



Order under Section 87(1) Residential Tenancies Act, 2006

Citation: Lee v Hannah, 2023 ONLTB 49328

Date: 2023-07-12

File Number: LTB-L-069376-22

In the matter of: MAIN FLOOR – 4 PALMERSTON AVE TORONTO
ON M6J2H7

Between: Eva Lee Landlord

And

Bobby Hannah Tenants
Jesse Robinson

Eva Lee (the 'Landlord') applied for an order to terminate the tenancy and evict Bobby Hannah and Jesse Robinson (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on June 7, 2023. The Landlord and the Landlord's representative, Mohsen Azimi, attended the hearing. The Tenants and the Tenants' representative, Daniel English, also attended the hearing.

Preliminary Issue – Disclosures of the Parties:

1. On May 20, 2023 the Landlord submitted an L1 update sheet to the Board that included a rent ledger for the tenancy from March 1, 2020 to May 1, 2023. This disclosure was also mailed to the Tenants' unit address on May 21, 2023. I therefore accepted this disclosure as evidence at the hearing.
2. On May 31, 2023 the Tenants emailed their 14-page disclosure to the Board and to the Landlord at lee.eva@hotmail.com. The Landlord confirmed that this was her email address; however, she stated that she did not have this disclosure. I determined that the Tenants' disclosure was provided to the Landlord in accordance with the Board's Rules of Procedure 19.1 and 19.2. The Tenants' representative emailed this disclosure to the Landlord during the hearing pursuant to the Board's Rules of Procedure 19.3. The Landlord confirmed receipt of the Tenants' disclosure at the hearing. At the hearing, I accepted pages 6 through 14 of this document as evidence, as presented by the Tenants.

3. On June 1, 2023 the Tenants submitted a factum to the Board that summarized their arguments. The Landlord's representative stated that the Landlord did not have this factum. The Tenants' representative emailed the factum to the Landlord during the hearing pursuant to the Board's Rules of Procedure 19.3. The Landlord confirmed receipt of the Tenants' factum at the hearing. The Tenants' representative requested that this factum be accepted as the Tenants' closing submissions in this matter. I granted the Tenants' representative's request.

Determinations:

Validity of the N4 Notice

1. On November 3, 2022 the Landlord served the Tenants with a Notice to End the 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 of November 19, 2022, or before the date the application was filed on November 21, 2022.
2. As provided in the Landlord's N4 Notice and L1 application, the Landlord's representative confirmed that the rent arrears owed were \$19,056.00 on November 19, 2022 and November 21, 2022 respectively. These arrears were calculated, in part, on the basis of a lump sum rent payment by the Tenants of \$24,624.00 on August 23, 2021, as testified by the Landlord, and as provided in the Landlord's rent ledger for the tenancy.
3. Tenant Bobby Hannah testified that the rent payment in August 2021 was for a total of \$26,624.00, and not \$24,624.00. The Tenants provided a copy of a cheque dated August 8, 2021, for an amount of \$26,624.00 payable to the Landlord.
4. The Landlord's representative acknowledged the payment of \$26,624.00 from the Tenants in August 2021, and subsequently confirmed that there was a \$2,000.00 error in the Landlord's L1 application regarding the arrears owing for the period of March 1, 2020 to August 23, 2021. The Landlord's representative requested that the total arrears owing be amended to reflect \$17,056.00 as of the date of the L1 application. I consented to this amendment.
5. Upon a review of this matter after the completion of the hearing, I determined that this \$2,000.00 error is also included in the Landlord's N4 Notice to the Tenants. The Landlord's N4 Notice lists the total rent paid over the period of March 1, 2020 to August 23, 2021 as \$24,624.00, resulting in total rent owing on the N4 of \$19,056.00. As provided in paragraphs 3 and 4 above, this is not correct. I am satisfied that the rent paid over the period of March 1, 2020 to August 23, 2021 was \$26,624.00, resulting in total rent owed on the date of service of the N4 of \$17,056.00.
6. I therefore find that the Landlord's N4 Notice has not accurately set out the rent arrears owing at the time the N4 was served, pursuant to s. 59(2) of the *Residential Tenancies Act*,

2006 (the 'Act'), and has not provided the Tenants with the correct reasons and details respecting the termination of the tenancy, pursuant to s. 43(2) of the Act. Accordingly, I find that the N4 Notice is defective, and I am unable to consider a termination of the tenancy pursuant to s. 69(1) of the Act.

