



Order under Section 69 Residential Tenancies Act, 2006

Citation: John Miller v Gaston Belanger, 2023 ONLTB 37872

Date: 2023-05-19

File Number: LTB-L-070009-22

In the matter of: 3, 1103 CASSELLS ST
NORTH BAY ON P1B4B3

Between: John Miller Landlord

And

Gaston Belanger Tenant

John Miller (the 'Landlord') applied for an order to terminate the tenancy and evict Gaston Belanger (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on May 8, 2023.

Only the Landlord's agent, Miles MacMillan attended the hearing.

As of 10:32am, the Tenant 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.

I note the Tenant signed into the hearing room at 10:47am, after the matter had already been disposed of.

Determinations:

PRELIMINARY ISSUE

1. At the beginning of the hearing, I raised a preliminary issue with respect to the Landlord's agent's standing in this matter and his ability to represent the Landlord before the Board.
2. The Landlord's agent confirmed the property was owned by the named Landlord and that he worked for this individual Landlord. He also confirmed that he was not a licensee under the *Law Society Act* and did not articulate which category of an unlicensed person, he fell in, of persons the *Law Society of Ontario* has exempted from its licensing requirements (see Practice Direction on Representation before the Landlord and Tenant Board which states in part: **A person who is not licensed will not be permitted to act as a representative in an LTB proceeding unless they are in an exempted category.**).
3. The Landlord's agent confirmed he did not have written authorization from the named Landlord either to act on his behalf. The Landlord's agent argued that he had been "doing this" for the past 10 years and had never encountered an issue.

4. The problem with what the Landlord's agent was attempting to do was provide legal services without a license and without written authorization.
5. The leading case law on this issue is *The Law Society of Upper Canada v. Chiarelli, 2014 ONCA 391* where Mr. Chiarelli provided property management services to property owners, including representation at the Board. An investigation from the Law Society ensued as there had been multiple complaints that Mr. Chiarelli, who was not a licensed paralegal or lawyer, was advertising and providing legal services to his clients.
6. Section 1 (6) of the *Law Society Act* states:

(6) without limiting the generality of subsection (5), a person provides legal service if the person does any of the following:

...

3. **Represents a person** in a proceeding before an adjudicative body.
4. Negotiates the legal interests, rights or responsibilities of a person.

[Emphasis added.]

7. Mr. Chiarelli took the position that he was a landlord as defined by section 2 of the *Residential Tenancies Act, 2006* ("Act") and was therefore exempt from the licensing requirement. He argued he was permitted to appear before the Board as the landlord's personal representative since he was employed by the landlord as a property manager and performed the functions of a landlord – and that the landlord had a right to self-represent.
8. Section 2 of the *Residential Tenancies Act, 2006* defines a landlord as:

"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; ("locateur")
9. In *Chiarelli* while the Court of Appeal found Mr. Chiarelli to be a landlord by virtue of the definition found in section 2 of the *Residential Tenancies Act, 2006*, they also found that he had been providing legal services to a third party and therefore could not represent his clients before the Board as he was not licensed by the *Law Society Act* nor did he fall into one of the exemptions listed.

10. Similar to that case, the Landlord's agent in the present case, is attempting to act on behalf of an individual Landlord and provide "legal services" which is not permitted under the LSA, the *Residential Tenancies Act, 2006*, nor does it comply with the Board's Practice Direction on Representation.
11. As the Practice Direction permits unlicensed persons to represent a party at a hearing with written authorization, I held this matter down to allow the Landlord's agent to obtain written authorization from the Landlord. I also informed him to be mindful of this for future hearings.
12. A short while later, the written authorization was uploaded to the Tribunals Ontario Portal and I continued to hear this application on an uncontested basis.

L1 APPLICATION

13. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment 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.
14. As of the hearing date, the Tenant was still in possession of the rental unit.
15. The lawful rent is \$973.00. It is due on the 1st day of each month.
16. Based on the Monthly rent, the daily rent/compensation is \$31.99. This amount is calculated as follows: \$973.00 x 12, divided by 365 days.
17. The Tenant has paid \$6,305.00 to the Landlord since the application was filed.
18. The rent arrears owing to May 31, 2023 are \$1,560.00.
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 \$950.00 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.
21. Interest on the rent deposit, in the amount of \$25.39 is owing to the Tenant for the period from October 6, 2021 to May 8, 2023.
22. 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 Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.

2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$1,746.00 if the payment is made on or before May 30, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after May 30, 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 Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before May 30, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$53.53. 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 Tenant. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$31.99 per day for the use of the unit starting May 9, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before May 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 31, 2023 at 6.00% annually on the balance outstanding.
8. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
9. If the unit is not vacated on or before May 30, 2023, then starting May 31, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 May 31, 2023.

May 19, 2023
Date Issued

 Sonia Anwar-Ali
 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 November 30, 2023 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 May 30, 2023

Rent Owing To May 31, 2023	\$7,865.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,305.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$1,746.00

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

Rent Owing To Hearing Date	\$7,147.92
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,305.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$950.00
Less the amount of the interest on the last month's rent deposit	- \$25.39
Less the amount the Landlord owes the Tenant 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	\$53.53
Plus daily compensation owing for each day of occupation starting May 9, 2023	\$31.99 (per day)