due to the COVID-19 pandemic, but he testified that he had recently started to do outdoor work digging swimming pools. He testified that he earns roughly \$3,000.00 per month

and would continue to do so as long as the demand for the work continued. The Tenants also testified that they receive approximately \$1,600.00 in federal child benefits.

14. On cross-examination, Mr. Findlay testified that he started the outdoor work 5-days prior to the hearing and that he received \$3,500.00 for this work. When asked why he did use any of this money to pay the rent for May 2021, to show good faith, Mr. Findlay testified that the hearing date was upcoming and that he decided to wait. As for an explanation of the long history of nil payments, which in this case was more than 1-year, the Tenants testified that their bills excluding the rent consumed their financial resources. As for any attempts to negotiate repayment of the arrears, the Tenants testified that they had never had any discussions with the Landlord and that the only communications they received from the Landlord consisted of paperwork related to this eviction application. On cross-examination, the Tenants stated that they were not sure whether they should be communicating with the superintendents about the arrears, but also that they were aware that there is a full-time superintendent named Charles in the building.
15. The Landlords position was that the Landlord would have been content with a repayment plan if the Tenants had shown good faith by making at least some payments. The Landlord's agent noted that the Tenants were eating and contrasted the Tenants ability to eat with their failure to pay any rent. The Landlord's agent also testified that the superintendent Charles had talked with the Tenants a few times. Because the arrears were so gigantic, Charles went to see whether the Tenants were still present in the unit. The Landlord's agent testified that Charles reported back that the Tenants had no money, which in the Landlord's view meant that there was no point in discussing repayment. The Tenants denied that Charles ever talked with them about the rent.
16. In this case, I agree with the Landlord that the long history of nil payments is concerning. However, as eviction is a remedy of last resort, the more important question for me is whether there is exists a realistic repayment plan that is not unfair to the Landlord. In this case, taking the Tenants' evidence about their new incomes at the low-end of the spectrum (\$1,000.00 and \$3,000.00, respectively), the Tenants total household income is now approximately \$5,600.00 per month including federal child benefits. With rent at \$1,050.00, if the Tenants pay double the rent going forward they should have \$3,500.00 left to pay any additional household expenses. This leaves a healthy buffer if Mr. Findlay's income fluctuates. If the Tenants stick to this plan, the Landlord's arrears and cost will be paid in approximately 19-months.
17. While the plan itself appears realistic, the next question is whether a payment plan of this duration is unfair to the Landlord in the circumstances. There are certainly some cases in which the Board has ordered longer repayment plans, such as the 108-month repayment plan in *TSL-08353-19-SA (Re)*, 2020 CanLII 31389 (ON LTB). This is an extreme example decided in the specific context of a landlord that provides public housing, so it is not an appropriate guide for this case. My view is that the duration of the Tenant's proposal is significant and is of a length that could in some cases be considered unfair. However, there are three key reasons why I find that it is not unfair to the Landlord to impose a repayment plan on terms similar to those proposed by the Tenants in this case.

18. First, while the Tenants arrears pre-date the COVID-19 pandemic, it is clear that the extraordinary circumstances of the pandemic played a significant role in the escalation of these arrears. Second, I find that the Landlord did not fulfil the obligation under subsection 83(6) of the Act to attempt to negotiate repayment of the Tenants' arrears. I do not accept that the superintendent Charles discussed the rent with the Tenants. The Landlord's evidence on this issue was hearsay, which was outweighed by the Tenants' direct evidence to the contrary. But, even if I had accepted that Charles spoke with the Tenants about the rent while attending the Tenants' unit to see if they were still living there, I would still disagree with the Landlord that discussing repayment was pointless. In passing subsection 83(6) of the Act, the Legislature put the obligation on landlords to attempt negotiations. It was not sufficient to wait until the day of the hearing to proactively engage with Tenants. Lastly, the risk of increasing financial prejudice can be mitigated by providing the Landlord with direct recourse to the Board under section 78 of the Act.

**It is ordered that:**

1. The Tenants shall pay to the Landlord \$19,566.00, which represents the arrears of rent (\$19,340.00) and costs (\$186.00) outstanding for the period ending May 31, 2021.
2. The Landlord's application for eviction of the Tenants is denied on the condition that:
  - (a) The Tenants shall pay to the Landlord the lawful monthly rent for June 2021 on or before July 5, 2021.
  - (b) The Tenants shall pay to the Landlord the lawful monthly rent for July 2021 on or before July 5, 2021.
  - (c) The Tenants shall make the following payments to the Landlord in respect of the monies owing under paragraph 1 of this order, on or before the specified dates.

Date Payment Due	Amount of Payment
July 5, 2021	\$1,100.00
August 1, 2021	\$1,100.00
September 1, 2021	\$1,100.00
October 1, 2021	\$1,100.00
September 1, 2021	\$1,100.00
October 1, 2021	\$1,100.00
November 1, 2021	\$1,100.00
December 1, 2021	\$1,100.00
January 1, 2022	\$1,100.00
February 1, 2022	\$1,100.00
March 1, 2022	\$1,100.00
April 1, 2022	\$1,100.00
May 1, 2022	\$1,100.00

June 1, 2022	\$1,100.00
July 1, 2022	\$1,100.00
August 1, 2022	\$1,100.00
September 1, 2022	\$1,100.00
October 1, 2022	\$866.00
<b>Total of Payments:</b>	<b>\$19,566.00</b>

(d) Until the amount set out in paragraph 1 is paid to the Landlord in full, the Tenants shall also pay to the Landlord the lawful monthly rent in full and on time on or before the first of the month, commencing August 1, 2021.

3. If the Tenants fail to make any of the payments in accordance with paragraph 2, and by the dates required, then:
  - (a) The Landlord may apply under section 78 of 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 Landlord must make the application within 30 days of a breach of a condition set out in paragraph 2 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 simple interest calculated at 2.00% annually on the balance outstanding.

**June 23, 2021**  
**Date Issued**

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

  
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 Douglas Wilkins  
 Member, Landlord and Tenant Board

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