7. The Landlord's L1 application may however be considered for rent arrears only, pursuant to s. 87(1) of the Act. However, if the Tenants fail to pay any of the arrears, if ordered by the Board, the Landlord may not return to the Board to seek an eviction of the Tenants on the basis of those arrears.
8. On June 21, 2023, as issued in LTB-L-069376-22-IN, the Landlord was ordered to advise the Board and the Tenants, on or before June 28, 2023, whether the Landlord wanted to proceed with the L1 application for rent arrears only. On June 27, 2023 the Landlord advised the Board and the Tenants via letter that she wanted to proceed with her L1 application for rent arrears only. This final order provides my determinations and decision on the basis of the evidence provided by both parties at the hearing.

Lawful Rent, Rent Deposit, and Rent Arrears

Landlord's Evidence

9. The Landlord testified that the Tenants moved into the unit on October 1, 2019 and the rent was set at \$2,080.00 monthly, payable the first day of each month, as per a written tenancy agreement that was agreed to and signed by both parties. The Landlord testified further that the rent for the unit remains \$2,080.00 monthly and that she never offered the Tenants a rent reduction or accepted any reduction in rent.
10. The Landlord stated that for the period from March 1, 2020 to August 22, 2021 the Tenants did not pay any rent. The Landlord stated further that on August 23, 2021 she received a payment from the Tenants of \$24,624.00; however, the Landlord later corrected this amount to \$26,624.00, as provided in paragraphs 2, 3 and 4 above. The Landlord continued that from September 2021 to the hearing date she received regular monthly payments from the Tenants of \$1,664.00; however, never the full rent of \$2,080.00. The Landlord submitted a rent ledger for the tenancy for the period from March 1, 2020 to May 1, 2023.
11. The Landlord testified that the rent arrears owing when the L1 application was filed in November 2022 were \$17,056.00. The Landlord confirmed that since filing the application, additional rent was charged for the months of December 2022 to June 2023 totaling \$14,560.00; however, the Tenants only paid \$11,648.00 during this period, for a total of \$2,912.00 in arrears since the L1 was filed. The Landlord remarked that the total rent arrears owing are therefore \$19,968.00.
12. The Landlord testified further that since March 2020 the Tenants have not paid the full rent, and they never communicated with her requesting the lower rent payments. The Landlord asserted that she tried to communicate with the Tenants about why they were not paying

the full rent, and she asked them to pay the full monthly rent, but the Tenants never responded to her queries, refusing to communicate with her regarding the rent payments.

13. The Landlord testified that she collected a last month's rent deposit of \$2,080.00 from the Tenants on October 1, 2019; and no interest has been paid on this deposit. I accept this testimony as an amendment to the Landlord's L1 application, indicating on page 7 that no rent deposit was collected from the Tenants.

Tenants' Evidence

14. Tenant Bobby Hannah testified that in October 2019 the Tenants agreed, as per the tenancy agreement, to a monthly rent of \$2,080.00; however, in March 2020, as a result of the loss of their employment income from the pandemic, the Tenants requested and received approval for a 20% rent reduction from the Landlord for a monthly rent of \$1,664.00. The Tenant testified further that this reduction was negotiated and approved by the Landlord during a phone conversation in March 2020.
15. The Tenant acknowledged that she has no documentary evidence of the Landlord's acceptance of the lower rent payment; however, the Tenant contended that the Landlord accepted the reduced rent on the basis of unresolved maintenance issues, and that the Landlord did not dispute the lower rent payments despite good communication flow between the Tenants and the Landlord.
16. The Tenants submitted copies of text message exchanges with the Landlord in October 2021 regarding the receipt of rent cheques, as well as exchanges about maintenance issues in the kitchen and washroom.
17. The Tenant testified further that given the rent reduction, and payments made to the Landlord since March 2020, the Tenants currently only have rent arrears of \$1,664.00 representing one month's rent. The Tenants submitted a copy of cheque #28 payable to the Landlord, dated March 1, 2020, for \$2,080.00, and a copy of the Tenants' rent ledger for the period from March 2020 to May 2023, indicating a zero balance as of May 2023.
18. The Tenants' rent ledger indicates that the rent deposit of \$2,080.00, collected on October 1, 2019, was applied for the rent for the month of April 2020.
19. The Tenants also submitted a copy of cheque #30 for \$26,642.00, payable and delivered to the Landlord on August 16, 2021, representing monthly rent of \$1,664.00 for the period of April 2020 to August 2021, less the rent deposit of \$2,080.00 that was applied for rent for the month of April 2020. The Tenants also submitted copies of cheques sent to the Landlord, each for \$1,664.00, for the period from September 2021 to May 2023.
20. The Tenants' representative submitted that the Landlord's acceptance of the cheque for \$26,642.00 on August 17, 2021, as well as the Landlord's text message correspondence with the Tenants in October 2021 regarding a possible missing rent cheque for \$1,664.00, without questioning the amount of this cheque, are both indicators that the Landlord

