



Order under Section 69 Residential Tenancies Act, 2006

Citation: HARMONY GARDENS LTD. v PENWRIGHT, 2023 ONLTB 72179

Date: 2023-10-26

File Number: LTB-L-078277-22

In the matter of: 19, 23 HARMONY ROAD OSHAWA
ON L1H6T2

Between: HARMONY GARDENS LTD.

Landlord

And

SANDRA CRYMBLE and SHAWN Tenants PENWRIGHT

HARMONY GARDENS LTD. (the 'Landlord') applied for an order to terminate the tenancy and evict SANDRA CRYMBLE and SHAWN PENWRIGHT (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on July 31, 2023. The Landlord's representative Julia Augurusa, and Tenant Sandra Crymble ('SC') attended the hearing. Joey Kay ('JK') appeared as a witness for the Landlord.

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 Landlord assumed ownership on/around January 24, 2020.

Was there an agreement regarding repairs?

4. The Tenants take the position that they had an agreement with the former landlord that they could replace the carpet throughout the rental unit with hardwood flooring and deduct the cost from their rent.

5. No written agreement regarding the repairs was presented by the Tenants. SC testified that they had a verbal agreement with the former landlord as conveyed by the former landlord's superintendent. She stated that the flooring in the living room and dining room had been replaced prior to the Landlord assuming ownership in January 2020. SC stated that they resumed work on the floors in April 2020 and then deducted \$1,002.50 off the May 2020 monthly rent.
6. The Landlord presented an email from the former landlord dated August 18, 2020 denying there was an agreement with the Tenants that they could make repairs to the flooring and deduct expenses from the monthly rent.
7. The Tenants bear the burden of proving that they had an agreement with respect to repairs. In the absence of a written agreement or corroborating evidence from the former landlord, I find the Tenants have failed to sufficiently establish that there was an agreement permitting them to deduct repair costs from the monthly rent.

What is the monthly rent?

8. It is the evidence of the Landlord that the monthly rent increased from \$1,377.70 to \$1,402.50 on March 1, 2019. The rent increased again to \$1,433.36 on July 1, 2020, \$1,450.56 on January 1, 2022, and \$1,486.82 on January 1, 2023.
9. The Tenants deny that they received an N1 notice of rent increase from the previous landlord increasing the rent from \$1,377.70 to \$1,402.50. SC testified that she continued to pay \$1,377.70 until she received the Landlord's N1 on March 10, 2020 increasing the rent to \$1,433.36.
10. The Landlord has submitted a copy of a Certificate of Service indicating that on October 21, 2018, Jude Paul served the Tenants an N1 notice of rent increase by leaving it in the mailbox or a place where the mail is normally delivered. The Board need not be satisfied that a notice was received, only that it was served. Based on the evidence before me, I am satisfied the N1 notice of rent increase was duly served to the Tenants on October 21, 2018.
11. Section 118 of the *Residential Tenancies Act, 2006* (the 'Act') sets out a tenant's options upon receiving a Notice of Rental Increase should he or she disagree with the increase:

118 A tenant who does not give a landlord notice of termination of a tenancy under section 47 after receiving notice of an intended rent increase under section 116 shall be deemed to have accepted whatever rent increase would be allowed under this Act after the landlord and the tenant have exercised their rights under this Act.

12. The Tenants did not serve the former landlord with a notice of termination to vacate the rental unit upon receiving the N1. Accordingly, they are deemed to have accepted the increase.
13. I find the lawful monthly rent is \$1,486.82 as of January 1, 2023. It is due on the 1st day of each month. Based on the Monthly rent, the daily rent/compensation is \$48.88. This amount is calculated as follows: $\$1,486.62 \times 12$, divided by 365 days.

What are the arrears owing?

14. The Landlord's application was filed on May 22, 2020. At that time, the Tenants owed \$1,027.30 in arrears.
15. Tenants have paid \$53,786.80 to the Landlord since the application was filed.
16. The rent arrears owing to July 31, 2023 are \$2,257.94.
17. The Landlord incurred costs of \$175.00 for filing the application and is entitled to reimbursement of those costs.
18. The Landlord collected a rent deposit of \$1,402.50 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.
19. Interest on the rent deposit, in the amount of \$70.05 is owing to the Tenant for the period from January 24, 2020 to July 31, 2023.
20. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
21. The Landlord shall deduct any additional payments made by the Tenants from the total amount owing since the application was heard on July 31, 2023.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - **\$6,893.40** if the payment is made on or before October 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- **\$8,380.22** if the payment is made on or before November 6, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after November 6, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
 4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before November 6, 2023**
 5. If the Tenants do not void the order, the Tenants shall pay to the Landlord **\$960.39**. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
 6. The Tenants shall also pay the Landlord compensation of \$48.88 per day for the use of the unit starting August 1, 2023 until the date the Tenants move out of the unit.
 7. If the unit is not vacated on or before November 6, 2023, then starting November 7, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
 8. 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 November 7, 2023.

October 26, 2023

Date Issued

Percy Laryea

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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on May 7, 2024 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.

Schedule 1
SUMMARY OF CALCULATIONS

A. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before October 31, 2023

Rent Owing To October 31, 2023	\$60,505.20
Application Filing Fee	\$175.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$53,786.80
Total the Tenant must pay to continue the tenancy	\$6,893.40

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before November 6, 2023

Rent Owing To November 30, 2023	\$61,992.02
Application Filing Fee	\$175.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$53,786.80
Total the Tenant must pay to continue the tenancy	\$8,380.22

C. Amount the Tenants must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$56,044.74
Application Filing Fee	\$175.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$53,786.80
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,402.50
Less the amount of the interest on the last month's rent deposit	- \$70.05
Total amount owing to the Landlord	\$960.39
Plus daily compensation owing for each day of occupation starting August 1, 2023	\$48.88 (per day)