



## **Order under Section 69 Residential Tenancies Act, 2006**

**Citation:** Amiraco Properties Inc. v Letourneau Auch, 2023 ONLTB 59353

**Date:** 2023-08-31

**File Number:** LTB-L-003669-23

**In the matter of:** 2798 SCARSDALE RD  
WINDSOR ON N8R1R4

**Between:** Amiraco Properties Inc. Landlord

**And**

Cody Letourneau Auch and Lauren Croteau Tenants

Amiraco Properties Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Cody Letourneau Auch and Lauren Croteau (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on August 3, 2023.

The Landlord's Agent, Jessica Lapkowski, the Tenants, and the Tenants' Legal Representative, Christopher Hall, attended the hearing.

### **Determinations:**

#### Effect of Tenants' Consumer Proposal

1. The Tenants filed a consumer proposal on July 21, 2023, pursuant to section 66 of the *Bankruptcy and Insolvency Act*, (R.S.C., 1985, c. B-3) (the 'BIA').
2. Section 69.2 of the BIA provides that upon filing of a proposal, all claims provable in bankruptcy are stayed. The stay of proceedings includes proceedings before the Landlord and Tenant Board for rent arrears.
3. Section 69.2 (1) states that "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."
4. A claim provable in bankruptcy is defined as "all debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt" (s. 121(1) of the BIA). This definition includes all rent owing by the Tenants on the date they filed their consumer proposal. Therefore, rent owing by the Tenants as of the date the Tenants filed consumer proposal is a claim provable in bankruptcy, and subject to the BIA stay. In this case that includes rent owing up to July 31, 2023.

5. Furthermore, section 84.2 of the BIA states that a lease cannot be terminated by reason only that the debtor has not paid rent in respect of a period preceding the filing of the bankruptcy.
6. As a result of the BIA stay, the Board cannot issue an order requiring the Tenants to pay rent arrears that constitute a claim provable in bankruptcy or terminate the tenancy due to rent arrears that constitute a claim provable in bankruptcy. This finding is consistent with the Divisional Court's determination in *Forestwood Cooperative v. Pritz* [2002] O.J. No. 550:

23. It is beyond dispute that the claim for arrears is provable in bankruptcy. To separate the request for a writ of possession from the money judgment for arrears is artificial and flies in the face of the wording of the section [s. 69.3]. Specifically, the section dictates that the 'proceeding' that involves a claim provable in bankruptcy is stayed...

7. Therefore, I do not agree with the Landlord's submission that the Board has the authority to issue an eviction order as a result of the rent arrears owing by the Tenants that constitute a claim provable in bankruptcy. Further, according to section 69.4 of the BIA, it is the court who has the power to decide if the BIA stay should be varied; the Board does not have the jurisdiction to make any determination on varying/not applying the BIA stay.
8. The rent for the month of August 2023 came due after the Tenants filed their consumer proposal and is therefore not a claim provable in bankruptcy and not subject to the BIA stay.
9. I find that it would not be unfair to amend the application so as to only include rent for the month of August 2023 and allow the application to proceed on that basis.
10. A similar approach was accepted by the Divisional Court in *Edward v. Niagara Neighbourhood Housing Co-Operative Inc.*, 2006 CanLII 16485 (ON SCDC). In that matter the trial judge identified the amount of pre-bankruptcy arrears that were the subject of a stay, but the proceeding continued only in relation to the post-bankruptcy arrears. In dismissing the appeal, the Divisional Court stated that "the effect of a stay under s. 69.3 should be limited to the words of the provision; the stay operates as against *the recovery of a claim provable in bankruptcy*. There is nothing in the judgment that violates the BIA".

#### Rent Arrears

11. 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.
12. As of the hearing date, the Tenants were still in possession of the rental unit.
13. The lawful rent is \$1,352.19. It is due on the 1st day of each month.

14. Based on the Monthly rent, the daily rent/compensation is \$44.46. This amount is calculated as follows: \$1,352.19 x 12, divided by 365 days.
15. The rent arrears owing by the Tenants for the period from August 1, 2023 to August 31, 2023 are \$1,352.19.
16. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
17. The Landlord collected a rent deposit of \$1,250.00 from the Tenant 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.
18. Interest on the rent deposit, in the amount of \$81.88 is owing to the Tenant for the period from May 1, 2019 to August 3, 2023.
19. 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. The Tenant's Legal Representative advised that the Tenants could pay the amount owing that is not covered by the consumer proposal within the standard 11-day time.

**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:**
  - \$1,538.19 if the payment is made on or before August 31, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$2,890.38 if the payment is made on or before September 11, 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 September 11, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant 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 September 11, 2023**
5. If the Tenants do not void the order, the Tenants are in a credit position of -\$1,038.55 but the Landlord is entitled to apply towards this amount, and collect as owing, \$44.46 per day for the use of the unit starting August 4, 2023 until the date the Tenants move out of the unit.

6. If the Tenants do not pay the Landlord the full amount owing on or before September 11, 2023, the Tenants will start to owe interest. This will be simple interest calculated from September 12, 2023 at 6.00% annually on the balance outstanding.
7. If the unit is not vacated on or before September 11, 2023, then starting September 12, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. 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 September 12, 2023.
9. The portion of the Landlord's application that is covered by the consumer proposal, \$11,854.19, is stayed until the Court otherwise decides.

**August 31, 2023**  
**Date Issued**

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Diane Wade  
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 March 12, 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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before August 31, 2023**

Rent Owing To August 31, 2023	\$13,206.38
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the included in the Tenants' consumer proposal	- \$11,854.19
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$1,538.19</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before September 11, 2023**

Rent Owing To September 30, 2023	\$14,558.57
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$11,854.19
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$2,890.38</b>

**C. Amount the Tenant must pay if the tenancy is terminated**

Rent Owing To Hearing Date	\$11,961.52
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$11,854.19
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,250.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$81.88
<b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00

<b>Total amount owing to the Landlord</b>	<b>-\$1,038.55</b>
Plus daily compensation owing for each day of occupation starting August 4, 2023	\$44.46 (per day)