



Order under Section 69 Residential Tenancies Act, 2006

Citation: Verma v Brett, 2023 ONLTB 80660

Date: 2023-12-12

File Number: LTB-L-001513-23

In the matter of: 729 SPITFIRE ST
WOODSTOCK ON N4T0B1

Between: Ankit Verma Landlord

And

Ryan Barrie Brett and Donna Fleury Tenants

Ankit Verma (the 'Landlord') applied for an order to terminate the tenancy and evict Ryan Barrie Brett and Donna Fleury (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on November 22, 2023.

The Landlord's Representative Shikha Kapoor, the Tenants, and the Tenants' Representative Kyle Corbin attended the hearing.

Determinations:

Abuse of Process / Board Jurisdiction

1. At the hearing, the Tenants argued this proceeding constitutes an abuse of process and that the Board does not have jurisdiction to hear the application because the Tenants filed an application in the Superior Court of Justice claiming equitable ownership over the rental unit. The Tenants submitted the Landlord is "using the LTB to sidestep having to respond and deal with ownership interest."
2. In *Warraich v Choudhry*, 2018 ONSC 1275 the Divisional Court addressed this exact same circumstance where there is a parallel civil proceeding claiming equitable ownership and an LTB proceeding for rent arrears. The Divisional Court stated:

[15] I am satisfied that the Board had jurisdiction in this matter despite the commencement of the Superior Court proceeding for the following reasons.

[16] There are two very different legal proceedings occurring in two different tribunals – the landlord's eviction proceeding before the Board and the appellant's claim of ownership in the Superior Court action. The Board has the jurisdiction to hear the eviction application which is based on the Lease. Indeed, it has the sole jurisdiction to terminate a tenancy and evict a tenant: see *Toronto-Dominion Bank v. Hosein*, 2016 ONCA 628. The Board's jurisdiction in this regard extends to the determination of

whether the appellant is a “tenant”, and the respondent is a “landlord”, as defined in s. 2(1) of the Act. Conversely, the Superior Court has the jurisdiction to adjudicate the appellant’s claim of an equitable ownership interest in the property.

[17] These are very separate proceedings that can proceed without any risk of conflicting decisions. In particular, a finding that the appellant is a lessee under the Lease does not in any way affect, much less determine, his claim that he has an equitable interest in the property as a co-owner.

[18] For this issue, the definition of a “tenant” under the [Act](#) is relevant:

“tenant” includes a person who pays rent in return for the right to occupy a rental unit and includes the tenant’s heirs, assigns and personal representatives, but “tenant” does not include a person who has the right to occupy a rental unit by virtue of being,...(a) a co-owner of the residential complex in which the rental unit is located ...

[19] Given this definition, the Board had jurisdiction unless it had notice that the appellant was occupying the premises pursuant to a “right to occupy a rental unit by virtue of being... a co-owner of the residential complex in which the rental unit is located ...” In this case, the appellant was not registered on title as a co-owner of the property and there was no final determination in the Superior Court action that he was a co-owner. Accordingly, the Board had no notice that the appellant was in occupation by virtue of a right to occupy the premises as a co-owner. Consistent with the decision in the companion action under court file #732/17, the Board therefore had jurisdiction in this matter. The only jurisdictional issue before it was whether the appellant was a “person who pays rent in return for the right to occupy a rental unit.” Given the evidence before the Board, the Board decision that the appellant was a tenant for the purposes of the [Act](#) was not only reasonable but correct.

[20] The appellant argues that, having been apprised of the existence of the Superior Court action, the Board should have gone on to inquire into the nature of that action. I do not agree. In order to address its jurisdiction, the Board is required to establish whether or not an alleged tenant is a registered co-owner or has been found to be a co-owner in a final judgement of the Superior Court. The nature of the appellant’s claim, and any view of the merits of that claim, are matters that are beyond the jurisdiction of the Board.

