

Order under Section 69
Residential Tenancies Act, 2006

File Number: SWL-13588-18

In the matter of: 50 NEWBURY DRIVE
KITCHENER ON N2N2X6

Between: 2324692 Ontario Inc.

Landlord

and

Stephane Savard

Tenant

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2324692 Ontario Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Stephane Savard (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard in Waterloo on April 24, 2018. The Landlord's Agent, Mark McInnis, attended the hearing. The Tenant and the Tenant's Legal Representative, Shawn Harvey, attended the hearing.

Determinations:

Lawful Monthly Rent

1. For the reasons set out below, I find the monthly rent for the rental unit is \$1,898.00.
2. On March 22, 2012, the parties entered into a three-year fixed term tenancy effective May 20, 2012 and ending May 19, 2015. Since then, the tenancy has been month-to-month. The monthly rent as set out in the Tenancy Agreement (Exhibit # 1) is \$1,898.00. The rent amount has not increased since the beginning of the tenancy.
3. Also on March 22, 2012, the parties signed an Option to Purchase Agreement (Exhibit # 2). Paragraph 1 of this agreement sets out that the Tenant, upon providing at least 90 days written notice, had the option to purchase the rental unit at the end of the three-year term for a set price of \$292,465.00. It is undisputed that the Tenant never exercised that option.
4. Paragraph 3 of the Option to Purchase Agreement sets out that for each month that rent is paid pursuant to the Tenancy Agreement, the Tenant would earn a "Monthly Option Credit" of \$380.00 towards the down payment of the purchase price of the property. The Monthly Option Credits would not bear interest, and would accrue to a maximum of \$13,680.00 to be used as a down payment. This paragraph expressly sets out that if the

Tenant does not exercise this option, or in the event of a breach of either agreement, the Monthly Option Credit is to be forfeited, and the Monthly Option Credit is non-refundable.

5. This type of arrangement is known as a "rent-to-own" arrangement, and both parties agreed that they entered into the tenancy specifically because they wanted the rent-to-own option. The Tenancy Agreement and the Option to Purchase Agreement have entire agreement clauses, which set out that the total agreement is set out in the document.
6. The Tenant's Legal Representative asserted that both Agreements needed to be read together in order to ascertain the real substance of the transaction as per section 202 of the *Residential Tenancies Act, 2006* (the Act). The Tenant's Legal Representative also asserted that the Landlord's application should be dismissed, because the Landlord claimed \$1,898.00 for monthly rent on the N4 notice, and lawful rent for the property should be reduced by the \$380.00 credit to equal \$1,510.00 per month.
7. I agree with the Tenant's Legal Representative and find that both documents need to be read together to understand the arrangement between the parties. However, I do not agree that the Landlord miscalculated the lawful rent.
8. The Tenant's Legal Representative referred to Board order NOL-22623-16-RV-IN-2 as a precedent. Board orders are not binding on me; however I have reviewed NOL-22623-16-RV-IN-2. That case was also a "rent-to-own" scenario, where both the terms of the tenancy and the terms of the option to purchase were contained in a single agreement. The agreement outlines an "occupation payment" of \$950.00 per month, which the Board found was "rent", and an additional, separate payment of \$287.50 towards the option to purchase which the Board found was not part of "rent" for the unit.
9. The facts of NOL-22623-16 differ significantly from the facts before me. In this case, there are two separate agreements: a Tenancy Agreement and the Option to Purchase Agreement. The Tenancy Agreement clearly sets out the monthly rent at \$1,898.00. The Option to Purchase Agreement is worded to say that for every month that rent is paid, the Tenant will earn a credit towards the down payment for the rental unit. In this case, the Tenant did not exercise his option to purchase the rental unit, and as per the Option to Purchase Agreement signed by the parties, he forfeited the monthly option credits. This forfeiture has no impact on the assessment of monthly rent which is clearly set out in the Tenancy Agreement, and is not subject to any caveats, conditions or reductions.
10. The Landlord's N4 Notice is therefore valid, as it correctly identifies the monthly rent as \$1,898.00.

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11. The Tenant has not paid the total rent the Tenant was required to pay for the period from September 20, 2017 to May 19, 2018. Because of the arrears, the Landlord served a Notice of Termination effective December 14, 2017.
12. The Tenant is in possession of the rental unit.

13. The Landlord is not holding a last month's rent deposit.
14. The Tenant has made no payments since the application was filed.

Relief from Eviction

15. Having found the Landlord established the Tenant did not pay the rent that the Tenant owes; I will turn my mind to relief from eviction, as required under section 83 of the Act.
16. The Tenant runs his own business. He asserted that last year he lost a significant customer who he had previously been able to count on for \$20,000 to \$40,000 in sales per month. As a result, he fell behind in his rent and other bills, and almost lost his business. The Tenant's wife, who used to work in his business, is now working full-time at another job, and business is picking up again for the Tenant. The Tenant has no children, but provides \$375.00 per week in financial support to his elderly father and also supports his father-in-law who has medical issues. The Tenant proposed a repayment plan for the arrears in which he would essentially pay his monthly rent amount every two weeks and repay the arrears within eight months.
17. The Landlord did not agree to the Tenant's proposed payment plan. The Landlord also runs his own small businesses and employs approximately twenty-five people. He asserted that his businesses are financially intertwined, and because of the failure of the Tenant to pay rent, the Landlord is in breach of his bank covenant. This means the bank may stop loaning him money at any time. The Landlord asserted that he has tried to work with the Tenant over a long period of time, but can no longer afford to pay the mortgage on the property. The Tenant has made only two rent payments in the past year, and the arrears total over \$13,000 at this time. The Landlord requested a standard eviction order.
18. 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 be unfair to the Landlord to impose the Tenant's plan, as eight months is too long for the Landlord to have to wait for the arrears to be repaid. The Tenant has paid virtually no rent for almost one year, not even the lower amount which he asserted was lawful rent. However, in consideration of the Tenant's circumstances, I find it would not be unfair to postpone the eviction until **May 19, 2018** pursuant to subsection 83(1)(b) of the Act. A delay of a few extra weeks provides the Tenant with additional time to either repay the arrears, or pack his belongings and secure new accommodations.
19. This order contains all of the reasons for this matter, and no other reasons will issue.

It is ordered that:

1. Unless the Tenant voids the order as set out below, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before May 19, 2018.

2. The Tenant shall pay to the Landlord \$13,603.20*, which represents the amount of rent owing and compensation up to April 30, 2018.
3. The Tenant shall also pay to the Landlord \$62.40 per day for compensation for the use of the unit starting May 1, 2018 to the date the Tenant moves out of the unit.
4. The Tenant shall also pay to the Landlord \$175.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing* on or before May 11, 2018, the Tenant will start to owe interest. This will be simple interest calculated from May 12, 2018 at 3.00% annually on the balance outstanding.
6. If the unit is not vacated on or before May 19, 2018, then starting May 20, 2018, 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 May 20, 2018.
8. If, on or before May 19, 2018, the Tenant pays the amount of \$15,359.00** 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 Tenant 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 Tenant 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 May 20, 2018 but before the Sheriff gives vacant possession to the Landlord. The Tenant is only entitled to make this motion once during the period of the tenancy agreement with the Landlord.

April 30, 2018
Date Issued

South West-RO
150 Dufferin Avenue, Suite 400, 4th Floor
London ON N6A5N6

Melanie Love
Member, Landlord and Tenant Board
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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 November 20, 2018 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: