CITATION: Paterson v. City of Oshawa, 2023 ONSC 2287
COURT FILE NO.: 31-2890236 & 31-2892136
DATE: 2023 03 21

SUPERIOR COURT OF JUSTICE – ONTARIO IN BANKRUPTCY

31-2890236

IN THE MATTER OF THE BANKRUPTCY OF DANIKA CHERYL ELIZABETH TARA PATERSON OF THE CITY OF OSHAWA PROVINCE OF ONTARIO

AND

31-2892136

IN THE MATTER OF THE BANKRUPTCY OF RICKY JOSEPH WESLEY DUSSAULT OF THE CITY OF OSHAWA IN THE PROVINCE OF ONTARIO

BEFORE: Associate Justice Ilchenko, Registrar in Bankruptcy

COUNSEL:

J.J. Neal for Landlord Walid Lodin (the "**Landlord**")

Bankrupts Danika Cheryl Elizabeth Tara Paterson ("**Paterson**") and Ricky Joseph Wesley Dussault ("**Dussault**") appearing in person (collectively, the **"Bankrupts"**)

Trustee MNP Limited, Joel Kideckel, LIT (the "**Trustee**") not appearing but not opposing although duly served

Superintendent of Bankruptcy not opposing although duly served

HEARD: March 21, 2023

E N D O R S E M E N T

[1] The Landlord of the residential property leased by the Bankrupts at 899 Beatrice Street E., Oshawa, Ontario (the "**Property**") appears on these Motions to lift the stay of proceedings under s.69.3(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, (the "**BIA**") with respect to each of Bankrupts, who are both tenants in the Property under a lease with the Landlord, to permit the landlord to direct the Sheriff to obtain possession of the Property and that the provisions of s.84.2 of the BIA do not apply.

[2] Both Bankrupts and the Landlord, each represented at the hearings, appeared on August 23, 2022, October 19, 2022 and November 7, 2022 before Peter Nicholson, a Member of the Landlord and Tenant Board ("**Nicholson**") at a hearing under the provisions of the s.69 of the *Residential Tenancies Act*, 2006, SO 2006, c 17, (the "**RTA**") where the Landlord was seeking an Order to terminate the Tenancy of the Bankrupts and to evict the Bankrupts as they had not paid rent to the Landlord.

[3] Nicholson rendered a decision on November 21, 2022 (the "**Board Decision**") which I have appended as Schedule A to this Endorsement. The Board Decision made the following factual determinations:

"DETERMINATIONS
1. The Tenants have not paid the total rent the Tenants were required to pay for the period from April 1, 2021 to November 30, 2022. Because of the arrears, the Landlord served a Notice of Termination effective June 25, 2021.

2. The Landlord collected a rent deposit of $3,000.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit is owing to the Tenants for the period from August 1, 2020 to June 25, 2021.

3. The Total arrears owing to November 30, 2022 is $60,000.00. Subject to the Tenants's.82 claims, as outlined below, this amount is not in dispute."

[4] The Bankrupts alleged before Nicholson that they were entitled to relief under s.82 of the RTA as a result of various assorted alleged breaches by the Landlord of the reasonable use and enjoyment of the Property, including that the Landlord illegally entered the Property, towed their vehicles, interfered with the ODSP Child Tax Credit funding of the Bankrupts, and other harassing behavior. These are the same issues that the Bankrupts raised before me today.

[5] Before Nicholson they also requested relief from eviction under s.83 of the RTA with respect to the health issues of the Bankrupts and their 5 children, and the conduct of the Landlord. These are the same issues that the Bankrupts raised before me today.

[6] With respect to that issue, after full oral hearings and testimony, and after granting the Bankrupts the opportunity to provide further evidence to substantiate their allegations and their request under s.83 of the RTA. Nicholson concluded on this issue in the Board Decision:

“32. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act*, 2006 (the 'Act'), including the Tenants' family and health situations, as well as the Landlord's conduct and poor choices throughout the tenancy. Given the Tenants' unwillingness and inability to make any rent payments over such a prolonged period of time with little proven substantial change to the Tenants' ability and willingness to pay going forward, I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.”

[7] Nicholson rejected the claims by the Bankrupts for general damages for pain and suffering caused by the Landlord, instead providing an $10,055.76 abatement for the proven odious conduct of the Landlord, stating:

“25. The Tenants' claim for general damages for pain suffering and for payment of a fine to the Board is denied, as the Tenants' section 82 allegations are sufficiently addressed in the remedies awarded above.

[8] Nicholson made the following Orders under the RTA in the Board Decision (the “**RTA Orders**”):

It is ordered that:

1. Unless the Tenants void the order as set out below, the tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before December 2, 2022.

2. The Tenants shall pay to the Landlord $35,000.00, which represents the maximum jurisdictional amount of the Board, for rent owing and compensation up to November 21, 2022, less the rent deposit and interest the Landlord owes on the rent deposit.

