



Order under Section 78(11)
Residential Tenancies Act, 2006

File Number: SWL-52150-21-SA

In the matter of: 62 REDAN STREET
ST. THOMAS ON N5P1T7

Between: Harry Alway Landlord

and

Terry Fenning Tenant

Harry Alway (the 'Landlord') applied for an order to terminate the tenancy and evict Terry Fenning (the 'Tenant') because the Tenant failed to meet a condition specified in the order issued by the Board on May 13, 2021 with respect to application SWL-43121-20.

The Landlord's application was resolved by order SWL-52150-21, issued on June 18, 2021. The Tenant filed a motion to set aside order SWL-52150-21.

This motion was heard in video conference room 102 on September 2, 2021.

The Landlord's representative, S. Pereira, and the Tenant attended the hearing.

Determinations:

1. The Tenant agreed that he did not pay rent on August 1, 2021. The Tenant therefore breached the May 13, 2021 Board conditional order that required timely rental payments.
2. The Tenant and Landlord's representative further agreed that the Tenant has not paid the Landlord \$1,555.00 for the period ending September 30, 2021. This amount includes the Tenant's rent arrears of \$805.00 and the Landlord's \$175.00 Board filing costs.
3. The Tenant testified that his monthly income from working as a full-time wheelchair lift technician on accessible buses is \$2,400.00. The monthly rent of \$575.00 is therefore affordable.
4. At the hearing, the Tenant testified that he would pay rent for September 2021 on September 3, 2021 and the balance of the amount in paragraph two, above, on or before September 8, 2021. The Tenant also testified that he is able to pay rent for October 2021, and following months, on time. The Tenant explained that he has resided at the affordable rental unit for six years and would face hardship if evicted from the rental unit. The Tenant therefore requested relief from eviction.

5. The Landlord's representative opposed relief from eviction and submitted that the Landlord has little confidence in the Tenant's ability to pay rent on time and the rent arrears the Tenant owes. The Landlord's representative expressed concern that the Landlord may be required to file another application with the Board under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') if the Tenant fails to make a payment.
6. Although the Tenant did breach the June 18, 2021 conditional order requiring timely rental payments, I am mindful that the Act is remedial legislation. The Tenant gave uncontested evidence that the monthly rent of \$575.00 is currently affordable. Since the Tenant proposed a plan that will bring his account with the Landlord to a \$0.00 balance in a reasonable amount of time, I find it is not unfair to issue a new conditional order. If the Tenant breaches this latest conditional order, the Landlord may apply under section 78 of the Act, without notice to the Tenant, for an order terminating the tenancy and evicting the Tenant. Such an application must be made within 30 days of the breach.
7. The deadline to make the first payments in this order shall reflect that this order is being issued on October 7, 2021.

It is ordered that:

1. Order SWL-52150-21, issued on June 18, 2021, is set aside.
2. If the Tenant has not already done so, the Tenant shall pay the Landlord \$1,555.00 on or before October 14, 2021. This amount represents rent arrears for the period ending August 31, 2021 and rent for September 2021.
3. If the Tenant has not already done so, the Tenant shall also pay the Landlord rent for October 2021, on or before October 14, 2021.
4. The Tenant shall also pay the Landlord the full rent on the first day of each month for the period November 1, 2021 to September 1, 2022.
5. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 2 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant apply to the Board pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after September 30, 2021.



October 7, 2021
Date Issued

Harry Cho
Member, Landlord and Tenant Board

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