



Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: Mahmood v Riutta, 2024 ONLTB 62844

Date: 2024-09-03

File Number: LTB-L-072858-22-RV

2024 ONLTB 62844 (CanLII)

In the matter of: 27 NATHAN CRES
BARRIE ON L4N0S2

Between: Rashis Mahmood Landlords
Zafar Mirza

And

Sonja Riutta Tenants
Peter Riutta

Review Order

Rashis Mahmood and Zafar Mirza (the 'Landlords') applied for an order to terminate the tenancy and evict Sonja Riutta and Peter Riutta (the 'Tenants') because the Tenants did not pay rent and utilities.

This application was heard on December 11, 2024 and resolved by an order issued on May 30, 2024 (the 'Hearing Order').

On June 26, 2024, Mr. Riutta requested a review of the Hearing Order. The basis for Mr. Riutta's request was that the LTB erred in finding that Mr. Riutta was a tenant because he was not in possession of the unit when the application was filed, having vacated in July of 2022.

By an interim order issued on June 27, 2024 (the 'Interim Order'), Mr. Riutta's request was directed to a hearing and the Hearing Order was stayed. The Interim Order said:

- 2. *The matter is directed to a review hearing to determine whether there are serious errors in the order or serious errors occurred in the proceedings. Subject to the presiding Member's discretion, the issues to be determined are:*
 - *Did the Member seriously err by ordering the requesting Tenant to pay the full arrears due up to March 31, 2023 because the other Tenant had filed in bankruptcy?*
 - *Did the Member seriously err by including the requesting Tenant's name on the order even though it was uncontested that the requesting Tenant was not in possession of the rental unit when the application was filed and the issue as to whether the Board could treat the L1 application as an L10 application was not addressed?*

I heard the review by videoconference on August 19, 2024. The Landlord and Peter Riutta were in attendance. Charlene Lewin represented the Landlords.

In submissions filed in connection with the review, the Landlords asserted the Tenants caused damage to the unit. Those assertions were not made on the N5 notice delivered by the Landlords upon which this application was based, and there is no reference to those damages in the Hearing Order. Given that the Tenants have vacated the unit, the Landlords must bring an application under sections 88.1 or 89 of the *Residential Tenancies Act, 2006* (the 'RTA').

Determinations:

I. Background and Introduction

1. On October 31, 2022, the Landlords delivered an N4 notice with a November 30, 2022 termination date asserting the Tenants owed \$5,250.00 in rent. On October 8, 2022, the Landlords delivered a first (voidable) N5 notice with a November 30, 2022 termination date asserting the Tenants owed \$602.06 in utilities. The Tenants did not pay the rent or the utilities and, on December 2, 2022, the Landlords filed this combined L1/L2 application.
2. Mr. Riutta vacated the unit in July of 2022 when the relationship broke down between him and Ms Riutta. Ms Riutta became bankrupt on March 21, 2023 and vacated the unit on October 4, 2023.
3. Concerning Mr. Riutta, the Member found that he was a joint tenant and continued to be a joint tenant notwithstanding that he had stopped living in the unit. The Member did not consider the requirement of the RTA that a tenant (a) have been in possession of the unit; or (b) have been out of possession for less than one year, when an application to recover rent or other compensation was filed [**RTA, s 87(1.1) and 88.2(2)**], and how that requirement might apply in circumstances where a joint tenant vacated the unit more than one year before an application was filed, leaving the other joint tenant in occupation.
4. The Member:
 - (a) determined the LTB could hear the applications notwithstanding that Ms Riutta had become bankrupt because: (a) Mr. Riutta was not bankrupt; and (b) there was rent owed after March 21, 2023;
 - (b) made an order on the L1 portion of the application terminating the tenancy on October 4, 2023 based on a finding that rent had not been paid; and
 - (c) ordered: (i) Mr. Riutta to pay \$15,750.00 in rent arrears and \$1,348.12 in utilities for the period August 1, 2022 to March 31, 2023; and (ii) Ms and Mr. Riutta to jointly pay \$10,831.79 owed from April 1, 2023.¹
5. In my view, the review must be granted and the Hearing Order cancelled based on Ms Riutta's bankruptcy.