3. If the unit is not vacated on or before December 2, 2022, then starting December 3, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

4. 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 December 3, 2022.

5. If the Tenants wish to void this order and continue the tenancy, the Tenants must pay to the Landlord or to the Board in trust: $49,944.24 if the payment is made on or before November 30, 2022, or $52,944.24 if the payment is made on or before December 2, 2022 **.

If the Tenants do not make full payment in accordance with this paragraph and by the appropriate deadline, then the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

6. The Tenants may make a motion to the Board under subsection 74(11) of the Act to set aside this order if they pay the amount required under that subsection on or after December 3, 2022 but before the Sheriff gives vacant possession to the Landlord. The Tenants are only entitled to make this motion once during the period of the tenancy agreement with the Landlord.”

[9] Under the provisions of s.209 and s.210 of the RTA: Order final, binding

209 (1) Except where this Act provides otherwise, and subject to section 21.2 of the *Statutory Powers Procedure Act*, an order of the Board is final and binding.

…

Appeal rights

210 (1) Any person affected by an order of the Board may appeal the order to the Divisional Court within 30 days after being given the order, but only on a question of law.

[10] No appeal was brought of the Board Decision by the Bankrupt's or their representative
K. Farell. The Bankrupts did not pay the amounts ordered to stave off eviction under the terms of the Board Decision in the period between November 21, 2022 and December 2, 2022. The Bankrupts did not move out of the Property by December 2, 2022 as required by the Board Decision and continue to reside in the Property. The Bankrupts admitted to me that they continue to not pay rent to the Landlord.

The Bankruptcies

[11] Instead, on December 1, 2022 the Bankrupt Paterson made and assignment into Bankruptcy with the Trustee, and December 8th, 2022 the Bankrupt Dussault made an assignment into Bankruptcy with the Trustee.

[12] These decisions made their situations far, far worse.

[13] In her Statement of Affairs Paterson declared the debt to the Landlord at $52,944.24 for the pre-filing claim determined under the Board Decision. In addition there were credit cards cash store type lenders, Rogers and national student loans declared for claims totaling $79,954, all unsecured. It is unclear whether she has signed her bankruptcy documentation, which is an issue under s.158(d) of the BIA.

[14] Paterson declared in her Income and Expense statement monthly income of $3,029.33, monthly expenses of $3015, of which $1500 is "rent", $100 gas, $100 hydro. No family unit income is declared. Based on that declaration (unsigned), the Trustee assessed a monthly surplus income payment at $100. Paterson has a prior filing, what appears to be an unsuccessful consumer proposal in 2020. Accordingly, it is likely that under s.172(1)(a)(ii) there may be a minimum 21 month period to discharge.

[15] In his Statement of Affairs Dussault declared the debt to the Landlord at $52,944.24 for the pre-filing claim determined under the Board Decision. In addition there were a CRA debt declared of $34,000, $9,057 to "Ministry of Transportation -Eastern Region" credit cards, cash store type lenders declared for claims totaling $97,914.74, all unsecured. It is unclear

whether he has signed his bankruptcy documentation, which is an issue under s.158(d) of the BIA

[16] Dussault declared in his Income and Expense statement monthly income of a child tax benefit of $1,235, monthly expenses of $1,235, of which $500 is “rent”. Again, no family unit

income is declared. Based on that declaration (unsigned), the Trustee assessed a monthly surplus income payment at $100. Dussault has no prior filing.

[17] The Bankrupts admitted that they are continuing to not pay rent after bankruptcy to the Landlord, again blaming the Landlord for interfering with their ODSP Child Tax Credit, which Nicholson considered and still granted the RTA Orders in the Board Decision, including denying the request by the Bankrupts to forestall eviction. This is very problematic in Bankruptcy for a number of reasons.

[18] I was at some pains to point out to the Bankrupts that in Bankruptcy, NONE of the unpaid post-Bankruptcy rent and other amounts payable under the lease to the Landlord is dischargeable in the Bankruptcies of the Bankrupts, by an Order of Discharge.

[19] Furthermore, at discharge, which for Paterson may be 21 Months away, there is a high likelihood that the Discharge Order will require payment of post-bankruptcy indebtedness. As the rent for the Property is $3,000 per month, over 21 months that could amount to $63,000. Over just the last 4 months post-Bankruptcy unpaid, that amount appears to be $12,000 of undischargeable debt owing to the Landlord. So far.

[20] Furthermore, as no rent is being paid to the Landlord post-bankruptcy, the declaration of expenses for rent as a deduction in the Surplus Income Declaration, when it is not actually being paid, may have resulted, to date, of additional Surplus Income owing to the Trustee of
$6,000 for Paterson and $2000 for Dussault, which amount will keep increasing until their Surplus Income periods end. There may also be an issue by the failure of the Bankrupts to advise of the “family unit” income and expenses.

