



Order under Section 69
Residential Tenancies Act, 2006

File Number: CEL-98659-21

In the matter of: 39 MAURINO COURT
BRADFORD ON L3Z1S6

Between: Viacheslav Tkachev
Maria Tkacheva

Landlords

and

Jessica Avelar
Nelson Assuncao

Tenants

Viacheslav Tkachev and Maria Tkacheva (the 'Landlords') applied for an order to terminate the tenancy and evict Jessica Avelar and Nelson Assuncao (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard via videoconference on November 23, 2021. The Landlord, M. Tkacheva, the Landlord's legal representative, K. Pacheco, and the Tenants attended the hearing. The Tenants declined the opportunity to speak with Tenant Duty Counsel before the hearing.

Determinations:

1. The Tenants have not paid the total rent the Tenants were required to pay for the period from June 20, 2020 to December 19, 2021. Because of the arrears, the Landlords served a Notice of Termination effective January 26, 2021.
2. The Tenants are in possession of the rental unit.
3. The lawful monthly rent is \$2,450.00.
4. The Landlords collected a rent deposit of \$2,450.00 from the Tenants and this deposit is still being held by the Landlords.
5. Interest on the rent deposit is owing to the Tenants for the period from December 21, 2019 to January 26, 2021.
6. The Tenants paid \$4,950.00 after the application was filed.

7. The Tenants disputed the amount owing. They submitted that they made a \$2000.00 payment on January 21, 2021, a \$2,500.00 payment on March 1, 2021, a \$2,000.00 on March 25, 2021, a \$2,450.00 payment on July 20, 2021 and a \$2,450.00 payment on August 23, 2021. As such, the amount owing to the date of the hearing was \$15,550.00. Submitted into evidence was screenshots of bank statements. The Landlords submitted that they accounted for these payments, but the arrears owing is \$17,100.00 to the date of the hearing. Submitted into evidence was the Landlords' ledger.
8. On a balance of probabilities, I find that the arrears to the date of the hearing was \$17,100.00. I prefer the Landlords' evidence as the Landlords' ledger is very detailed and listed every payment made by the Tenants since the tenancy commenced. This ledger further outlines each payment the Tenants testified they paid since January 21, 2021. Once a Landlord denies receiving funds, the Tenant has an evidentiary burden to prove that she paid rent as only the Tenant can prove payment as a positive fact. Although the legal burden rests with the Landlord, I do not find that the Tenants adduced evidence to counter or overcome the Landlords' evidence.
9. I have considered all of the disclosed circumstances in accordance with subsection 83 of the Residential Tenancies Act, 2006 (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlords attempted to negotiate a repayment agreement with the Tenants, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
10. Pursuant to section 83(6), I am required to consider whether the Landlords made attempts to negotiate a payment agreement with the Tenants. The Landlords submitted that the parties entered several payment arrangements, but the Tenants defaulted on the payments. The Tenants disputed that the Landlord attempted to negotiate a repayment agreement, stating that the Landlords were only seeking lump sum repayments and not smaller payments.
11. I find that the Landlords attempted to negotiate a repayment agreement with the Tenants. The evidence before me was that the parties tried to negotiate how payment would be made. While the Tenants state that the Landlords rejected their proposal, this is part and parcel of negotiations. I am satisfied that this constitutes negotiation pursuant to section 83(6).
12. With respect to section 83(2), the Tenants submitted that they would vacate the unit on or before December 1, 2021. The Landlords submitted that the Tenants continued occupation without rent affects their ability to pay the mortgage, pay their own rent and their line of credit. As such, they are seeking termination of the tenancy to December 1, 2021, as requested by the Tenants. However, the date that this order is being issued is past the date of requested termination. To ensure the parties receive this order and my reasons, termination will be effective five days after issuance.

It is ordered that:

1. Unless the Tenant voids the order as set out below, the tenancy between the Landlords and the Tenants is terminated. The Tenants must move out of the rental unit on or before December 18, 2021.
2. The Tenants shall pay to the Landlords \$22,516.08*, which represents the amount of rent owing and compensation up to December 13, 2021, less the rent deposit and interest the Landlords owe on the rent deposit.
3. The Tenants shall also pay to the Landlords \$80.55 per day for compensation for the use of the unit starting December 14, 2021 to the date the Tenants move out of the unit.
4. The Tenants shall also pay to the Landlords \$186.00 for the cost of filing the application.
5. If the Tenants do not pay the Landlords the full amount owing* on or before December 18, 2021, the Tenants will start to owe interest. This will be simple interest calculated from December 19, 2021 at 2.00% annually on the balance outstanding.
6. If the unit is not vacated on or before December 18, 2021, then starting December 19, 2021, the Landlords 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 Landlords, on or after December 19, 2021.
8. If, on or before December 18, 2021, the Tenants pay the amount of \$25,736.00** to the Landlords 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 Landlords 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 December 19, 2021 but before the Sheriff gives vacant possession to the Landlords. The Tenants are only entitled to make this motion once during the period of the tenancy agreement with the Landlords.

December 13, 2021
Date Issued



Camille Tancioco
Member, Landlord and Tenant Board

Central-RO
3 Robert Speck Pkwy, 5th Floor
Mississauga ON L4Z2G5

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 June 19, 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**

File Number: CEL-98659-21

2021 CanLII 148906 (ON LTB)

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

Reasons for amount owing	Period	Amount
Arrears: (up to the termination date in the Notice of Termination)	June 20, 2020 to January 26, 2021	\$4,113.84
Less the amount the Tenants paid to the Landlords		-\$4,950.00
Plus compensation: (from the day after the termination date in the Notice to the date of the order)	January 27, 2021 to December 13, 2021	\$25,856.55
Less the rent deposit:		-\$2,450.00
Less the interest owing on the rent deposit:	December 21, 2019 to January 26, 2021	-\$54.31
Amount owing to the Landlords on the order date:(total of previous boxes)		\$22,516.08
Additional costs the Tenants must pay to the Landlords:		\$186.00
Plus daily compensation owing for each day of occupation starting December 14, 2021:		\$80.55 (per day)
Total the Tenants must pay the Landlords if the tenancy is terminated:		\$22,702.08, + \$80.55 per day starting December 14, 2021

B. Amount the Tenants must pay to void the eviction order and continue the tenancy:

Reasons for amount owing	Period	Amount
Arrears:	June 20, 2020 to December 19, 2021	\$30,500.00
Less the amount the Tenants paid to the Landlords		-\$4,950.00
Additional costs the Tenants must pay to the Landlords:		\$186.00
Total the Tenants must pay to continue the tenancy:	On or before December 18, 2021	\$25,736.00