



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

**Citation:** Centurion Property Associates Inc v Somersett, 2023 ONLTB 38486

**Date:** 2023-06-14

**File Number:** LTB-L-049605-22

**In the matter of:** 107, 137 WOODSIDE AVENUE Cambridge  
ON N1S4N9

**Between:** Centurion Property Associates Inc Landlord

**And**

James Somersett Tenants Michelle Rehel

Centurion Property Associates Inc (the 'Landlord') applied for an order to terminate the tenancy and evict James Somersett and Michelle Rehel (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes.

The application was initially heard by videoconference on March 16, 2023. It was adjourned to allow the Landlord's representative to obtain additional disclosure.

This application was heard by videoconference on March 16, 2023 and April 27, 2023.

Only the Landlord's representative, Robert Rose attended the hearing.

As of 9:31 a.m., the Tenants were 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:**

1. 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.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$971.43. It is due on the 1st day of each month.

4. The Tenants have not made any payments since the application was filed.
5. The Landlord's application claims that the Tenants owe \$11,496.85 in rent arrears through April 30, 2023.

#### Consumer Proposal

6. At the hearing on March 16, 2023, the landlord's legal representative stated that the Tenant James Somerset had made a consumer proposal on March 13, 2023, pursuant to the *Bankruptcy Insolvency Act, R.S.C. 1985* (the 'BIA').
7. The matter was adjourned until April 27, 2023 to allow the Landlord to obtain additional disclosure regarding the consumer proposal.
8. Based on the evidence submitted I am satisfied that one of the two joint Tenants, James Somerset, filed a Consumer Proposal under the federal BIA on March 13, 2023. The consumer proposal states that the total liabilities owing is \$38,711.00 of that \$10,794.00 is owing to the landlord it is not clear the period of the arrears owing on the Consumer Proposal. The second joint Tenant, Michelle Rehel, has not filed a Consumer Proposal.
9. Section 69.2 of the BIA provides that upon filing of a proposal, all claims provable in bankruptcy are stayed. The stay of proceedings included proceedings before the Landlord and Tenant Board. Section 69.2 (1) provided 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." A claim for rent owed up to the date of filing of the Consumer Proposal cannot be pursued, although the Tenants are liable for the rent accrued after that date.
10. Furthermore, section 66.34 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 consumer proposal.
11. As a result of the BIA stay, the Board cannot issue an order requiring the Tenant 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.
12. The rent arrears owing up to the date of the Consumer Proposal are a claim provable in bankruptcy, and the Landlord is not permitted to continue this application with respect to recovery of those rent arrears or seek termination of the tenancy on the basis of the arrears.

#### Severing the Tenancy

13. The Landlord's representative submitted that the application should be amended to remove James Sommerset as a party and allow for the application to proceed against the Tenant Michelle Rehel who has not filed a Consumer Proposal.
14. The Landlord provided a document prepared by Allan Marshall & Associates, which he submitted is a leading firm in bankruptcy and a Licensed Insolvency Trustee, which states that bankruptcy is not a joint debt and if a spouse files for bankruptcy, "the non-bankrupt" spouse will not be relieved of their obligation to repay the loan.
15. The Landlord's representative also submitted a document prepared by Hoyes Michalos, another leading insolvency firm, which states that if a loan is co-signed that each party is jointly and severally liable for the full amount of the debt.
16. Neither of the documents submitted by the Landlord specifically address rent arrears owing in the context of a joint residential tenancy, or the impact of the *Residential Tenancies Act, 2006* ("Act") on the issue of liability. Therefore, I find them of limited usefulness.
17. Further, the original lease for this tenancy indicates that a 1-bedroom apartment was rented by both Tenants with a Guarantor named on the lease. The lease documents do not stipulate the relationship the Tenants were in at the time the lease was signed. Based on the evidence before me, I am not satisfied that this was a spousal relationship as the Landlord's representative has indicated.
18. In the context of the RTA, the Board has consistently held joint tenants to be jointly and severally liable for the entire rent because the tenants share an interest in the entire tenancy rather than holding partial shares of it. The Board has also consistently held it does not have the authority to issue an order that severs a joint tenancy.
19. I find that the application cannot be amended as requested by the Landlord's representative as that would effectively sever the joint tenancy. The entire proceeding before the Board in respect of this joint tenancy is subject to the BIA stay. A tenancy cannot be terminated for one tenant and not the other even where one of the tenants has filed a Consumer Proposal. Granting an application to terminate this joint tenancy would be inconsistent with section 66.34 of BIA as it would result in termination of Michelle Rehel's (joint)tenancy on the basis of a claim provable in bankruptcy.
20. The rent for the month of April 2023 came due after the Tenant made the consumer proposal and is therefore not a claim provable in bankruptcy. The arrears owing for that month are \$971.43.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

15. The Landlord collected a rent deposit of \$780.00 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.
16. Interest on the rent deposit, in the amount of \$99.58 is owing to the Tenants for the period from June 1, 2015 to April 27, 2023.

**It is ordered that:**

1. The remainder of the Landlord's application for the amount provable in bankruptcy is stayed as a result of the Tenant's bankruptcy filing. The application is stayed until the Court otherwise decided or until the Tenant is discharged from bankruptcy.

**June 14, 2023**

**Date Issued**

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Camille Clyne

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.