



Order under Section 69 Residential Tenancies Act, 2006

Citation: 1213763 Ontario Inc c/o GWL Realty Advisors Residential Inc v Sierra, 2023 ONLTB 18631

Date: 2023-02-14

File Number: LTB-L-033134-22

In the matter of: 1402, 66 PACIFIC AVE
TORONTO ON M6P2P4

Between: 1213763 Ontario Inc c/o GWL Realty Advisors Residential Inc Landlord

And

Fernanda Sierra Tenants
Hudson P Valle

1213763 Ontario Inc c/o GWL Realty Advisors Residential Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Fernanda Sierra and Hudson P Valle (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on January 31, 2023.

The Landlord's Agent Nicole Bevington and the Landlord's Legal Representative Martin Zarnett and the Tenants Fernanda Sierra and Hudson Valle and the Tenants' Legal Representative Sharda Sankar Bickram Singh attended the hearing.

Determinations:

1. At the hearing the Landlord relied on oral submissions and referred to documents to support their application. The Tenants were also given an opportunity to provide submissions and evidence.

Preliminary Issue

2. As a preliminary issue, the Tenants asserted the N4 Notice served on the Tenants was defective as the monthly rent stipulated on it was incorrect. In support of this, the Tenants submitted a copy of the lease agreement between the Landlord and the Tenants which covered a portion of the time period included on the rent tables contained on the N4 Notice. The lease agreement was for a one year period commencing November 1, 2020 and concluding on October 31, 2021.

3. The monthly rent according to the lease agreement was \$1,683.00. The N4 Notice served on the Tenants relied on a monthly rent amount of \$1,672.56. The first rent table on the N4 Notice claims the total rent charged to the Tenants for the period of May 1, 2021 until April 30, 2022 was \$20,070.12. This amount equates to \$1,672.56 for monthly rent for the twelve month period indicated on the N4 Notice. The second line of the N4 Notice rent tables is for the one month period of May 1, 2022 until May 31, 2022 and again the amount of rent charged was \$1,672.56.
4. The Landlord submitted they were notified by the City of Toronto that on January 1, 2021 the property taxes for the residential complex had been reduced by 0.62% and therefore obligated them to decrease the monthly rent by 0.62%. This mandatory reduction equates to \$1,672.56, the amount of monthly rent claimed on the N4 Notice. The Landlord further submitted they have filed an A4 application to the Board but have yet to receive an order. The Landlord submitted their ledgers include the higher amounts of monthly rent in the event their A4 application is successful and adjustments need to be made at a later date. However, until the A4 application is determined, the Landlord submitted they are charging the Tenants the mandated lower monthly rent amount.
5. The Tenants position was they were never notified of the rent reduction and the N4 Notice should have explained this. I do not agree. The N4 Notice is required to accurately set out the amount of rent charged for the periods the Landlord is alleging rent arrears are owing. This provides the Tenants with the required amount to pay in order to void the N4 Notice. The Landlord was obligated to reduce the monthly rent and they did so. If the Tenants did not receive the notice from the City of Toronto advising them of the reduction in the monthly rent, this does not invalidate the N4 Notice. The amount of monthly rent particularized on the N4 Notice is correct and I found the Notice to be valid.

L1 Application

6. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment 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.
7. As of the hearing date, the Tenants were still in possession of the rental unit.
8. The lawful rent was \$1,672.56 and increased to \$1,692.63 on November 1, 2022. It is due on the 1st day of each month.
9. Based on the Monthly rent, the daily rent/compensation is \$55.65. This amount is calculated as follows: $\$1,692.63 \times 12$, divided by 365 days.
10. The Tenants has paid \$8,415.00 to the Landlord since the application was filed.
11. The Landlord submitted the Tenants have also made an additional payment of \$1,703.19 on January 24, 2023. However, on the date of the hearing this payment had not yet cleared the Landlord's bank account. This order treats this payment as not having been made as of the date of this order. If this payment clears the Landlord's account it will satisfy the first payment required under this order due on February 25, 2023. If the

payment does not clear the Landlord's bank account, the Tenants will have until February 25, 2023 to make the first required payment.

12. The rent arrears owing to January 31, 2023 are \$14,936.65.
13. The Landlord is entitled to \$20.00 to reimburse the Landlord for administration charges the Landlord incurred as a result of 1 cheque given by or on behalf of the Tenants which was returned NSF.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. The Landlord sought an eviction within 11 days of this order. They submitted letters that were sent to the Tenants in June, August, September, October, November and December of 2022 in which they advise the Tenants of the outstanding arrears and the Landlord's willingness to negotiate a payment agreement for the rental arrears.
16. The Tenants submitted the repayment proposals they sent to the Landlord did not receive response. The Landlord's position was the Tenants' proposals were not agreeable as the monthly rent and rent arrears were not both addressed.
17. I am satisfied the Landlord has attempted to negotiate an agreement with the Tenants pursuant to section 83(6) of the *Residential Tenancies Act, 2006* (the Act). This section does not require a Landlord accept a proposal from the Tenants if they find it unattractive. The Landlord quite clearly did not close their mind to negotiation as evidenced by the six letters they sent the Tenants since June of 2022.
18. The Tenants explained the rent arrears accumulated as a result of delays in Ms. Sierra's immigration status. She was unable to work after her work permit expired in May of 2021. She was eventually granted permanent residence status and is now employed as is the Mr. Valle. The Tenants have a collective income that can clearly support paying the monthly rent as well as a meaningful payment towards the rent arrears. I also take note that the Tenants have made significant payments towards the rent arrears since the application was filed.
19. 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 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. Eviction is an order of last resort and I find the Tenants should be given an opportunity to maintain the tenancy. I am also mindful of the Landlord's interest in receiving the monthly rent as well as the rent arrears in a reasonable time period. For this reason, I will order a payment plan that balances the interests of both parties.

It is ordered that:

1. The Tenants shall pay to the Landlord \$15,142.65 for arrears of rent up to January 31, 2023, NSF fees and costs in accordance with the following schedule:
 - a) \$1,703.19 on February 25, 2023
 - b) \$2,000.00 on March 25, 2023

- c) \$2,000.00 on April 25, 2023
 - d) \$2,000.00 on May 25, 2023
 - e) \$2,000.00 on June 25, 2023
 - f) \$2,000.00 on July 25, 2023
 - g) \$2,000.00 on August 25, 2023
 - h) \$1,439.46 on September 25, 2023
2. The Tenants shall pay the Landlord the monthly rent as it becomes due and owing on or before the first day of every month beginning March 1, 2023 until September 1, 2023 or until the arrears are paid in full, whichever date is earliest.
3. If the Tenants fail to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent, NSF fees and costs to be paid by the Tenants to the Landlord pursuant to paragraphs 1 and 2 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenants, apply to the LTB within 30 days of the Tenants' breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenants and requiring that the Tenants pay any new arrears, NSF fees and related charges that became owing after **January 31, 2023**.

February 14, 2023
Date Issued

John Cashmore
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.