discreetly accepted the rent reduction to \$1,664.00. The representative submitted further that the only rent owed to the Landlord is \$1,664.00 for the month of April 2020.

Analysis – Lawful Rent

21. On the basis of the evidence provided, and on a balance of probabilities, I find that the lawful rent is, and remains, \$2,080.00 monthly as established by both parties in accordance with their tenancy agreement on October 1, 2019. On this matter, I find the Landlord's evidence more compelling than the Tenants'. I accept that the Tenants' employment income was severely restricted as a result of the pandemic, and that the Tenants were seeking to resolve maintenance issues; however, the Tenants failed to establish that the Landlord, for these reasons, accepted a 20% reduction in rent effective April 1, 2020.
22. I am satisfied that the Landlord, at no time, accepted a reduction in rent or discounted the rent as desired by the Tenants. I am also satisfied that the Landlord attempted to correspond with the Tenants, without success, to seek lawful rent payments from April 2020 onward. I find that the Tenants did not pay any rent for the period from April 1, 2020 to August 1, 2021, a period of 16 months, until mid-August 2021 when the Tenants provided a lump sum payment of \$26,642.00, representing monthly rent of \$1,664.00 – not \$2,080.00.
23. I accept that the Landlord corresponded with the Tenants regarding the receipt of rent cheques in August 2021 and October 2021; however, I do not accept that the Landlord's omission to discuss the lawful rent on these two occasions, as the Landlord's tacit approval of a 20% rent reduction self-initiated by the Tenants 16 months earlier. Furthermore, I accept that the Landlord could have corresponded more frequently and formally with the Tenants regarding their self-imposed rent reduction, or could have applied to the Board before November 2022 to seek a remedy; however, I find that the Landlord's actions were reasonable and appropriate under the circumstances. I find it unreasonable for the Tenants to consider the Landlord's actions as discreet acceptance of their rent reduction.

Analysis – Rent Deposit

24. On the basis of the evidence provided, the Landlord collected a rent deposit of \$2,080.00 from the Tenants on October 1, 2019, and this deposit is still being held by the Landlord.
25. The Tenants indicated on their rent ledger that this deposit was applied for April 2020 rent; however, the Landlord disagreed that the deposit was used for this purpose. Pursuant to s. 106(10) of the Act, the rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated. As provided in paragraph 6 above, termination of the tenancy will not be considered in this application; therefore, the rent deposit will be retained by the Landlord and not applied as rent for the month of April 2020.

Analysis – Rent Arrears

26. As of the hearing date, the Tenants were still in possession of the rental unit.
27. The lawful rent is \$2,080.00. It is due on the 1st day of each month.
28. As of November 21, 2022, the day the L1 application was filed, the rent arrears owing for the period from March 1, 2020 to November 30, 2022 are **\$14,958.00**. The Landlord charged \$68,640.00 in rent during this period, and the Tenants paid a total of \$53,682.00 – including \$2,080.00 for March 2020, \$26,642.00 for the period May 2020 to August 2021, and \$1,664.00 each month from September 2021 to November 2022.
29. Since the L1 application was filed, for the period from December 1, 2022 to June 30, 2023, the rent arrears owing are **\$2,912.00**. The Landlord charged \$14,560.00 in rent during this period, and the Tenants paid a total of \$11,648.00, representing \$1,664.00 each month from December 2022 to June 2023.
30. Accordingly, the rent arrears owing to June 30, 2023 are **\$17,870.00**.
31. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The Tenants shall pay to the Landlord \$18,056.00. This amount includes rent arrears owing of \$17,870.00 as of June 30, 2023, and \$186.00 for the cost of filing the application.
2. If the Tenants do not pay the Landlord the full amount owing on or before July 31, 2023, the Tenants will start to owe interest. This will be simple interest calculated from August 1, 2023 at 6.00% annually on the balance outstanding.

July 12, 2023
Date Issued

Frank Ebner
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor Toronto
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.