



Order under Section 69
Residential Tenancies Act, 2006

File Number: TNL-31874-21

In the matter of: 2, 54 BLACKFRIAR AVENUE
TORONTO ON M9R3S6

Between: Jermaine Cousins

and

Jessica Blazejewski

**I hereby certify this is a
true copy of an Order dated**

Sept 7 2021

LS

Landlord and Tenant Board

Landlord

Tenant

Jermaine Cousins (the 'Landlord') applied for an order to terminate the tenancy and evict Jessica Blazejewski (the 'Tenant') because the Landlord requires possession of the rental unit for the purpose of residential occupation. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by video conference on August 5, 2021.

The Landlord and the Tenant attended the hearing. The Landlord was represented by Roman Komarov and the Tenant was represented by Daniel English. The Landlord and the Tenant both testified.

Determinations:

1. On March 28, 2021, the Landlord served a N12 notice with a termination date of May 31, 2021 and filed this L2 application on April 14, 2021.
2. At the beginning of the hearing the Landlord asked that the L2 be amended to change the rent to from \$1,042.00 to \$1,042.44. The Tenant confirmed that this was the correct rent. Nothing turns on the amendment to the L2 being requested by the Landlord and the L2 is amended as requested by the Landlord.
3. The Tenant raised a preliminary issue with respect to the compensation that was required to be provided to the Tenant pursuant to sections 48.1 and 55.1 of the *Residential Tenancies Act, 2006* (the 'Act').
4. The relevant provisions of the Act provide:

48.1 A landlord shall compensate a tenant in an amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant if the landlord gives the tenant a notice of termination of the tenancy under section 48.

55.1 *If the landlord is required to compensate a tenant under section 48.1, 49.1, 52, 54 or 55, the landlord shall compensate the tenant no later than on the termination date specified in the notice of termination of the tenancy given by the landlord under section 48, 49 or 50.*

5. The Landlord asserts that the compensation required by section 48.1 was provided to the Tenant by the Landlord waiving rent for the month of May 2021 and that this was conveyed to the Tenant in an e-mail sent on May 26, 2021.
6. There is no dispute that a Landlord can provide compensation for the purposes of sections 48.1 and 55.1 of the Act by waiving rent or reducing an amount owing in respect of rent for a period of tenancy prior to the termination date in a N12. **[See TNT-05879-18 (Re), 2018 CanLII 113853 (ON LTB)]** The particular facts of this case are, however, a bit complicate.
7. At the time the Landlord indicated to the Tenant that rent for May of 2021 would be waived as compensation, the Tenant did not owe the Landlord rent for May of 2021. The Tenant had paid her rent for May by e-transfer on May 1, 2021. As at May 26, 2021, the Landlord had not accepted the Tenant's e-transfer, but the funds had been taken from the Tenant's bank account and were not available to the Tenant. There was no explanation offered by the Landlord as to why he did not accept the Tenant's e-transfer.
8. The Landlord asserts that the Tenant's e-transfer was declined by him on May 27, 2021, after the Tenant was advised the Landlord was waiving the rent for May of 2021 as compensation.
9. The Tenant acknowledged receiving the Landlord's e-mail on May 26, 2021. The Tenant asserts, however, that she did not receive any notice that the e-transfer that she triggered on May 1, 2021 had been declined by the Landlord and did she did not receive back the funds that were taken from her account on May 1, 2021 until her e-transfer expired on June 23, 2021. The Tenant was charged a \$5.00 fee because the e-transfer had expired. The Tenant produced her bank statement for May and June of 2021.
10. After hearing the evidence of the Landlord and the Tenant with respect to the issue of the e-transfer, and reviewing the Tenant's bank statement for the months of May and June of 2021, I find that the funds the Tenant sent to the Landlord for May 2021 rent did not come back into her bank account until June 23, 2021 when her e-transfer expired. I accept the Tenant's evidence that she was not notified that the Landlord had declined her e-transfer.
11. I find that the Tenant was not provided with compensation by May 31, 2021 as required but sections 48.1 and 55.1 of the Act. Whatever the intention of the Landlord, the Tenant did not have access to the money that the Landlord asserts was to be compensation until June 23, 2021. I do not accept the Landlord's argument that there was an obligation on the Tenant to follow-up and inquire into why the funds she e-transferred on May 1, 2021 had not been (re)deposited into her account by May 31, 2021. The obligation under section 48.1 and 55.1 of the Act to compensate the Tenant was on the Landlord and if the Landlord wished to provide that compensation by "waiving" rent that had already been

paid by the Tenant it was his obligation to ensure that the funds were returned to the Tenant prior to May 31, 2021.

12. Based on my finding with respect to the issue of compensation, this application must be dismissed.
13. Section 73.1 of the Act provides that if a landlord compensates a tenant in accordance with section 48.1 of the Act and the Board refuses to grant an application to evict the tenant based on the landlord's N12 notice, the Board may order the tenant to pay back the compensation. In this case the compensation was in the form of the waiver of rent for the month of May of 2021 and the Tenant did receive back the rent she paid for May of 2021, albeit after May 31, 2021. I am ordering that, to the extent that she has not already done so, the Tenant pay to the Landlord rent for May of 2021, less the \$5.00 fee paid by the Tenant as a result of the Landlord not accepting the Tenant's e-transfer of May 1, 2021.

It is ordered that:

1. The L2 is amended to reflect the rent as being \$1,042.44 instead of \$1,040.00.
2. This application is dismissed.
3. To the extent that she has not already done so, the Tenant shall pay to the Landlord \$1,037.44, being the rent for the month May of 2021 less \$5.00, on or before October 1, 2021.

September 7, 2021

Date Issued



E. Patrick Shea

Member, Landlord and Tenant Board

Toronto North-RO
47 Sheppard Avenue East, Suite 700, 7th Floor
Toronto ON M2N5X5

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