



Order under Section 69
Residential Tenancies Act, 2006

File Number: SOL-20980-21

In the matter of: 6, 947 EAST MAIN STREET EAST
WELLAND ON L3B3Z2

Between: John Paraskevopoulos Landlord

and

Hollie Ford also known as Hollie Dixon Tenants
Pat Ford

John Paraskevopoulos (the 'Landlord') applied for an order to terminate the tenancy and evict Pat Ford and Hollie Ford also known as Hollie Dixon (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe (L1 Application); and because Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant. (L2 Application)

This application was heard by videoconference on August 11, 2021.

The Landlord and the Tenants attended the hearing.

Determinations:

L1 Application for Non-payment of Rent

1. The Tenants have not paid the total rent the Tenants were required to pay for the period from February 1, 2021 to August 31, 2021. Because of the arrears, the Landlord served a Notice of Termination.
2. The Tenants are in possession of the rental unit.
3. The lawful monthly rent is \$1,040.00.
4. The Tenants made payments in the amount of \$2,080.00 since the application was filed.
5. The Tenant Hollie Dixon ('HD') disputed the amount of rent arrears owing. HD agreed that no rent was paid in July and August 2021, she was uncertain if rent was paid in May and that the Landlord refused the rent in June. The Tenant was provided the opportunity to provide post hearing submissions to submit proof of payment for rent for the month of May 2021 and failed to do so by the date provided.
6. The Tenant HD testified that she is not working and is in receipt of Child Tax Benefits and intends to apply for government benefits. She testified that the Tenant Pat Ford's ('PF')

towing business has been impacted by the COVID-19 pandemic and due to damage to his truck, which requires replacement. The Tenants testified that they could not pay the August rent and could pay either \$200.00 or possibly \$600.00 with assistance from family. No concrete repayment plan was offered to repay the outstanding arrears of rent.

7. The Landlord seeks a termination of the tenancy as the arrears are substantial and it was uncertain whether the Tenants could pay the rent as it fell due or the arrears of rent. The Landlord testified that due to the lack of rent payments he is having difficulties paying the mortgage on the property.
8. The Landlord collected a rent deposit of \$975.00 from the Tenants and this deposit is still being held by the Landlord.
9. Interest on the rent deposit is owing to the Tenants for the period from August 16, 2018 to February 23, 2021.
10. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. It does not appear that the Tenants can pay the rent as it falls due and no concrete repayment plan was presented to the Board; the Tenants were uncertain what they could pay to repay the arrears of rent. There is prejudice to the Landlord to allow further rent arrears to accrue.
11. The Landlord has incurred the cost of \$201.00 for filing the application and is entitled to reimbursement of those costs.

L2 Application

12. The rental unit is an apartment in a 19 unit apartment building. The Tenants have resided in the unit since 2018.
13. On November 11, 2021, the Landlord served a voidable N5 Notice of Termination ('N5 notice') alleging that the Tenants' behaviour or the behaviour of someone visiting or living with them has substantially interfered with another tenant's or the Landlord's reasonable enjoyment of the residential complex or lawful rights, privileges, or interests.
14. I find that the N5 notice did not advise the Tenants that it was a voidable notice of termination, as is required by the *Residential Tenancies Act, 2006*. The Board will not terminate a tenancy and order eviction of the tenant unless the tenant has received a valid Notice of Termination from the landlord. As the first N5 notice was void it cannot be relied upon to terminate the tenancy.
15. On February 18, 2021, the Landlord served a second non-voidable N5 Notice of Termination with a termination date of March 4, 2021, alleging that the Tenants' behaviour substantially interfered with another tenant's or the Landlord reasonable enjoyment of the residential complex and their lawful rights, privileges or interests.

16. The second N5 notice alleged that the Tenants left their car parked in the middle of the driveway stuck the snow blocking other tenants entry or exit from the lot and was not removed until 9:15 am; and also stated undated allegations regarding changing of the locks, damage to the front door, and failing to clean up after their dog.
17. The Landlord's second N5 notice claims damage to the rental unit and states that there is damage to the front door. The N5 notice does not provide particulars or details regarding the damages amount or what repairs are required, nor does it provide the Tenants the opportunity to void the notice of termination. Although for the reasons set out below, this would void the notice of termination for damages a Landlord may make a claim for damages in an L2 application itself. However, the L2 application is required to set out the cost of repair or replacement of the damaged property and itemize the property that is damaged. In the present case the Landlord's L2 application did not claim damages to any property and did not set out an amount claimed for the repair or replacement of damaged items.
18. Pursuant to subsection 43(2) of the Act, where a landlord gives a tenant a notice of termination "it shall also set out the reasons and details respecting the termination..." It is a requirement for any application to terminate a tenancy that the notice clearly establish the details about the events that led to the landlord giving the tenant the notice.
19. In the case of *Ball v. Metro Capital Property*, [2002] O.J. No. 5931 ('*Ball*'), the Divisional Court held that in order to be considered, a claim must have sufficient details and particulars, including dates and times and a detailed description of the alleged conduct complained of, in order to allow the person against whom the claim is made to know the case to be met, to void the notice (if applicable), to be able to decide whether to dispute the allegations, and to prepare for the hearing accordingly.
20. I find that the undated claims regarding the Tenants' dog and the damage to the door and rental unit in the N5 Notice failed to establish the details with respect to the dates the alleged events/activities took place, or details of damage done or costs to repair or replace the damages as required by subsection 43(2) of the Act and the *Ball* case. I find that there was a lack of detail in the N5 notice and there was no claim for damages asserted in the L2 application. I would note that the Landlord testified that he served the Tenants with detailed information about the damages just prior to the hearing. However, the Tenants testified that they received the information one or two days prior to the hearing and having fully considered the totality of the evidence and lack of detail in the Notice and Application, and the Tenants' right to know the case to be met and prepare for a defence, I find that sufficient notice of the claims was not provided and these claims will be dismissed.
21. Therefore, the only claim arising from the N5 Notice to be determined by the Board in the Landlord's application is whether the Tenants have substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant by leaving their car in the snow, blocking the parking lot on February 16, 2021.

