



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

**Citation:** ANNA MOORE GROUP INC v Jessica Savoia, 2023 ONLTB 41077

**Date:** 2023-06-05

**File Number:** LTB-L-062641-22

**In the matter of:** 6, 15 ROSE ST  
BARRIE ON L4M2T3

**Between:** ANNA MOORE GROUP INC Landlord

**And**

Jessica Savoia Tenant

ANNA MOORE GROUP INC (the 'Landlord') applied for an order to terminate the tenancy and evict Jessica Savoia (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on April 27, 2023. T. McGowan was appearing on behalf of the Landlord. The Tenant and the Tenant's legal representative, J. McDougall, also attended the hearing.

**Preliminary Issues**

*Was the application signed by the applicant or by a person authorized to do so under the authority of the Law Society Act?*

1. The Tenant submitted that the ANNA MOORE GROUP ('AMG') is not the Landlord, the signatory was not a licensee and did not fall under the exemption under the law society. Therefore, the application must be dismissed pursuant to section 185 of the *Residential Tenancies Act, 2006* (the 'Act').
2. The Tenant submitted that J. Middlebro is the Landlord, as the N4 Notice states AMG is acting on his behalf. Further, AMG forwards rent received to J. Middlebro.
3. The Landlord's position is that AMG is a landlord. AMG is a property management company hired by the Landlord. T. McGowan testified that she participates in day-to-day activities of the tenancy. She completes N4 Notices of Termination, addresses maintenance concerns, conducts inspections and signed the lease agreement with the

Tenant. In support of this application, AMG also filed a payment plan that was previously entered into with the Tenant.

4. Subsection 2(1) of the Act states that a landlord includes:
  - (a) the owner of a rental unit or any other person who permits occupancy of a rental unit, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit,
  - (b) the heirs, assigns, personal representatives and successors in title of a person referred to in clause (a), and
  - (c) a person, other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex **and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent;** [emphasis added]
5. Section 202 of the Act permits the Board to ascertain the real substance of all transactions and activities relating to a rental unit and in doing so may disregard the outward form of a transaction and may have regard to the pattern of activities relating to the rental unit.
6. Pursuant to section 202 and subsection 2(1) of the Act, I find that AMG is a landlord, for the following reasons:
  - (a) AMG entered the lease agreement with the Tenant.
  - (b) AMG was the contact for maintenance issues.
  - (c) AMG conducted inspections.
  - (d) AMG entered a payment plan with the Tenant.
  - (e) AMG filed this application to enforce the collection of rent arrears.
7. Therefore, I find that AMG enforced the rights of a landlord under a tenancy agreement including the right to collect rent as set out in subsection 2(1)(c) of the Act. As such, AMG has standing to file this application.
8. I considered the principles set out in *Law Society of Upper Canada v. Chiarelli*, 2014 ONCA 391. The Court found that an unlicensed person, such as a property manager, who is not a statutory party to an application (i.e. meets the definition of Landlord) may not provide legal services, including the completion of forms and documents, and does not have standing before the Board. Having found that AMG meets the definition of the Landlord, T. McGowan, a direct employee of AMG, falls under the exemption under *Law Society Act*. Therefore, T. McGowan had the authority to sign the application.

#### *Service of N4 Notice*

9. The Tenant also submits that the Landlord improperly served the Notice of Termination. It was undisputed that the Tenant vacated the rental unit on April 17, 2023. As such, the issue of proper service is moot as the only live issue is arrears of rent and the application filing fee.

**Determinations:**

10. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenant 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.
11. The Tenant was in possession of the rental unit on the date the application was filed.
12. The Tenant vacated the rental unit on April 17, 2023. Rent arrears are calculated up to the date the Tenant vacated the unit.
13. The lawful rent is \$1,800.00. It was due on the 1st day of each month.
14. The Tenant paid \$4,588.00 since the application was filed. In cross examination, the Tenant put it to the Landlord that the Tenant paid all of the arrears before the application was filed. The Landlord denied this allegation and submitted that the Tenant paid the amount set out in the L1/L9 update sheet.
15. Once a landlord denies receiving funds, the Tenant has an evidentiary burden to prove that she paid rent as only the Tenant can prove payment as a positive fact. Although the legal burden rests with the Landlord, I do not find that the Tenant adduced evidence to counter or overcome the Landlord's evidence.
16. The rent arrears owing to April 17, 2023 are \$8,206.06.
17. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
18. The Landlord collected a rent deposit of \$1,800.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
19. Interest on the rent deposit, in the amount of \$30.33 is owing to the Tenant for the period from August 15, 2022 to April 17, 2023.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated as of April 17, 2023, the date the Tenant moved out of the rental unit
2. The Tenant shall pay to the Landlord \$6,561.73. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.

**File Number:** LTB-L-062641-22

3. If the Tenant does not pay the Landlord the full amount owing on or before June 16, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 17, 2023 at 6.00% annually on the balance outstanding.

**June 5, 2023**  
**Date Issued**

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Camille Tancioco  
Member, Landlord and Tenant Board

15 Grosvenor St, 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.

\*Note: When the LTB directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice.

Schedule 1  
SUMMARY OF CALCULATIONS

**A. Amount the Tenant must pay as the tenancy is terminated**

Rent Owing To Move Out Date	\$12,794.06
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	- \$4,588.00
<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	- \$1,800.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$30.33
<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>\$6,561.73</b>

2023 ONL TB 41077 (CanLII)