[emphasis added]

3. Similarly, in this case the Tenants are not registered on title as a co-owner of the property and there is no final determination in the Superior Court action that they are co-owners.
4. I am satisfied that the Tenants are “tenants” within the meaning of the *Residential Tenancies Act, 2006* (the “Act”):

“tenant” includes a person who pays rent in return for the right to occupy a rental unit and includes the tenant’s heirs, assigns and personal representatives, but “tenant” does not include a person who has the right to occupy a rental unit by virtue of being,

- (a) a co-owner of the residential complex in which the rental unit is located, or
 - (b) a shareholder of a corporation that owns the residential complex;
5. The Tenants are paying rent in return for the right to occupy the rental unit. As noted, they have not established they are co-owners or that their occupation is dependent on that status. There is insufficient evidence for me to find that the Tenants are “co-owners” and that they are beyond the jurisdiction of the Act.
 6. This proceeding is also not an abuse of process given the Superior Court proceeding. As stated by the Divisional Court in *Warraich v Choudhry*, these are very separate proceedings that can proceed without risk of conflicting decisions. The LTB has exclusive jurisdiction to determine rent arrears applications between landlords and tenants and this is the only avenue of recourse available to the Landlord for this issue. This is not a matter that can be addressed by the Divisional Court. I am also not determining equitable ownership as that is a matter that falls within the Superior Court’s jurisdiction.

Amended Application

7. The Landlord’s N4 Notice claims rent arrears of \$45,150.00 from April 1, 2021 to December 31, 2022. However, their L1 application only claims rent arrears of \$2,150.00 from January 1, 2023 to January 31, 2023. I raised this issue with the Landlord.
8. The Landlord then requested an amendment of their application at the hearing. I granted the request to amend the application in accordance with Rule of Procedure 15.4 as I was satisfied the amendment is appropriate, would not prejudice any party and is consistent with a fair and expeditious proceeding. I will address each factor in turn.
9. The amendment is appropriate because it is the actual amount of rent arrears the Landlord is claiming for a 2.5 year period. Furthermore, the application is claiming arrears above the Board’s monetary jurisdiction which is why it was scheduled in an urgent hearing block and to adjourn the hearing to complete the amendment would mean any additional rent or daily compensation that comes due is not recoverable and it would also further delay the proceeding.
10. For the same reasons, the amendment is consistent with a fair and expeditious proceeding. It would be unfair to adjourn the hearing with any additional rent or daily compensation not being recoverable when the Tenants were aware of the total rent arrears being claimed before and at the hearing. The N4 notice claims rent arrears of \$45,150.00 up until December 31, 2022 which is 11 months before the hearing date. The L1/L9 update sheets uploaded on June 5, 2023 before the adjourned hearing and on November 13, 2023 before this hearing claimed \$55,900 and \$68,800, respectively. The Tenant Ryan Brett confirmed in his oral evidence that he believed the Landlord was claiming rent arrears of \$65,000 and the Tenants also did not dispute that they have not paid rent since April 2021 which further informs their belief. Overall, I am satisfied that the Tenants were well aware of the rent arrears being claimed before and at the hearing prior to any amendment being requested.
11. The Tenants would also not be prejudiced by the amendment as it simply reflects their stated understanding of the rent arrears being claimed at the hearing. The Tenants claimed they believed the Landlord was claiming \$65,000 of rent arrears at the hearing

and the amendment seeks to increase the rent arrears being claimed to \$68,234.56 (up to November 22, 2023). There is no issue of procedural fairness in this regard. The Tenants had notice the entire time of the arrears being claimed, including but not limited to the N4 notice served which claimed \$45,150.00 in arrears up to December 31, 2022 which is almost 11 months ago and this is confirmed in their oral evidence.

12. To not grant this amendment would significantly prejudice the Landlord, it would be inappropriate, and inconsistent with both a fair and expeditious proceeding.