Legislation & Analysis

22. Subsection 64(1) of the *Residential Tenancies Act, 2006*, S.O. 2006, c.17 (the 'Act') states:

A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

23. The Landlord testified that the Tenants' car was left in the snow blocking the parking lot until approximately 9:15 am. The Tenants testified that as the parking lot was unplowed, the car was stuck in the snow and could not be moved. The Tenants testified that they did remove the car by 9:15 am, other vehicles were able to go around their car and were not blocked by it, and that this did not occur again.
24. Without any other corroborating evidence, I only had the conflicting testimony of the parties before me. On any application before the Board, the person who alleges any particular incident or event occurred has the burden of leading sufficient evidence to establish that it is more likely than not that their version of events is true. In this case that burden falls on the Landlord.
25. I find that there was insufficient evidence before me to determine on a balance of probabilities that the Tenants left the car in the parking lot blocking other vehicles causing substantial interference with the Landlord or other tenants. Even had there been further evidence I would not find that this single event rose to the level of substantial, as it was uncontested that there was snow in the parking lot, the vehicle was removed by 9:15 am, and this was not ongoing behaviour or a recurring event.
26. The Landlord's L2 application will be dismissed.

It is ordered that:

L1 Application

1. Unless the Tenant voids the order as set out below, the tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before September 27, 2021.
2. The Tenants shall pay to the Landlord \$4,732.44*, which represents the amount of rent owing and compensation up to September 16, 2021, less the rent deposit and interest the Landlord owes on the rent deposit.
3. The Tenants shall also pay to the Landlord \$34.19 per day for compensation for the use of the unit starting September 17, 2021 to the date the Tenants move out of the unit.

- 4. The Tenant shall also pay to the Landlord \$201.00 for the cost of filing the application.
- 5. If the Tenants do not pay the Landlord the full amount owing* on or before September 27, 2021, the Tenants will start to owe interest. This will be simple interest calculated from September 28, 2021 at 2.00% annually on the balance outstanding.
- 6. If the unit is not vacated on or before September 27, 2021, then starting September 28, 2021, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
- 7. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord, on or after September 28, 2021.
- 8. If, on or before September 27, 2021, the Tenants pay the amount of \$6,441.00** to the Landlord or to the Board in trust, this order for eviction will be void. This means that the tenancy would not be terminated and the Tenants could remain in the unit. If this payment is not made in full and on time, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
- 9. The Tenants may make a motion to the Board under subsection 74(11) of the Act to set aside this order if they pay the amount required under that subsection on or after September 28, 2021 but before the Sheriff gives vacant possession to the Landlord. The Tenants are only entitled to make this motion once during the period of the tenancy agreement with the Landlord.

L2 Application

- 10. The Landlord's L2 application is dismissed.



September 16, 2021
Date Issued

Nicola Mulima
Member, Landlord and Tenant Board

Southern-RO
119 King Street West, 6th Floor
Hamilton ON L8P4Y7

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

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on March 28, 2022 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

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

**Schedule 1
SUMMARY OF CALCULATIONS**

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A. Amount the Tenants must pay if the tenancy is terminated:

Reasons for amount owing	Period	Amount
Arrears & Compensation	February 1, 2021 to September 16, 2021	\$7,827.04

Less payments made:		-\$2,080.00
Less the rent deposit:		-\$975.00
Less the interest owing on the rent deposit:	August 16, 2018 to February 23, 2021	-\$39.60

Amount owing to the Landlord on the order date:(total of previous boxes)		\$4,732.44
Plus costs:		\$201.00
Plus daily compensation owing for each day of occupation starting September 17, 2021:		\$34.19 (per day)

Total the Tenants must pay the Landlord if the tenancy is terminated:		\$4,933.44, + \$34.19 per day starting September 17, 2021
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B. Amount the Tenants must pay to void the eviction order and continue the tenancy:

Reasons for amount owing	Period	Amount
Arrears:	February 1, 2021 to September 27, 2021	\$8,320.00
Less payments made:		-\$2,080.00
Plus costs:		\$201.00
Total the Tenants must pay to continue the tenancy:	On or before September 27, 2021	\$6,441.00

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