¹ No end date is referenced in the Hearing Order, but presumably, the utilities are until Ms Riutta vacated the unit.

II. Impact of Bankruptcy

6. There are three procedures available under the *Bankruptcy and Insolvency Act* (the ‘BIA’) that have the potential to impact the landlord-tenant relationship: (a) bankruptcy, (b) ‘ordinary’ or Division I proposals, and (c) consumer or Divisional II proposals.² Bankruptcy and consumer proposals are the BIA procedures that are most commonly encountered in applications under the RTA. Each of the BIA procedures is different, but, in general terms, each impacts the landlord-tenant relationship by: (a) staying proceedings before the LTB to recover amounts owed by the tenant; and (b) restricting the termination of the tenancy and eviction of the tenant.³
7. This case involves bankruptcy. Two provisions of the BIA come into play in a bankruptcy that impact applications to the LTB under the RTA: section 69.3 and section 84.2.

A. Section 69.3—Automatic Stay

8. Section 69.3 creates an automatic stay that is intended to prevent creditors from taking steps to establish or recover a debt owed by the bankrupt outside of the process established by the BIA. **[See, for example, SWL-16920-SA (Re), 2008 CanLII 82446 (ON LTB)]** It says, in part:

69.3 (1) Subject to subsections (1.1) and (2) and sections 69.4 and 69.5, on the bankruptcy of any 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.

(1.1) Subsection (1) ceases to apply in respect of a creditor on the day on which the trustee is discharged.

9. Section 69.3 applies to proceedings for the recovery of a claim provable in the tenant’s bankruptcy. The BIA defines a “claim provable” to be ‘[a]ll debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt’s discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt’. **[BIA, s 121(1)]** Generally, rent or other amounts owed by a bankrupt tenant when the bankruptcy started are ‘provable’ and any application that includes the recovery of such amounts is stayed.
10. As was noted by the Supreme Court of Canada in *R v. Fitzgibbon* **[1990 CanLII 102 (SCC)]**:

... [section 69.3] prohibits the granting of any ‘remedy against’ or ‘recovery of’ any claim against the debtor or his property without leave of the court in bankruptcy.... The object of the section is to avoid a multiplicity of proceedings and to prevent any single unsecured

² There is a third procedure—Orderly Payment of Debts under Part X of the BIA—but that procedure is not available in Ontario.

³ The chart at Schedule A provides a summary of how the various possible landlord applications under the RTA are impacted by various sections of the BIA.

creditor from obtaining a priority over any other unsecured creditors by bringing an action and executing a judgment against the debtor. This is accomplished by providing that no remedy or action may be taken against a bankrupt without leave of the court in bankruptcy, and then only upon such terms as that court may impose. (citations omitted)

11. As a practical matter, there is no need for the LTB to order that a bankrupt tenant owes rent or to resolve any dispute concerning the amount of rent owed. The BIA includes a process for a landlord to establish its claim for rent against a bankrupt tenant **[BIA, s. 124]**⁴ and for resolving any dispute over the rent owed by the tenant. **[BIA, s. 135]**
12. There may be circumstances where an application to the LTB is not stayed by section 69.3. Section 69.3 of the BIA stays proceedings for the recovery of a monetary claim and an L2 application where the remedy requested does not include the recovery of a monetary claim will, for example, not be stayed by section 69.3. **[See *BCIMC Realty Corporation v Fernandes*, 2021 CanLII 140640 (ON LTB)]** Where, however, a landlord asserts that section 69.3 does not apply to stay an application before the LTB, the LTB should carefully consider whether the application is in fact seeking to continue a proceeding for the recovery of a claim provable in bankruptcy.
13. The BIA 69.3 stay is effective from when a bankruptcy takes place—essentially when a bankruptcy file number is assigned—and ends when the trustee appointed to administer the bankruptcy is discharged. **[BIA, 69.3(1.1)]**⁵
14. It is possible for a landlord to obtain permission from the Superior Court exercising jurisdiction under the BIA to commence or continue an L1 application. **[BIA, s. 69.4]** The LTB does not, however, have jurisdiction to allow an application under the RTA against a bankrupt tenant to proceed. As was noted by the *Human Rights Tribunal in Robert v. Temagami Co-operative Inc.* **[2012 HRTO 46 (CanLII)]**:

*... it is the Bankruptcy Court that is tasked with the management of litigation against parties who have been granted protection under the BIA. [See also *Sorenson v. Les Aliments Whyte's Inc.*, 2024 HRTO 129 (CanLII)]*
15. There are cases in which a proceeding commenced after a stay under the BIA has taken effect without leave first being obtained under section 69.4 of the BIA has been found to be a 'nullity'. It is more accurate, in my view, to say that a proceeding commenced without leave first being obtained under section 69.4 of the BIA is an 'irregularity' that can be remedied by a *nunc pro tunc*⁶ order of the Superior Court granting leave under section 69.4. **[See *Royal Bank of Canada v Streetsville Eyecare Inc.*, 2022 ONSC 4609 (CanLII)]** Until, however, the 'irregularity' is remedied by the Superior Court, the LTB cannot consider

⁴ A landlord must file a proof of claim with the trustee to receive a distribution from the bankruptcy: BIA, s. 124(1).

⁵ There are some LTB orders—see, for example, *Singhmar v Mwebi*, 2021 CanLII 74068 (ON LTB) and *Xiao v Cunha*, 2020 CanLII 119803 (ON LTB)—that incorrectly indicate that the stay comes to an end when the bankruptcy for example *Singhmar v Mwebi*, 2021 CanLII 74068 (ON LTB) and *Xiao v Cunha*, 2020 CanLII 119803 (ON LTB)—that incorrectly indicate that the stay comes to an end when the bankrupt is discharged.

⁶ This is a Latin phrase the Member terminated the tenancy 'now for then' and refers to an order that retroactively validates some step taken or order made otherwise than in compliance with some legal requirement such as, for example, obtaining leave under section 69.4 of the BIA.

an application that was commenced after the bankruptcy was started without leave—the continuation of the proceeding is stayed.

B. Section 84.2—Restriction on Eviction

16. Once a tenant becomes bankrupt, the ability of a landlord or the LTB to terminate the tenancy based on the fact the tenant owes rent is restricted by section 84.2 of the BIA, which says, in part:

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.*

(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.

17. The effect of section 84.2 is to prevent the LTB from exercising its jurisdiction under section 69 of the RTA to terminate a tenancy where the basis for the application is the failure of a bankrupt tenant to pay rent owed at the time the tenant became bankrupt—an L1 application based on a notice of termination delivered under section 59 of the RTA. The Superior Court has jurisdiction to permit a tenancy to permit an application impacted by section 84.2 to proceed. **[BIA, s. 84.2(6)]** The LTB does not.
18. The intention of section 84.2 is to preserve residential tenancies—so long as the bankrupt tenant continues to pay rent after the bankruptcy starts, the tenancy will remain in place. **[See *Structures Métropolitaines (smi) Inc. v. Ryszard Pasternak*, 2014 CanLII 110518 (QC TAL) (unofficial translation)]**
19. Section 84.2 was first added to the BIA by Bill C-55. The clause-by-clause analysis produced for Bill C-55 described the purpose of the section:

The intention of the reform is to ensure that agreements in good standing be respected by all parties. Therefore, the individual bankrupt, who is attempting to obtain his or her "fresh start", will not be unreasonably evicted from their home, denied basic and essential services or denied other benefits to which they would otherwise be entitled.

...

Subsection (2) stipulates that a landlord may not evict a bankrupt only because of a bankruptcy or there is an amount for past rent outstanding prior to the bankruptcy. The provision applies only in respect of individuals - permitting a landlord to evict an individual only because of a bankruptcy or past obligations would cause a serious hardship on the individual. Balance in the relationship is restored, however, by requiring the bankrupt to pay rent on an on-going basis.