L1 Application

13. As of the hearing date, the Tenants were still in possession of the rental unit.
14. The lawful rent is \$2,150.00. It is due on the 1st day of each month.
15. Based on the Monthly rent, the daily rent/compensation is \$70.68. This amount is calculated as follows: \$2,150.00 x 12, divided by 365 days.
16. The Tenants have not made any payments since the application was filed.
17. The rent arrears owing to November 30, 2023 are \$68,800.00. At the hearing, I informed the Landlords' Representative that this is beyond the Board's monetary jurisdiction and should they proceed, their rights to any amount in excess of the Board's monetary jurisdiction will be extinguished. The Landlords' Representative understood and agreed to proceed before the Board.
18. In the recent decision *Galaxy Real Estate Core Ontario LP v Kirpichova et al*, 2023 ONSC 4356, the Divisional Court agreed with the LTB that the monetary jurisdiction does not apply to the amount the Tenants may pay if they want to void the order and continue the tenancy pursuant to section 74(4) of the Act.
19. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
20. The Landlord collected a rent deposit of \$2,150.00 from the Tenants and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
21. Interest on the rent deposit, in the amount of \$206.93 is owing to the Tenants for the period from February 15, 2018 to November 22, 2023.
22. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, including 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.
23. The Tenants testified that they need at least 6 months of a delayed eviction date.
24. Given that the arrears are currently beyond the Board's monetary jurisdiction, any delay would be unfair to the Landlord as any subsequent rent due or daily compensation is not recoverable by the Landlord.

25. The Landlord's Representative also detailed the impact of the non-payments of rent to the Landlord and the financial hardship they are experiencing. The Landlord has not been working for 8 months and currently has a very high debt ratio having used all of their available credit. They require vacant possession of the property immediately to be able to rent it again and are also considering selling the property to address the debt accumulated.
26. It would clearly be unfair to grant any delay in the eviction in these circumstances. The Tenants have not paid rent since April 2021 which is 32 months ago. The rent arrears are well beyond the Board's monetary jurisdiction and any additional rent or daily compensation is not recoverable. The Tenants' ongoing failure to pay rent has had a substantial impact on the Landlord.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$71,136.00 if the payment is made on or before December 23, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after December 23, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before December 23, 2023.**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$35,186.00 which is the maximum amount permitted under the Board's monetary jurisdiction (reduced from \$66,034.03). This amount includes rent arrears owing 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.
6. The Tenants shall also pay the Landlord compensation of \$70.68 per day for the use of the unit starting November 23, 2023 until the date the Tenants move out of the unit, up to a maximum \$35,186.00.
7. If the Tenants do not pay the Landlord the full amount owing on or before December 23, 2023, the Tenants will start to owe interest. This will be simple interest calculated from December 24, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 23, 2023, then starting December 24, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

9. 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 24, 2023.

December 12, 2023
Date Issued

Elan Shemtov
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 June 24, 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.

Schedule 1
SUMMARY OF CALCULATIONS

A. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before December 23, 2023

| | |
|---|--------------------|
| Rent Owing To December 31, 2023 | \$70,950.00 |
| Application Filing Fee | \$186.00 |
| NSF Charges | \$0.00 |
| Less the amount the Tenants paid to the Landlord since the application was filed | - \$0.00 |
| Less the amount the Tenants paid into the LTB since the application was filed | - \$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 are entitled to | - \$0.00 |
| Total the Tenants must pay to continue the tenancy | \$71,136.00 |

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

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|---|--|
| Rent Owing To Hearing Date | \$68,204.96 |
| Application Filing Fee | \$186.00 |
| NSF Charges | \$0.00 |
| Less the amount the Tenants paid to the Landlord since the application was filed | - \$0.00 |
| 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 | - \$2,150.00 |
| Less the amount of the interest on the last month's rent deposit | - \$206.93 |
| Less the amount the Landlord owes the Tenants for an {abatement/rebate} | - \$0.00 |
| Less the amount of the credit that the Tenant is entitled to | - \$0.00 |
| Total amount owing to the Landlord | \$35,186.00 (monetary jurisdiction) |
| Plus daily compensation owing for each day of occupation starting November 23, 2023 | \$70.68 (per day) |