



Order under Section 69 Residential Tenancies Act, 2006

Citation: H&R Property Management Ltd v Pierre-Louis, 2024 ONLTB 9669

Date: 2024-02-08

File Number: LTB-L-057978-23

In the matter of: 910, 20 ANTRIM CRES
SCARBOROUGH ON M1P4N3

Between: H&R Property Management Ltd

And

Ronald Pierre-Louis

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

Feb 8, 2024

Landlord

Landlord and Tenant Board

Tenant

H&R Property Management Ltd (the 'Landlord') applied for an order to terminate the tenancy and evict Ronald Pierre-Louis (the 'Tenant') because:

- the Tenant did not pay the rent that the Tenant owes; and
- the Tenant have been persistently late in paying the Tenant's rent.

This application was heard by videoconference on January 17, 2024.

The Landlord's Legal Representative Bryan Rubin, the Tenant and the Tenant's Legal Representative Tigran Sandukhchyan attended the hearing.

Preliminary Issue:

The Tenant's representative asked for an adjournment of the matter because the Notice of Hearing indicated that only the L1 application was going to be heard, not the L2 application. He argued that as a matter of procedural fairness his client was entitled to proper notice that the L2 application was going to be heard at the hearing and that as a result, the L2 application was not properly before the Board. He further stated that his client did not seek legal advice on the L2 application as he did not have a notice of hearing on the L2 application.

The Landlord's representative was opposed to the request for an adjournment. The Landlord's position was that the application before the Board was clearly an L1/L2 blended application and that the Tenant ought to have known that the entire application was before the Board. He further stated that the L2 application for persistent late payment of rent is not a complex issue and that the Tenant has legal representation to assist him in the application.

After a brief recess, I denied the Tenant's request for an adjournment. While the Notice of Hearing indicated that the hearing type was L1/L9, the application number was clearly noted at the top of the notice. There is only one application before the Board and that application encompasses both the L1 application for arrears of rent and the L2 application for persistent late payment of rent. As part of the Notice of Hearing package, the blended application was sent to

the Tenant. As a result, the Tenant and his representative knew that the application sought to address both issues and ought to have anticipated that both would be dealt with at the hearing. In addition, the Notice of Hearing for this hearing is the same Notice of Hearing for other L1/L2 combined applications that are heard in L1/L9 blocks. Given the nature of the L2 application, where the only question is whether the rent was paid on time, the Notice of Hearing does not objectively cause confusion.

Determinations:

L1 Application – Non-Payment of Rent

1. The parties agreed that the Tenant filed a consumer proposal under s. 66.13(2) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the 'BIA') on December 11, 2023 and that the proposal covers the rental arrears the Landlord claimed in the application up to December 31, 2023.
2. The parties do not agree on the effect of that consumer proposal on the L1 application for arrears of rent.
3. The Landlord's representative's position is that I have the authority to issue an order for the arrears of rent covered by the consumer proposal, but that any order cannot be executed given the automatic stay of proceedings pursuant to s. 69.2(1) of the BIA. His position was that an order would give the Landlord protection if the Tenant did not follow the debt repayment provisions of his consumer proposal in that it could be executed if the proposal fails. Mr. Rubin did not submit any legal authorities for this proposition but stated that this issue is currently before the Divisional Court.
4. The Tenant's representative's position was that the Board cannot make an order on the L1 application given the automatic stay of proceedings pursuant to the BIA and if the Board makes an order on the L1 application, it would be ultra vires.
5. Subsection 69.2(1) of the BIA is very clear that no creditor shall continue any action for a claim provable in bankruptcy. The legislation states:

69.2 (1) Subject to subsections (2) to (4) and sections 69.4 and 69.5, on the filing of a consumer proposal under subsection 66.13(2) or of an amendment to a consumer proposal under subsection 66.37(1) in respect of a consumer debtor, no creditor has any remedy against the debtor or the debtor's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy until

(a) the consumer proposal or the amended consumer proposal, as the case may be, has been withdrawn, refused, annulled or deemed annulled; or

(b) the administrator has been discharged.

6. I have no evidence before me that the Tenant's consumer proposal has been withdrawn, refused, annulled or deemed annulled. Nor do I have any evidence before me that the administrator has been discharged.

7. In the absence of such evidence, pursuant to s. 69.2(1) the Landlord cannot continue with the L1 application. As a result, I cannot consider the L1 application and it is stayed.

L2 Application – Persistent Late Payment of Rent

8. The Tenant did not dispute the Landlord's allegations that he persistently paid his rent late as set out in the N8 notice.

Relief from Eviction

9. 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 postpone the eviction until February 29, 2024 pursuant to subsection 83(1)(b) of the Act.
10. The Tenant sought a conditional pay on time order. He testified that he has undergone several significant challenges in the past 6 months that have led him to pay his rent late. He testified that he suffered a serious workplace injury which has led to mental health issues and has hindered his decision-making abilities. He stated that he was placed on paid leave while the workplace incident was investigated. The Tenant further testified that his WSIB claim for the incident was denied but that he was appealing that decision. The Tenant tendered documentation regarding the workplace incident.
11. The Tenant further testified that he was diagnosed with cancer and underwent a family separation that has contributed to his financial hardship as he had to pay lawyer's fees. He also stated that his 95 year old mother lives with him as an occupant in the rental unit and that he is her primary caregiver.
12. The Tenant stated that he is confident that he will be able to pay his rent in full and on time on February 1, 2024 as long as his mother receives her Old Age Security payments.
13. The Tenant's representative's position was that a conditional order is warranted given the Tenant's disability and his family circumstances and that any prejudice will be mitigated by the inclusion of a s. 78 provision in the order.
14. The Landlord opposed a conditional order in this case and sought a non-voidable termination of the tenancy. The Landlord's representative stated that the Tenant has been receiving pay but has not paid his rent since July 2023. He stated that the Tenant had not submitted any income statements showing that the unit is financially sustainable for the Tenant.
15. After considering all the circumstances presented to me, I do not find that a conditional order is warranted in this case. Although I appreciate the Tenant's difficult circumstances, I am not convinced that he will be able to pay the rent on time if I were to grant a conditional order. The Tenant testified that he has been on paid leave from his employer since October when he was scheduled to go back to work, however, he has not made any rent payments since that time. While I understand that he has had other obligations, including the consumer proposal, he hasn't made any good faith payments to the Landlord even after the consumer proposal was filed.

16. The Tenant also testified that he was confident that he would be able to pay the rent on February 1, 2024 as long as his mother received her OAS payments. The Tenant's mother has been living with him since he moved into the rental unit. At 95 years old, she would have already been in receipt of OAS. Further, any OAS payment is not the Tenant's money, it belongs to his mother and thus it cannot be relied upon to satisfy the Tenant's rent obligation.
17. However, given the Tenant's circumstances, I do find a short delay in eviction until February 29, 2024 to be appropriate in order to give the Tenant time to find new accommodations for himself and his mother.

It is ordered that:

L1 Application – Non-Payment of Rent

1. The Landlord's L1 application for arrears of rent is stayed as a result of the Tenant's consumer proposal filed pursuant to the BIA.

L2 Application – Persistent Late Payment of Rent

2. The tenancy between the Landlord and the Tenant is terminated, as of February 29, 2024.
3. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
4. If the Tenant does not pay the Landlord the full amount owing on or before February 19, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 20, 2024 at 7.00% annually on the balance outstanding.
5. If the unit is not vacated on or before February 29, 2024, then starting March 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. 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 March 1, 2024.

February 8, 2024
Date Issued



Angela Long
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 September 1, 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.