20. Similarly, in *The Annotated Bankruptcy and Insolvency Act*, the section is described as follows:

*Section 84.2 is aimed at ensuring that agreements in good standing be respected by all parties. Therefore, the individual bankrupt who is attempting to obtain a “fresh start” will not be unreasonably evicted from the family home, denied basic and essential services, or denied other benefits to which the bankrupt would otherwise be entitled by reason only of the bankruptcy or insolvency.... [HMPREC 4:440. See also **Capital Steel Inc v Chandos Construction Ltd**, 2019 ABCA 32 (CanLII) aff'd, 2020 SCC 25 (CanLII)]*

21. To balance the interest of the landlord and the tenant, the BIA says that section 84.2 does not prohibit a landlord from recovering rent owed by a bankrupt tenant for a period after the bankruptcy started. [**BIA, s. 84.2(4)**. See also **A Ho, The Treatment of Ipso Facto Clauses in Canada**, 2016 CanLII Docs 346 and **Chandos Construction Ltd. v. Deloitte Restructuring Inc.**, 2020 SCC 25 (CanLII), para 16] This, in practical terms, means that: (a) a bankrupt tenant must pay rent after the bankruptcy starts; and (b) the LTB can terminate a tenancy and evict the tenant based on the failure of the tenant to pay rent after the bankruptcy started [**OR the Date of Bankruptcy**]. [See **Paterson v. City of Oshawa**, 2023 ONSC 2287 (CanLII)] If a bankrupt tenant fails to pay rent after the bankruptcy starts, the landlord can serve another N4 and file another L1 application.
22. In many cases, a bankruptcy will start in the middle of the month. There are some LTB orders that suggest that, in that case, the entire month of rent is ‘brought into’ or ‘caught by’ the bankruptcy because the whole rent was payable on the 1st of the month in advance. [See **Raja v Sharpe**, 2021 CanLII 79180 (ON LTB) and **Capreit Limited Partnership v Hume**, 2021 CanLII 150449 (ON LTB)] In the context of a commercial tenancy, the Superior Court has consistently found that parallel provisions of the BIA require that a tenant who commences insolvency proceedings in the middle of a month pay *per diem* rent for the remainder of the month. [**Crystalline Investments Ltd. v. Domgroup Ltd.**, 2002 CanLII 9612 (ON CA), **Cosgrove-Moore Bindery Services Ltd (Re)**, 2000 CanLII 22377 (ON SC) and **Durham Sports Barn Inc. Bankruptcy Proposal**, 2020 ONSC 5938 (CanLII)] I prefer this approach to the interpretation of section 84.2.
23. Section 84.2 of the BIA says that the LTB cannot make an order under section 69 terminating the tenancy and evicting the tenant based only on the fact that rent was owed when the bankruptcy started. It is possible, however, for the LTB to terminate a tenancy and evict a tenant based on other grounds such as, for example, the tenant having caused undue damage to the rental unit [**RTA, ss. 62 and 63**], or having caused substantial interference [**RTA, s. 64**]. [See, for example, **Structures Métropolitaines (smi) Inc. v. Ryszard Pasternak**, 2014 CanLII 110518 (QC TAL) and **Piperni v. Saucier**, 2014 CanLII 145597 (QC TAL) ((unofficial translation))] Where, however, a landlord asserts on an L2 application based on the assertion a bankrupt tenant has persistently failed to pay the rent when due [**RTA, s. 59(1)1**] that section 84.4 does not apply because the application is based on conduct as opposed to arrears, the LTB should carefully consider the ‘real substance’ of the application [**RTA, s. 202(1)**] and whether the landlord is asking the LTB to terminate the tenancy based on arrears that were owed when the bankruptcy started such that section 84.2 of the BIA applies.
24. There do not appear to be any reported cases that have considered whether the termination of a tenancy in the face of section 84.2 or the other sections of the BIA that restrict the termination of agreements where an insolvency proceeding has been commenced is a

nullity or an irregularity that can be cured. The purpose of section 84.2 is to prevent the termination of tenancies. **[See paragraphs 20 and 21 above, and *Canadian Petcetera Limited Partnership v. 2876 R Holdings Ltd.*, 2010 BCCA 469 (CanLII) interpreting section 65.1 of the BIA, which parallel section 84.2.]** In my view, the effect of section 84.2 of the BIA is to: (a) render a notice of termination under section 59 based on the failure of a bankrupt tenant to pay rent invalid such that the LTB has no jurisdiction to make an order under section 69 based on that notice; and (b) deprive the LTB with jurisdiction to make an order under section 69 terminating a tenancy based on rent that was owed by a bankrupt tenant when the bankruptcy started, and an order that is made without jurisdiction is a nullity.