[21] The Bankrupts advised that they will at some point start paying rent to this Landlord once their “new worker” fixes their ODSP Child Tax Credit problems allegedly caused by the Landlord, which Nicholson found occurred in July 2021.

[22] That would seem to be unlikely, as even if the monthly amount of income is raised when or if that happens, how will the Bankrupts ever pay the $12,000 in undischargeable post- bankruptcy debt racked up to date to the Landlord? The RTA Orders were granted:

“Given the Tenants' unwillingness and inability to make any rent payments over such a prolonged period of time with little proven substantial change to the Tenants' ability and willingness to pay going forward”

[23] The Landlord’s evidence of prejudice in his affidavits filed in each of the Leave Motions in each of the Bankruptcy estates was:

9. I have continued to pay for all of the expenses for the Property since December 1, 2022 without any rent being received from Paterson or the other tenants as follows:

a. the mortgage for the Property of $1,530.36 per month;

b. municipal taxes for the Property which are currently $4,838.54 annually, or $403.21 per month;

c. house insurance for the Property of $1,347 annually, or $1,112.25 per month; and

d. there will be additional water bills added to the tax roll for the Property as neither Paterson nor the other tenants are paying anything on the water bills.

10. The Statement of Affairs filed by Paterson as part of her bankruptcy includes a statement of monthly expenses showing her paying rent of $1,500 monthly, however she has not paid any rent to myself since the date of the bankruptcy. A copy of the Statement of Affairs is attached hereto as Exhibit B.

11. As a result of delays at the Landlord and Tenant Board, if I were to recommence proceedings for non-payment of rent due after the date of bankruptcy, I would not be able to obtain a hearing date for approximately nine months to one year.

12. I believe that I will be materially prejudiced if the stay of proceedings is not lifted to the limited extent of allowing the Sheriff to proceed to obtain possession of the Property on my behalf pursuant to the LTB Order.

13. I have and will continue to incur significant financial hardship if I am not permitted by this Honourable Court to enforce the part of the LTB Order granting myself possession of the Property."

[24] The Bankruptcy Court does not sit as an alternative appeal route to undo the work of other Courts. The Supreme Court of Canada in *Kozack v Richter* 1973 CanLII 166 (SCC), 973 CarswellSask 142, 1973 CarswellSask 5, [1973] 5 W.W.R. 470, [1974] S.C.R. 832, 20 C.B.R. (N.S.) 223, 36 D.L.R.
(3d) 612 (where the Bankrupt was attempting to discharge a large motor vehicle accident Judgment) stated:

"5 In the present case, respondent's bankruptcy was precipitated by his condemnation to pay damages to the appellant. This being due to a finding of "wilful and wanton misconduct" on his part, certainly his financial predicament cannot be said to have arisen "from circumstances for which he cannot justly be held responsible". The Courts below did not ignore this provision. However, the sanction meted out in the first instance was purely nominal. In the Court of Appeal, respondent was in effect ordered to make payments that would hardly cover more than appellant's costs in the trial Court and in the Court of Appeal. Although respondent is a wage-earner with a large family in very modest circumstances, I cannot agree that the proper application of the provisions above quoted should result in a plaintiff making no recovery for personal injuries caused by gross negligence. It would mean that motorists in respondent's situation would be able to tell such a claimant: "There is no use suing me, if you lose you will have to pay the costs, if you win I will make an assignment in bankruptcy and you will get nothing."

[25] In the family law context, where the Bankrupt was seeking to escape an order for costs, as stated by Epstein, J. (as she then was) in *Re Bobyk* (1995), 1995 CanLII 7384 (ON SC), 37 C.B.R. (3d) 25, 1995 CarswellOnt 682 (Ont. Gen. Div.):

"5 It appears that this is a situation where Mr. Bobyk elected to go bankrupt in order to avoid paying his wife the legal costs he was ordered to pay.

...

7 In my view this is a situation akin to *Kozack v. Richter* [(1973), 1973 CanLII 166 (SCC), 20 C.B.R. (N.S.) 223 (S.C.C.)] where the Bankruptcy Act is not to be permitted to be used to avoid a judgment for tort or for a matrimonial proceeding. I note that this is not a case where Mr. Bobyk has more income or assets than he says at the moment, nor is there assault or physically abusive treatment involved as in several of the other cases cited in the court. Nevertheless our court process cannot condone a situation where spouses force each other through the financially and emotionally onerous burden of matrimonial litigation without taking responsibility for the financial consequences of losing."

[26] In this case it is abundantly clear that the Bankrupts assigned themselves into Bankruptcy to deliberately stymie the enforcement by the Landlord of the RTA Orders granted in the Board Decision. Paterson admitted that to me.

[27] However thuggish the behavior of the Landlord, as alleged by the Bankrupts, and some of which was factually found to be true by Nicholson for which the Bankrupts received a rent abatement, Nicholson declined to deny the Bankrupts the relief from eviction they requested AFTER hearing three full days of testimony on the issues.

