

Oz v Shearer, 2020 CanLII 120980 (ON LTB)

Date: 2020-12-10
File number: TEL-05362-19-VO
Citation: Oz v Shearer, 2020 CanLII 120980 (ON LTB), <<https://canlii.ca/t/jhd7n>>, retrieved on 2024-02-23



Tribunals Ontario
Landlord and Tenant Board

Order under Subsection 74(6)
and Direction Authorizing Payment-Out under Subsection 195(2)

Residential Tenancies Act, 2006

File Number: TEL-05362-19-VO

In the matter of: 24 DON HADDEN CRESCENTSUNDERLAND ON L0C1H0

Between: Eran Oz Landlord

and
Charles Ross Shearer Jenna Shearer Tenants

On August 6, 2020 the Board issued order TEL-05362-19 terminating the tenancy and evicting Charles Ross Shearer and Jenna Shearer (the 'Tenants') because they failed to pay rent that they owe.

On November 9, 2020 the Tenants filed a motion to void order TEL-05362-19 because before the eviction order became enforceable, the Tenants paid the Landlord and the Board } the amount required to void the order under subsection 74(4) of the *Residential Tenancies Act, 2006* (the 'Act').

The motion was heard by videoconference on November 26, 2020. The Landlord and the Tenant, Charles Ross Shearer, attended the hearing.

Determinations:

1. The Tenants filed an affidavit swearing that the Tenants paid the full amount required to void order TEL-05362-19 to the Landlord and the Board before the eviction order became enforceable.

2. At the hearing the Tenant challenged the Board's jurisdiction to order more than \$25,000.00 to the Landlord. The Tenants paid \$33,000.00 to the Attorney General and take the position that the Board can only order payment of \$25,000.00 to the Landlord and the balance should be returned to the Tenants.

3. Section 207 of the *Residential Tenancies Act* provides direction on this submission.

Monetary jurisdiction of Board

207 (1) The Board may, where it otherwise has the jurisdiction, order the payment to any given person of an amount of money up to the greater of \$10,000 and the monetary jurisdiction of the Small Claims Court. [2006, c. 17, s. 207 \(1\)](#).

Same

(2) A person entitled to apply under this Act but whose claim exceeds the Board's monetary jurisdiction may commence a proceeding in any court of competent jurisdiction for an order requiring the payment of that sum and, if such a proceeding is commenced, the court may exercise any powers that the Board could have exercised if the proceeding had been before the Board and within its monetary jurisdiction. [2006, c. 17, s. 207 \(2\)](#).

Same

(3) If a party makes a claim in an application for payment of a sum equal to or less than the Board's monetary jurisdiction, all rights of the party in excess of the Board's monetary jurisdiction are extinguished once the Board issues its order. [2006, c. 17, s. 207 \(3\)](#).

4. The Landlord filed the application with the Board on October 2, 2019 claiming \$4,247.00 in arrears. The Board's monetary jurisdiction at the time was \$25,000.00. The claim in the application was well below the Board's monetary jurisdiction.

5. The application was initially heard after the Board's monetary jurisdiction increased to \$35,000.00. The order was issued on August 4, 2020. Section 207(1) states the Board may order payment to any given person of an amount of money up to the greater of \$10,000.00 and the monetary jurisdiction of the Small Claims Court. When the Board issued the order on August 4, 2020 the monetary jurisdiction of Small Claims Court, that of the Landlord and Tenant Board, was \$35,000.00.

6. The Tenants requested a review of the decision. The request to review the order was denied.

7. The Tenants filed an appeal of the order which was quashed by the Court.

8. I find the Board has jurisdiction to order up to \$35,000.00 at the time of the original hearing, when the order was issued by the Board, and at the time of the hearing of the Tenants' motion to void.

9. The parties agree the Tenants owe the Landlord \$31,073.00 in arrears of rent for the period September 2019 to November 2020 plus the \$175.00 cost the Landlord incurred to file the application with the Board and the \$348.60 the Landlord incurred to file the order with the Court Enforcement Office. The Tenants owe the Landlord \$31,596.60.

It is ordered that:

1. The motion to void order TEL-05362-19 is granted.
2. Order TEL-05362-19 is void and cannot be enforced by the Landlord.
3. The amount of \$31,596.0 paid into the Board by the Tenants shall be paid out to the Landlord the excess amount of \$1,403.40 shall be paid out to the Tenants.

The Board shall pay to the Landlord the amount of \$33,000.00 together with any accrued interest.
**



December 10, 2020

Date Issued

Member, Landlord and Tenant Board

Greg Joy

Toronto East-RO
2275 Midland Avenue, Unit 2 Toronto ON
M1P3E7

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party(ies) named in this order. The cheque will be in the amount directed plus any interest accrued up to the date of this order.