



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

Citation: WJ Properties v Ferdous, 2023 ONLTB 25472

Date: 2023-03-15

File Number: LTB-L-032427-22

In the matter of: 1010, 2550 KINGSTON RD
SCARBOROUGH ON M1M1L7

Between: WJ Properties Landlord

And

Shamim Ahmed Ferdous Tenants Syeda Muntasira Maleque

WJ Properties (the 'Landlord') applied for an order to terminate the tenancy and evict Shamim Ahmed Ferdous and Syeda Muntasira Maleque (the 'Tenants' or 'A.F.' and 'S.M.', respectively) because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on January 30, 2023.

The Landlord did not attend the hearing but was represented by David Ciobotaru. The Tenants attended the hearing and were self-represented.

Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenants did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$1,973.84. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$64.89. This amount is calculated as follows: \$1,973.84 x 12, divided by 365 days.
5. The Tenants had paid \$1,839.00 to the Landlord since the application was filed.

6. The rent arrears owing to January 31, 2023 are \$23,797.52.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,839.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
9. Interest on the rent deposit, in the amount of \$14.05 is owing to the Tenant for the period from January 1, 2021 to January 30, 2023.

Section 83 considerations

Tenant's evidence

10. The Tenants do not contest the arrears owing, however, explained that due to the impact of the COVID-19 pandemic, both lost their jobs which led to a loss of income and an inability to meet their monthly rent payment obligations for an extended period. As of December 2022, and after acquiring his driver's licence, A.F. began working for ridesharing and food delivery companies (i.e., Lyft, UberEats and Skip-the-dishes) which enables the Tenants to commit to a payment plan to pay the arrears.
11. Elaborating further, A.F. testified that he earns approximately \$3,200.00 - \$4,000.00 per month of employment income. The Tenants also receive a Child Care Benefit of \$2,035.00 per month which brings their total monthly family income to approximately \$5,235.00 - \$6,035.00. During the hearing, the Tenant's reviewed their household expenses which were estimated to be approximately \$3,676.00.
12. S.M. remains unemployed as she is on maternity leave but intends to look for work once her maternity leave ends.
13. The Tenants proposed a payment plan to address the arrears and to preserve the tenancy as follows: (i) monthly arrears payments of \$1,500.00 beginning immediately; (ii) rent paid on time when due; and, (iii) a lump sum payment of \$4,000.00 made in May 2023.

Landlord's evidence

14. The Landlord's legal representative did not call any witnesses, however, contests the viability of the tenancy by directing the Board to a previous Board Order involving the Tenants, TEL-14407-21, that was resolved through a payment plan. Once the Tenants satisfied the Order they immediately fell into arrears again, which is the subject of the current application.
15. Based on the Tenants' history of non-payment and Board proceedings, the legal representative submits that the tenancy should be viewed as non-viable and terminated, however, in the alternative, proposed monthly arrears payments of \$2,000.00 to offset any

risk to the Landlord (given the magnitude of the arrears) should the Board find that the tenancy is viable.

Analysis

- 16. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
- 17. Acknowledging the risk the arrears has on the Landlord in this case, I am satisfied that the Tenants' current employment and income allows them to pay the arrears if given additional time.

It is ordered that:

- 1. The Tenants shall pay to the Landlord \$23, 983.52, which represents the arrears of rent (\$27, 797.52) and costs (\$186.00) outstanding for the period ending January 31, 2023.
- 2. The Landlord's application for eviction of the Tenants is denied on the condition that:
 - (a) The Tenants shall make the following payments to the Landlord in respect of the monies owing under paragraph 1 of this order:

Payment	Due Date
\$2,000.00	March 31, 2023
\$2,000.00	April 30, 2023
\$2,000.00	May 31, 2023
\$2,000.00	June 30, 2023
\$2,000.00	July 31, 2023
\$2,000.00	August 31, 2023
\$2,000.00	September 30, 2023
\$2,000.00	October 31, 2023
\$2,000.00	November 30, 2023
\$1,983.52	December 31, 2023

- (b) On or before May 31, 2023, the Tenants shall also pay the Landlord a lump sum payment of \$4,000.00 in addition to the monthly installment set out in the schedule found in paragraph 2(a);
- (c) The Tenants shall pay the lawful monthly rent for February 2023 and March 2023 on or before March 31, 2023, if not already paid;

(d) The Tenants shall also pay the Landlord the lawful monthly rent as it becomes due on or before the 1st day of the month starting April 1, 2023 until the arrears are paid in full.

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, without notice to the Tenants, 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 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 shall bear interest at the post-judgement interest rate determined under subsection 207(7) of the Act.

March 15, 2023

Emile Ramlochan

Date Issued

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor Toronto
ON M7A 2G6

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