[28] The RTA Orders were issued and not complied with by the Bankrupts, who, like the husband in *Bobyk*, "...elected to go bankrupt in order to avoid..." the terms of the RTA Orders. Then they kept on not paying rent after Bankruptcy, effectively obtaining further credit every month from the Landlord.

[29] However heated the dispute is between the Bankrupts and the Landlord, Nicholson issued the RTA Orders, and this Court, and the Bankrupts, must be respectful of those RTA Orders.

[30] Under the provisions of the RTA: "Conflict with other

Acts

3(4) If a provision of this Act conflicts with a provision of another Act, other than the Human Rights Code, the provision of this Act applies. 2006, c. 17, s. 3 (4)

168 (2) The Board has exclusive jurisdiction to determine all applications under this Act and with respect to all matters in which jurisdiction is conferred on it by this Act."

[31] Accordingly, this Court cannot ignore the Board Decision and the findings of fact made by Nicholson, making those findings subject to *Res Judicata* and issue estoppel, and the RTA Orders issued by Nicholson under the RTA, who had exclusive jurisdiction to adjudicate matters under the RTA, including the underlying dispute between the Landlord and the Bankrupts.

[32] Pursuant to s. 69.4 of the BIA, a creditor who is affected by the statutory stay of proceedings may apply to the court for a declaration that the stay no longer operates in respect of that creditor and the court may make such a declaration, subject to any qualifications that the court considers proper, if it is satisfied that the creditor is likely to be materially prejudiced by the continued operation of the stay or it is equitable on other grounds to make such a declaration.

[33] In *Re Ma* (2000), CanLII 22487 (ONSC); affirmed 2001 CanLII 24076 (ON CA), [2001] OJ No. 1189, it was held that the test to be applied was whether the type of claim which the creditor seeks to advance is of the type that should be allowed to proceed, as enumerated in *Re Advocate Mines* 1984 CarswellOnt 156, [1984] O.J. No. 2330, 52 C.B.R. (N.S.) 277. On appeal, the Court of Appeal said that the onus remains on the applicant to establish a basis for the order and affirmed that there must be sound reasons, consistent with the scheme of the BIA to relieve against the automatic stay.

[34] In *Re Advocate Mines*, Registrar Ferron enumerated the following categories of claims that ordinarily are permitted to proceed:

The court may, however, remove the stay of proceedings prescribed by that section in appropriate cases and has done so in the following circumstances:

1. Actions against the bankrupt for a debt to which a discharge would not be a defence.

2. Actions in respect of a contingent or unliquidated debt, the proof of which and valuation has that degree of complexity which makes the summary procedure prescribed by s. 95(2) of the Bankruptcy Act inappropriate.

3. Actions in which the bankrupt is a necessary party for the complete adjudication of the matters at issue involving other parties.

4. Actions brought to establish judgment against the bankrupt to enable the plaintiff to recover under a contract of insurance or indemnity or under compensatory legislation.

5. Actions in Ontario which, at the date of bankruptcy, have progressed to a point where logic dictates that the action be permitted to continue to judgment.

[35] In *Re Francisco* 1995 CanLII 7371 (ON SC), 1995 CarswellOnt 363, [1995] O.J. No. 917, 19 C.L.R. (2d) 146, 32
C.B.R. (3d) 29, 54 A.C.W.S. (3d) 428, Adams, J. found that the *Advocate Mines* criteria are not exhaustive, stating:

“13 It should be understood that *Re Advocate Mines Ltd.*, supra, is not an exhaustive codification of the policy underlying the *Bankruptcy and Insolvency Act*. It is but one

thoughtful decision attempting to articulate the type of grounds which may provoke the exercise of a judicial discretion. To view *Advocate Mines* as a limiting or exhaustive instrument is an error in principle. Moreover, I am satisfied the action in question is one in respect of which a discharge may not be a defence and, further, that the action had progressed to a point where logic dictated the action be permitted to continue to judgment."

[36] Debts incurred by Bankrupts after the date of the assignment into bankruptcy are, by definition, not "claims provable in bankruptcy" as defined under the BIA, and therefore not claims released by an Order of discharge under s.178(2) of the BIA, and therefore the post- bankruptcy claims of the Landlord against the Bankrupts fit within either the *Advocate Mines* or the *Re Francisco* criteria.

[37] The Bankrupts took none of the steps, before they filed assignments into Bankruptcy, that would have had the effect of voiding the termination of the tenancy under the RTA Orders.