C. Continuation of LTB Applications

25. There are cases in which the LTB appears to have found where a landlord filed an L1 application in which they have claimed both amounts owed by a bankrupt tenant when the bankruptcy started and amounts that became owed after the bankruptcy started the LTB can hear the application and make an order because the application includes amounts that became owed after the bankruptcy started. **[See *TEL-05439-10 (Re)*, 2010 CanLII 58987 (ON LTB)]** This approach is consistent with *Global Royalties Limited v David Brook* **[2015 ONSC 6277 (CanLII)]**, in which case the Superior Court considered an action in which the plaintiff claimed monetary damages against a bankrupt defendant based on both pre- and post-bankruptcy conduct on the part of the bankrupt. The Superior Court found that leave under section 69.4 of the BIA was not required in connection with the claim for monetary damages based on the bankrupt's conduct post-bankruptcy.
26. However, in my view, this approach is only available where the application before the LTB is only to recover rent or monetary compensation—on applications under sections 87, 88, 88.1, 88.2 or 89 of the RTA.⁷
27. On an application seeking to terminate the tenancy and evict a bankrupt tenant based on the failure of the tenant to pay rent—an L1 application—the LTB may permit the landlord to continue the application to obtain an order that the tenant pay any arrears that became owed after the bankruptcy started, but cannot terminate the tenancy and evict the tenant. The ability of a landlord to apply under section 87 for 'arrears only' where an N4 notice of termination delivered by the landlord was defective has been affirmed by the Divisional Court in *Nejad v Preddie* **[2016 ONSC 4348 (CanLII)]**. I see no practical difference between a landlord relying on section 87 in the face of a defective N4 notice and relying on section 87 to recover post-bankruptcy rent in circumstances where an order under section 69 terminating the tenancy is not possible because of the application of section 84.2 of the BIA. Any potential prejudice to the tenant in permitting the landlord to proceed under section 87 can, in my view, be addressed by an adjournment.
28. Members have relied on the Divisional Court's decision in *Edward v Niagara* **[2006 CanLII 16485 (ON SCDC)]** to amend applications filed under section 69 of the RTA seeking termination of the tenancy based on section 59 to refer to only post-bankruptcy arrears and

⁷ See *Centurion Property Associates Inc v Somerset*, 2023 ONLTB 74672 (CanLII) where I found that, on an application under section 69 of the RTA, the LTB could not make an order terminating the tenancy based on rent that became owed post-bankruptcy and a landlord must deliver a new N4 notice and file a new L1 application.

to then make an order under section 69 of the RTA terminating the tenancy and evicting the tenant based on those arrears. [***Amiraco Properties Inc. v Letourneau Auch, 2023 ONLTB 59353 (CanLII)*** and ***Feng v Samari-Kermani, 2022 ONLTB 10935 (CanLII)***] With respect, I do not think those applications were correctly decided.

