



Order under Section 69 Residential Tenancies Act, 2006

Citation: Singh v Couvillion, 2024 ONLTB 4038

Date: 2024-01-22

File Number: LTB-L-048391-23

In the matter of: 1295 AIRE PL
WINDSOR ON N8S4E4

Between: Ranjit Singh Landlord

And

Alicia Couvillion Tenants
Jacob Couvillion

Ranjit Singh (the 'Landlord') applied for an order to terminate the tenancy and evict Alicia Couvillion and Jacob Couvillion (the 'Tenants') because

- the Tenants did not pay the rent that the Tenants owe (L1 application);
- the Tenants have been persistently late in paying the Tenants' rent (L2 application).

This application was heard by videoconference on January 4, 2024.

Only the Landlord's Legal Representative J. Kulikowski attended the hearing.

As of 1:42 p.m., the Tenants was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

L1 Application – Non-Payment of Rent

1. The Landlord's Legal Representative stated that the Tenant John Couvillion filed a consumer proposal on May 2, 2023. In the L1 Application, the earliest rental period for which rent arrears are claimed begins July 1, 2022. The Landlord is now claiming rent arrears since May 3, 2023, which should be granted by the Board. The Tenant Jacob Couvillion did not name the Landlord as a creditor in his consumer proposal, so the Landlord was not aware of it when they served the N4 and the L1 application. They only became aware of it sometime back.
2. Pursuant to the federal Bankruptcy and Insolvency Act (BIA) when a debtor files for bankruptcy that results in a stay in any enforcement proceedings that have been initiated by creditors for debts owing as of the date of the bankruptcy filing. Section 69.2 of the BIA states:

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69.2 (1) on the filing of a consumer proposal under subsection 66.13(2) or of an amendment to a consumer proposal:

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(a) the consumer proposal or the amended consumer proposal, as the case may be, has been withdrawn, refused, annulled or deemed annulled; or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

3. Section 121(1) of the BIA defines "claims provable in bankruptcy" as:

All 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.

4. In this case, I find that arrears claimed up to May 2, 2023 are claims provable in bankruptcy and, therefore, there is a stay of the proceeding with respect to those arrears. However, I can consider the Landlord's claim for arrears owing after May 2, 2023. I do note that the Landlord served the Tenant a N4 notice after the filing of the bankruptcy. Even if I were to consider the N4 defective based on the Landlord claiming rent arrears from the bankruptcy period, the tenancy shall be terminated based on the L2 application before me and arrears granted.

5. The Landlord's Legal Representative requested that I calculate the arrears owing to include the rent for May 2023 after May 2, 2023.

6. In *Raja v Sharpe*, 2021 CanLII 79180 (ON LTB), the Board considered a similar request and found :

"In my view, by the same logic, the entire rent for November 2020 was due and owing when the Tenants made their assignment in bankruptcy on November 4, 2020. What follows from this is that the stay under the BIA prevents me from considering arrears for the period November 5, 2020 to November 30, 2020 since the rent came due on November 1, 2020. All arrears for the period November 1, 2020 to November 30, 2020 are captured by the assignment in bankruptcy."

7. I find that the same logic applies to the application before me. When the Tenant filed for bankruptcy on May 2, 2023, the entire rent for May 2023 was already in arrears because it came due on May 1, 2023. Therefore, granting the Landlord's request would be inconsistent with the intent of the BIA stay. I note however that the rent arrears from June 1, 2023 onwards are not subject to the BIA stay which are being granted.

8. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants did not void the notice by paying the amount of

rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.

9. As of the hearing date, the Tenants were still in possession of the rental unit.
10. The lawful rent is \$1,800.00. It is due on the 1st day of each month.
11. Based on the Monthly rent, the daily rent/compensation is \$59.18. This amount is calculated as follows: \$1,800.00 x 12, divided by 365 days.
12. The Tenants have paid \$1,000.00 to the Landlord since the application was filed.
13. The rent arrears owing from June 1, 2023 to January 31, 2024 are \$13,400.00.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. There is no last month's rent deposit.

L2 Application – Persistent Late Payment of Rent

16. On June 2, 2023, the Landlord gave the Tenant an N8 notice of termination deemed served the same day.
17. The rent is due on the 1st day of each month. The rent has been paid late 8 times in the past 12 months. Two months out of those twelve months no rent was paid.
18. The Tenants have made most of the rent payments in the installments over the course of the month rather than a one-single payment. The N8 notice covers the period from July 1, 2022 till June 1, 2023 and there was only two instances the rent was fully paid in time. The pattern has worsened since the N8 was served. Since June 2023 the Tenants have not paid rent at all except once in August 2023 which was also a partial payment of \$1,000.00.
19. I find that the Tenants have persistently failed to pay the rent by 1st day of each month as required by the lease agreement over the last one and a half years. I find that the Landlord has proved that the Tenants have paid their rent late persistently.
20. I note that the L2 Application is not impacted by the Tenant's bankruptcy because a application seeking eviction for persistent late payment of rent is not a claim provable in bankruptcy.

Section 83 considerations

21. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
22. The Tenants have not attempted to pay any rent in the last six months. John Couvillion has not included the Landlord as a creditor in his bankruptcy filing. The Tenants were not

present at the hearing to present their circumstances. I do find a further delay will be prejudicial to the Landlord.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated on February 2, 2024.
2. The Tenants shall pay to the Landlord \$12,022.72. This amount includes rent arrears owing from June 1, 2023 up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
3. The Tenants shall also pay the Landlord compensation of \$59.18 per day for the use of the unit starting January 5, 2024 until the date the Tenants move out of the unit.
4. If the Tenants do not pay the Landlord the full amount owing on or before February 2,, 2024, the Tenants will start to owe interest. This will be simple interest calculated from February 3, 2024 at 7.00% annually on the balance outstanding.
5. If the unit is not vacated on or before February 2, 2024, then starting February 3, 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 February 3, 2024.

January 22, 2024
Date Issued

Sheena Brar
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 July 27, 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.

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Schedule 1
SUMMARY OF CALCULATIONS

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

Rent Owing To Hearing Date starting from June 1, 2023	\$12,836.72
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$1,000.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total amount owing to the Landlord	\$12,022.72
Plus daily compensation owing for each day of occupation starting January 5, 2024	\$59.18 (per day)

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