[38] In this case the Order that the Landlord is seeking is narrowed to not the usual order allowing the action to continue, but specifically to enforce a portion of the RTA Orders, to recover possession of the Property, and not to collect the pre-bankruptcy monetary compensation in the RTA Orders:

"2. THIS COURT ORDERS that the Stay of Proceedings established by section 69.3(1) of the BIA shall be and is hereby lifted for the sole purpose of permitting Lodin to enforce paragraphs 3 and 4 of the Order of the Landlord and Tenant Board dated November 21, 2022 (the "LTB Order") whereby Lodin was granted the right to file the LTB Order with the Sheriff for the Regional Municipality of Durham to obtain possession of the lands and premises known municipally as 899 Beatrice Street East, Oshawa, Ontario (the "Property").

3. THIS COURT ORDERS that Section 84.2 of the BIA does not apply to the termination of the lease between Lodin and the bankrupt Danika Cheryl Elizabeth Tara Paterson "

[39] Section 84.2 of the BIA reads:

"84.2 (1) No person may terminate or amend — or claim an accelerated payment or forfeiture of the term under — any agreement, including a security agreement, with a bankrupt individual by reason only of the individual's bankruptcy or insolvency.

Lease

(2) If the agreement referred to in subsection (1) is a lease, the lessor may not terminate or amend, or claim an accelerated payment or forfeiture of the term under, the lease by reason only of the bankruptcy or insolvency or of the fact that the bankrupt has not paid rent in respect of any period **before** the time of the bankruptcy."

[40] In this case, the termination of the lease occurred by operation of the RTA Orders by the failure of the Bankrupts to void the termination of the lease by the operation of the RTA Orders, prior to their Bankruptcies, or after. In this case, the additional failure of the Bankrupts to continue to pay rent after the Bankruptcy, makes this a situation where the termination of the lease is not "…by reason only of the bankruptcy or insolvency or of the

fact that the bankrupt has not paid rent in respect of any period before the time of the bankruptcy."

[41] In my view, as the Bankrupts have admitted they have taken no steps to void the RTA Orders before their Bankruptcies, and have admitted they have paid no amounts to the Landlord in the 4 months after their Bankruptcies.

[42] In addition the Landlord has proven that he has suffered prejudice in the 4 months since the Bankruptcies by having to continue to pay the carrying costs on the Property and that each month that liability and the Landlord's prejudice continues to increase, with absolutely no evidence before the Court that this will ever change.

[43] In addition, as I have found above, the Bankrupts, by claiming rent as expenses on the Statements of Income and Expenses provided to the Trustee, despite paying no rent post- Bankruptcy to the landlord, are in breach of their duties under s.68 and s.158 of the BIA, and this is also resulting every month with an increasing unpaid surplus income obligation to the Trustee by each Bankrupt, as long as this situation continues unresolved.

[44] I find that the Landlord has satisfied the test to be met on the motions and that there is basis for the orders against each of the Bankrupts and sound reasons to grant those orders, consistent with the scheme of the BIA.

[45] Accordingly, for these reasons, and exercising my Registrar's Discretion I have determined that the orders requested in the motions are properly granted and I have signed the appropriate orders in each of the Bankruptcies.

[46] Nothing in this decision purports to affect the future rights of either Bankrupt or the Landlord under the RTA which has the jurisdiction to deal with residential tenancies issues, and this decision is limited to the lifting of the stay requested with respect to the termination of the Lease between the Landlord and the Bankrupts, to permit the enforcement of the terms of paragraphs 3 and 4 of the RTA Orders, as requested by the Landlord on these Motions.

Released: March 21, 2023

Associate Justice Ilchenko

Registrar in Bankruptcy Superior Court of Justice

SCHEDULE A

Tribunals Ontario
Landlord and Tenant Board

013

Order under Section 69
Residential Tenancies Act, 2006

File Number: TEL-17695-21

In the matter of: 899 BEATRICE STREET E
OSHAWA ON L1K2H8

Between: Walid Lodin — Landlord

and

Bob (robert) Dussault
Danika Paterson
Ricky Dussault — Tenants

I hereby certify this is a true copy of an Order dated
NOV 21, 2022
Landlord and Tenant Board

Walid Lodin (the 'Landlord') applied for an order to terminate the tenancy and evict Ricky Dussault, Danika Paterson and Bob (robert) Dussault (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe. The Tenants raised issues pursuant to section 82 of the Residential Tenancies Act, 2006.

This application was heard by videoconference on August 23, 2022, October 19, 2022 and November 7, 2022.

The Landlord Walin Lodin (WL), the Landlord's witness Steve Pattersen (SP), the Landlord's representative K. Sinopostolova, the Tenants Danika Paterson (DP) and Ricky Dussault (RD) and the Tenants' representative K. Farrell attended the hearing.

Determinations:

1. The Tenants have not paid the total rent the Tenants were required to pay for the period from April 1, 2021 to November 30, 2022. Because of the arrears, the Landlord served a Notice of Termination effective June 25, 2021.

2. The Landlord collected a rent deposit of $3,000.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit is owing to the Tenants for the period from August 1, 2020 to June 25, 2021.