29. While I appreciate that an L1 application is technically brought under both section 69—termination and eviction—and section 87—payment of arrears—of the RTA⁸, an L1 is, at its root, an application to terminate the tenancy based on amounts owed as at a specific date—the date the N4 notice of termination under section 59 of the RTA was delivered. [***See RTA, ss. 59(2) and (3)***] If the tenant became bankrupt before the N4 was delivered, the N4 is invalid—the landlord was prohibited by section 84.2 of the BIA from terminating the tenancy—and cannot be the basis for an order under by the LTB under section 69. If, on the other hand, the tenant became bankrupt after the N4 was delivered the LTB cannot make an order based on the arrears owed at the time the N4 was delivered and it is not, in my view, possible for an order under section 69 of the RTA to be based only on the failure of a tenant to pay rent that became owed after the relevant N4 was delivered. It is only where the N4 delivered to a bankrupt tenant is based only on rent that became owed after the bankruptcy started that the LTB may make an order under section 69 based on that N4.⁹
30. In *Edward v Niagara*: (a) the Divisional Court was dealing with a decision of the Superior Court—which had jurisdiction under section 69.4 of the BIA to ‘lift’ the section 69.3 stay—granting a writ of possession under section 171.13 of the *Co-operative Corporations Act*; (b) the trustee administering the bankruptcy estate is referred to by the Divisional Court as having consented to the stay being lifted; and (c) and there appears to have been a finding by the Bankruptcy Registrar to the effect that lifting the stay was not required to allow the Superior Court to make the order in issue. I also note that the Divisional Court considered only the application of section 69.3 of the BIA and not section 84.2. That is because section 84.2 did not come into force until 2009.
31. There is, in my view, a distinction between: (a) the LTB making an order that a bankrupt tenant pay amounts the recovery of which is not stayed by section 69.3 of the BIA on an application that is not ‘caught’ by section 84.2 of the BIA—an application for arrears only; and (b) the LTB amending an application under section 69 of the RTA with the express intent of avoiding the application of section 84.2 of the BIA. In my view, a landlord who wants to obtain an order terminating a tenancy and evicting a bankrupt tenant based on the failure of the tenant to pay rent after the bankruptcy started must deliver an N4 notice of termination referring to the rent owed after the bankruptcy started and file a new L1 application under section 69.

⁸ In many cases the RTA provides for: (a) the termination of a tenancy; and (b) the award of compensation to the landlord, in separate sections.

⁹ In *Canadian Petcetera Limited Partnership v. 2876 R Holdings Ltd.*, 2010 BCCA 469 (CanLII), the British Columbia Court of Appeal found that a section of the BIA that parallels section 84.2 did not apply to prevent the termination of a commercial lease based on rent that became owed after the insolvency proceedings started: see also *Durham Sports Barn Inc. Bankruptcy Proposal*, 2020 ONSC 5938 (CanLII).

D. Joint Tenancies

32. The application of sections 69.3 and 84.2 of the BIA is relatively straightforward, where there is a single tenant: (a) an application to recover rent or other amounts that were owed when the bankruptcy started is stayed; (b) the LTB can make an order that the bankrupt tenant pay rent or other amounts that became owed after the bankruptcy started; and (c) the LTB cannot terminate the tenancy and evict a bankrupt tenant based on an L1 application that is based on rent owed when the bankruptcy started, even if rent became owed after the bankruptcy started. However, the situation becomes somewhat more complicated when there is a joint tenancy and only one of the tenants is bankrupt.
33. A joint tenancy arises when two or more tenants together enter into a tenancy agreement and agree to pay the landlord rent in return for the right to occupy a rental unit, and at the same time, each of them individually makes the same promise to pay rent to the landlord. **[See *Soucy v Milton Heights Inc*, 2015 SKQB 126 (CanLII)]** In a joint tenancy, the tenants are not responsible for separate shares of the rent. They are jointly and severally liable to the landlord for the entire rent. This means that if the rent is not paid, the landlord may pursue any of the joint tenants for the full amount owed.
34. When it comes to applications under section 69 of the RTA based on arrears of rent, a non-bankrupt joint tenant benefits, as a practical matter, from the application of section 84.2 of the BIA because it is not possible to terminate the tenancy of only the non-bankrupt joint tenant. If a landlord obtains an order under section 69 of the RTA terminating a joint tenancy, the tenancy ends for all of the tenants and they will all be evicted.
35. In *Centurion Property Associates Inc v Somerset* **[2023 ONLTB 38486 (CanLII)]**, the LTB considered a situation involving a joint tenancy where one of the tenants had filed a consumer proposal under Part III, Division II of the BIA. The filing of a consumer proposal results in an automatic stay that is similar in effect to the stay that arises under section 69.3 of the BIA. In *Centurion Property v Somerset*, the LTB refused a request by the landlord to amend the application to remove the tenant who had filed the consumer proposal to permit the LTB to terminate the tenancy because the effect of doing that would have been to ‘sever’ the joint tenancy. Where, however, a landlord brings an application to only recover unpaid rent or other amounts owed by joint tenants—where termination is not ‘on the table’—the situation is, in my view, different.
36. The BIA does not prevent a landlord from recovering rent or other amounts owed jointly by a bankrupt tenant and a non-bankrupt tenant from the non-bankrupt tenant **[See BIA, s. 179]** and the LTB can, in my view, determine as against a non-bankrupt joint tenant an application in which the landlord has asked for only monetary compensation without violating section 69.3 of the BIA. In my view, the same rationale applies where a landlord seeks monetary amounts against a non-bankrupt joint tenant as applies where the LTB is asked to make an order requiring a bankrupt tenant to pay amounts that became owed after the bankruptcy started. **[See *Global Royalties Limited v David Brook*, 2015 ONSC 6277 (CanLII) and *McDougall v. Litron Distributors Ltd.*, 2019 HRTO 1179 (CanLII)]**¹⁰. I also