3. The Total arrears owing to November 30, 2022 is $60,000.00. Subject to the Tenants' s.82 claims, as outlined below, this amount is not in dispute.

Section 82

4. Section 82 of the *Residential Tenancies Act, 2006* (the "Act") permits the Tenants to raise any issue that could be the subject of an application provided certain notice requirements are met.

5. In accordance with section 82 of the Act the Tenants allege numerous breaches on the part of the Landlord, including illegal entry, harassment and interference with their reasonable enjoyment and use of the rental unit.

Illegal Entry

6. The Tenants allege there was a clear, and egregious illegal entry on September 9, 2021. The Tenant DK testified that the Landlord, alongside approximately 6 other individuals, "stormed" the rental unit on September 9, 2021 without notice and forcefully removed all occupants by way of physical force.

7. At the time of the alleged entry, there were several occupants at the rental unit, including the Tenants' children. As a result of this incident, the police were called, and charges were laid as against the Landlord. While the events occurring on that evening are highly contested, the Tenants ultimately regained possession of the rental unit that night and the Landlord was advised to stay away from the rental unit.

8. The Landlord denies committing an assault and stated he believed he was entitled to "take back" the rental unit under the (mistaken) belief the Act did not apply to the tenancy and the tenants were "trespassers". Ultimately, I accept DK's testimony that the entry was aggressive in nature, frightening and without question, contrary to the Act. Because of the aggressive nature of the illegal entry, the Tenants and minor occupants became fearful of the Landlord, and this effected the Tenants' ability to enjoy use of the rental unit.

9. Having considered the impact of the illegal entry on the Tenants, the aggressive nature in which it occurred, and the Tenants' reasonable expectation privacy, I find a rent abatement of $2,500.00 for the illegal entry and surrounding conduct is reasonable in the circumstances. The Tenants' claim for general damages for pain suffering and for payment of a fine to the Board is denied, as I find this allegation is sufficiently addressed in the remedy awarded above.

Vehicles Towed

10. The Tenants allege the Landlord arranged for a tow truck to attend at the rental unit and remove 3 of the Tenants' vehicles. The Landlord does not deny removing the Tenants' vehicles but attempted to justify his actions by stating the vehicles were not licensed or operable.

11. WL testified he previously verbally advised the Tenants to remove the vehicles and by letter dated September 27, 2021, the Landlord's representative warned "*If you do not comply with the rules for the Rental Unit on or before October 4, 2021, my client may report this matter to the Municipal By-Law Enforcement Office of Oshawa.* ***Any vehicle remaining***

on the driveway of the Rental unit after October 4, 2021 that is unlicensed and/or inoperable may be privately towed."

12. In my view the Landlord's conduct here was unreasonable and constituted substantial interference of the Tenants' enjoyment. The Tenants stated they were not made aware as to where the vehicles were taken and were forced to "call around". Upon locating the vehicles, the Tenants were required to pay $1351.76 for their retrieval. Assuming such self-help could be justified by a need to adhere to the municipal by-laws, the Landlord did not lead sufficient evidence to establish either that the vehicles *had* to be towed under the municipal by-laws or that somehow the Landlord was in jeopardy of some sort of fine or other enforcement action as a result.

13. Tenants are entitled to reimbursement of this cost. Additionally, given the stress and inconvenience resulting from the Landlord's "self-help" remedy and efforts to avoid seeking the appropriate remedy under the Act, I find a rent abatement of $750.00 for the interference to be reasonable in the circumstances.

ODSP/Child Tax funding

14. The Tenants allege the Landlord contacted Ontario Works (OW) in July 2021 and interfered with the Tenants' funding source by falsely claiming the Tenants were not paying rent and no longer living at the rental unit.

15. The Landlord testified he felt an obligation to advise OW the Tenants were no longer paying rent because at the commencement of the tenancy he had represented to OW that the Tenants were living at the rental unit and paying rent.

16. As a result of the Landlord's interference, DK stated her ODSP funding was reduced from $1733/month, being her entitlement for "Shelter and Basic needs" to simply $815/month, constituting her "Basic Needs" entitlement only.

17. Since the Tenants' reduced ODSP funding commenced on July 1, 2021 due to the Landlord's interference, I find the Tenants are entitled to an abatement of $2,754.00, being the Tenants' total reduced entitlement for 3 months. While the Tenants did not receive their full ODSP entitlement for a period of time beyond 3 months, the Tenants must take reasonable steps to minimize any such losses, such as by making the necessary inquiries with the appropriate parties and supplying any requested documentation to rectify their funding situation. I do not find the Landlord to be responsible for the loss of funding beyond 3 months.

18. DK additionally added that her child tax credit was reduced from $1900 to $1235 as a result of one of her 3 children residing at a different location with her father, due to the Landlord's actions. The child had relocated prior to the September 9, 2022 illegal entry, and while not a requirement to prove this allegation, the child's father did not testify to speak to the cause of the relocation or the child's continued absence from the rental unit. I do not find DK has proven on a balance of probabilities that the cause of the child's relocation was due to the Landlord's actions and accordingly, I do not find that an abatement is warranted.

Other

19. The Tenants allege the Landlord without notice changed the mail key to the mailbox in February 2022, thereby depriving the Tenants of their mail. The Landlord does not deny arranging for Canada Post to change the key at the communal mailbox, stating his concern at the time was that some of his mail was going to the rental unit and being withheld by the Tenants. Ultimately, the Tenants mail was withheld until September 2022, and a key was given to the Tenants on the day of the final day of hearing, being November 7, 2022.

20. In the meantime, the Tenants either did not receive their mail or were forced to make other arrangements with Canada Post at their cost and inconvenience. I find there was some disruption to the Tenants' ability to normally reside in the rental unit as a result, and that the Tenants are entitled to some abatement of rent over a reasonable period of time. In this regard, I find a rent abatement of 10% of rent for a period of 9 months to be reasonable in the circumstances, constituting an abatement of $2,700.00.

21. DK also alleges that the Landlord changed the hydro bill from the Tenants' names to the Landlord's name and that the Landlord shut off the main water source to the rental unit on July 7, 2021. Relatively little evidence was presented as to the impact of these actions on the Tenants and ultimately, DK acknowledged changing the hydro back to her name. I find Landlord's evidence believable that the water was turned on within the hour. A claim for abatement for these allegations is denied.

22. The Tenants also seek one month's compensation as a result of the Landlord seeking to reclaim the property for personal use in accordance with section 48.1 of the Act. The Tenants also claim the Landlord breached section 23 of the Act in August 2021 by serving an "over exaggerated N5". These claims are denied, as the validity of the Landlord's notices and/or merits of the Landlord's N12/N5 applications are not presently before me, and in the circumstances, I do not find the mere service of such notices to constitute a breach under the Act.

23. The Tenants also alleged the Landlord contacted the Tenants through text and other means, and attended at the property on occasions in June, July, August and November 2021 and in the process, took photographs, peered into and videotaped both the interior and exterior of the rental unit. A video was tendered of the Landlord's visit to the rental property in July, alongside a contractor. Notwithstanding the Tenants' request at the time that he not enter, the Landlord ultimately refused to comply. However, the Landlord served a Notice of Inspection dated July 2, 2022, with a proposed entry the following day between 2pm-5pm, which provided more than 24-hours'notice. The notice also stipulated a valid reason for the entry. I find that the Landlord complied with the Act's entry requirements on that visit. I conclude that the Landlord's conduct did not rise to the level of constituting harassment or other breach under section 23 of the Act.

24. The Tenants produced pictures taken in August 2022 from the interior of the rental unit, showing the Landlord outside of the rental unit and waiving to the Tenants. Based upon the evidence presented, I do not find that the Landlord's presence at the rental unit rose to the level of constituting a breach under the Act.

25. The Tenants' claim for general damages for pain suffering and for payment of a fine to the Board is denied, as the Tenants' section 82 allegations are sufficiently addressed in the remedies awarded above.

26. As the rental arrears owing to the Landlord are greater than the abatement or amounts owing to the Tenants, the amounts owing as part of the Tenants' section 82 claims shall be deducted from the rental arrears owing to the Landlord.

Section 83

27. DK advised that the Tenants have submitted numerous rental applications, but given their credit score, have been unable to secure alternative accommodations. Given the Landlord's conduct, the Tenants seek to remain in the rental unit and seek an abatement or other offset of any rental arrears determined to be outstanding.

28. The tenancy commenced in August 2020. In addition to the Tenants, the Tenants' children also reside at the rental unit. The Tenants presented documentary evidence to show that multiple occupants have health issues to consider under section 83 of the Act.

29. In closing submissions, the Tenants' representative also suggested the Landlord had failed to offer the Tenants a repayment plan and thus, eviction should be denied. In response, the Landlord's representative submitted a payment plan was offered in March 2022, and based upon the evidence presented, I accept that the Landlord made efforts to work out a payment arrangement with the Tenants when the arrears initially began to accrue. I also note that the Tenants' failure to pay any rent, notwithstanding the imposition of the interim order dated August 29, 2021 requiring ongoing payments to be made into the Board, suggests an unwillingness to comply with a Board order, and moreover, an unwillingness and inability to comply with a payment plan.

30. On another note, it was open to me to refuse to consider the Tenants' evidence and submissions due to their non-compliance with the Board's interim order. When this matter was returned before the Board on October 19, 2022, the Tenants' representative advised that the Landlord's ongoing efforts have thwarted the Tenants' ability to make payments to the Board. Given the serious nature of the Tenants' s.82 claims, including the numerous allegations that the Landlord had interfered with the Tenants' funding, in the interest of justice I chose to hear the matter and ultimately consider the Tenants' evidence when the matter was returned to the Board on October 19, 2022 and November 7, 2022.