¹⁰ I acknowledge that in *Forestwood Co-operative Homes Inc. v Pritz*, [2002] OJ No 550, 2002 CarswellOnt 490 (Div Ct), the Divisional Court found that section 69.3 of the BIA stayed an application under the *Co-operative Corporations*

note that the LTB proceeding to determine an application against a non-bankrupt joint tenant where section 84.2 of the BIA does not apply is consistent with the obligation to adopt the most expeditious method of determining applications under the RTA. **[RTA, s. 183]**

37. As noted above, section 69.3 of the BIA stays proceedings that would result in the determination of a claim provable against a bankrupt person as well as claims to recover a claim provable. **[See, for example, *Labourers' International Union of North America, Local 1059 v Roger Good c.o.b. R. Good Concrete Ltd.*, 2019 CanLII 16411 (ON LRB), *Universal Workers Union, L.I.U.N.A., Local 183 v. En-San Contractors Ltd.* [2004 CanLII 22669 (ON LRB) and *International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 786 v S&T Industrial Inc. and S&T Electrical Contractors Limited*, 2020 CanLII 86613 (ON LRB)]** However, in my view, the determination by the LTB of a landlord's monetary claim against a non-bankrupt joint tenant does not determine the landlord's claim against the bankrupt tenant and the BIA contemplates that a creditor with a claim against a non-bankrupt co-obligor will be determined outside of the bankruptcy. **[See BIA, s. 179]**

III. Application to the Facts

38. It was a serious error for the Member to have terminated the tenancy.¹¹ This was an application under section 69 of the RTA in which the Landlords asked the LTB to make an order terminating the tenancy and evicting the Tenants because, among other things, rent was owed when the N4 notice was delivered—which was before Ms Riutta became bankrupt—and the N4 notice was not 'voided' as contemplated by subsection 59(3) of the RTA. This meant that the LTB was prohibited by section 84.2 of the BIA from making an order terminating the tenancy based on the rent arrears, which is what the Member appears to have done in the Hearing Order. The fact that it may not have been necessary for the Member to terminate the tenancy because the Tenants had vacated the unit does not change the fact that the tenancy was terminated by the Member in a circumstance where section 84.2 of the BIA prohibited the LTB from doing so.
39. My finding that it was a serious error for the Member to have terminated the tenancy in the face of section 84.2 of the BIA is sufficient, in my view, to grant the review and I do not need to determine the other issues raised by the Tenants or the other issues identified in the Interim Order.

IV. Remedy

40. Where a request to review a hearing order is granted, the LTB will typically cancel the hearing order and (re)hear the application on the merits. Where, however, a hearing order is cancelled because the application was stayed by section 69.32 of the BIA or the LTB was prohibited from making the order as a result of the application of section 84.2 of the BIA, the (re)hearing of the application is stayed by operation of section 69.3 of the BIA and/or the

Act against joint tenants, one of which had become bankrupt. I am not, however, bound by *Forestwood Co-operative Homes*, and prefer the reasoning in *Global Royalties* and *McDougall v Litron*.

¹¹ It is also an error for the Member to have found that Ms Riutta was only liable for rent after April 1, 2022. Ms Riutta was liable for *per diem* rent from March 21 to March 31, 2023.

LTB is prohibited by section 84.2 from making the order requested by the landlord. In those circumstances, the application will be stayed until the earlier of: (a) the discharge of the trustee administering the tenant's bankruptcy; and (b) an order being made by the Superior Court permitting the application to proceed.