31. The Landlord has waived any excess amount determined to be owed over and above the Board's monetary jurisdiction, and the Landlord opposes any relief from eviction given the resulting financial hardship caused by the Tenants' non-payment. The amount of rent unpaid is beyond the $35,000.00 monetary jurisdiction of the Board and the Landlord's application was filed several months ago, thus providing significant notice to the Tenants of the Landlord's intentions in this proceeding. It is clear there is a lack of trust between the parties, and there has been a breakdown in the landlord-tenant relationship.

32. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the Tenants' family and health

situations, as well as the Landlord's conduct and poor choices throughout the tenancy. Given the Tenants' unwillingness and inability to make any rent payments over such a prolonged period of time with little proven substantial change to the Tenants' ability and willingness to pay going forward, I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

Delay/Costs

33. In closing submissions, the Landlord's representative sought an award of costs as against the Tenants and the Tenants' representative for unduly prolonging this proceeding.

34. The hearing of the Landlord's L1 application took place over 3 days. While it is unfortunate the arrears accrued in the meantime, the Tenants' representative countered the delay was caused by the Landlord's actions throughout the tenancy and, in addition, the Landlord's initial position on its A1 application that the Act did not apply. By way of background, prior to the hearing of the Landlord's L1 application, the parties were engaged in a much-contested A1 application hearing which took place over 2 days. Significant documentary evidence was presented, and multiple witnesses were called by the Landlord, who steadfastly maintained that the Act did not apply.

35. By board order issued in TEL-21273-21 in October 2022, it was determined the Act did apply and accordingly, the Board's jurisdiction to consider the Landlord's rental arrears application was confirmed and the Landlord's L1 application was completed thereafter. I do not find that an award of costs is justified in the circumstances

It is ordered that:

1. Unless the Tenants void the order as set out below, the tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before December 2, 2022.

2. The Tenants shall pay to the Landlord $35,000.00, which represents the maximum jurisdictional amount of the Board, for rent owing and compensation up to November 21, 2022, less the rent deposit and interest the Landlord owes on the rent deposit.

3. If the unit is not vacated on or before December 2, 2022, then starting December 3, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

4. 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 December 3, 2022.

5. If the Tenants wish to void this order and continue the tenancy, the Tenants must pay to the Landlord or to the Board in trust:
   i) $49,944.24 if the payment is made on or before November 30, 2022, or
   ii) $52,944.24 if the payment is made on or before December 2, 2022**.
   If the Tenants do not make full payment in accordance with this paragraph and by the

appropriate deadline, then the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

6. The Tenants may make a motion to the Board under subsection 74(11) of the Act to set aside this order if they pay the amount required under that subsection on or after December 3, 2022 but before the Sheriff gives vacant possession to the Landlord. The Tenants are only entitled to make this motion once during the period of the tenancy agreement with the Landlord.

Peter Nicholson

November 21, 2022
Date Issued

Peter Nicholson
Member, Landlord and Tenant Board

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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on June 3, 2023 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.

* Refer to section A on the attached Summary of Calculations.
** Refer to section B on the attached Summary of Calculations.

Schedule 1
SUMMARY OF CALCULATIONS

File Number: TEL-17695-21

A. Amount the Tenants must pay if the tenancy is terminated:

Reasons for amount owing	Period	Amount
Arrears: (up to the termination date in the Notice of Termination)	April 1, 2021 to June 25, 2021	$8,465.75
Plus compensation: (from the day after the termination date in the Notice to the date of the order)	June 26, 2021 to November 21, 2022	$50,695.82
Less the rent deposit:		-$3,000.00
Less the interest owing on the rent deposit:	August 1, 2020 to June 25, 2021	-$2.70
Less amount owing to the Tenant for abatement/rebate:		-$10,055.76
Amount owing to the Landlord on the order date: (total of previous boxes)		**$46,103.11**
Total the Tenants must pay the Landlord if the tenancy is terminated:		**$35,000.00, maximum jurisdiction limit of the LTB**

B. Amount the Tenants must pay to void the eviction order and continue the tenancy:

1. If the payment is made on or before November 30, 2022:

Reasons for amount owing	Period	Amount
Arrears:	April 1, 2021 to November 30, 2022	$60,000.00
Less abatement for the Tenant's section 82 issues		-10,055.76
Total the Tenants must pay to continue the tenancy:	On or before November 30, 2022	$49,944.24

2. If the payment is made after November 30, 2022 but on or before December 2, 2022:

Reasons for amount owing	Period	Amount
Arrears:	April 1, 2021 to December 31, 2022	$63,000.00

Less amount owing to the Tenant for abatement/rebate:		-$10,055.76
Total the Tenants must pay to continue the tenancy:	On or before December 2, 2022	$52,944.24