41. There may, however, be circumstances such as this where the LTB can (re)hear at least some portion of the application. What was before the LTB on December 11, 2024 was a combined L1/L2 application. The LTB cannot determine the L1 portion of the application as a result of the application of section 84.2 of the BIA¹², but can determine the L2 portion of the application against Ms Riutta for any amounts that the Landlords assert became owed after March 21, 2023 and against Mr. Riutta for all amounts the Landlords assert are owed because utilities do not constitute 'rent' and are not subject to section 84.2 of the BIA. The Landlords may also wish to bring an application against Mr. Riutta under section 87 of the RTA seeking to recover unpaid rent.
42. I will schedule the re-hearing of the L2 portion of the application—the unpaid utilities referenced on the N5 notice—in the Fall of 2024. If the Landlords wants to bring an application against Mr. Riutta to recover any rent or other amounts they assert he owes, I will hear that application at the same time. The Landlords should be aware of the time limits in sections 87, 88 and 88.2 of the RTA and should be prepared to explain how those time limits apply in the circumstances of this case—specifically that while Ms Riutta vacated the unit in October of 2023, Mr. Riutta vacated in July of 2022.

It is ordered that:

1. The request to review the Hearing Order is granted and the Hearing Order is cancelled.
2. The Interim Order is no longer necessary and is also cancelled.

September 3, 2024
Date Issued



E. Patrick Shea
Vice Chair, 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.

¹² As a practical matter, there was (and is) no need for the LTB to terminate the tenancy and evict the Tenants because the Tenants have both vacated the unit.

Schedule A

Impact of BIA on Landlord Applications

LL Application under RTA Section:	Stay of LTB Application—BIA 69, 69.1, 69.2 and 69.3	Restriction on Termination—BIA 65.1, 66.34 and 84.2
35—Changing locks or locking systems	Provide keys—No Recovery of expenses—Yes	No
36—Harass, obstruct, coerce, threaten or interfere with a landlord	No	No
48—Possession for personal use of unit (landlord).	No	No
49—Possession for personal use of unit (purchaser)	No	No
50—Vacant possession for demolition, conversion or repairs.	No	No
58—Persistently late payment of rent (termination only)	No	No ¹³
58—Other grounds	No	No
59—Non-payment of rent (termination only) ¹⁴	No	Yes
60—Misrepresentation of income (termination only)	No	No
61—Illegal act	No	No
62 and 63—Damage to unit (termination only) ¹⁵	No	No
64 and 65—Substantial interference (termination only) ¹⁶	No	No
66—Serious impairment of safety	No	No
67—Overcrowding	No	No

¹³ The LTB should consider whether the application is actually based on unpaid rent as opposed to persistently late payment.

¹⁴ Most L1 applications also seek payment of arrears, which results in the application being stayed.

¹⁵ Most L2 applications based on the assertion the tenant caused damage also seek compensation for the damage, which results in the application being stayed.

¹⁶ Applications for substantial interference sometimes include claims for compensation, which results in the application being stayed.

68—Further contravention (termination only) ¹⁷	No	No
77—Agreement to terminate or tenant notice of termination	No	No
78—Previous order or mediated settlement	Recovery of rent or compensation— Yes Conduct—No	Payment of rent—Yes Conduct/Payment of compensation—No
79—Abandonment of unit	No	No
86 and 87(3)—Compensation for use and occupation (no termination)	Yes	N/A
87—Payment of arrears and NSF cheque charges/fees (no termination)	Yes	N/A
88.1—Compensation for substantial interference (no termination)	Yes	N/A
88.2—Compensation for unpaid utility costs (no termination)	Yes	N/A
89—Compensation for damage (no termination)	Yes	N/A
90—Compensation for misrepresenting income (no termination)	Yes	N/A
93 and 94—Superintendent premises	No	No
Part V.1—Non-profit housing co-operatives.	Recovery or housing charges or compensation—Yes Other--No	Non-payment of housing charges—Yes Other--No

¹⁷ Applications under section 68 may include a claim for compensation, which results in the application being stayed.