



Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: Whitehall Commercial Corp. v White, 2022 ONLTB 13988

Date: 2022-12-06

File Number: LTB-L-021769-22-RV

In the matter of: 27, 357 Murray Street
Corunna ON N0N1G0

Between: Whitehall Commercial Corp. Landlord

And

Korey White, Richard White, Stefanie Prince Tenants

Review Order

Whitehall Commercial Corp. (the 'Landlord') applied for an order to terminate the tenancy and evict Korey White, Richard White, Stefanie Prince (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-021769-22 issued on November 24, 2022.

On December 1, 2022, the Landlord requested a review of the order.

A preliminary review of the request was conducted without a hearing.

Determinations:

1. At the hearing, it was determined that the Tenants filed for bankruptcy as of October 26, 2022. The order dismisses the Landlord's application pursuant to section 69.3 of the *Bankruptcy and Insolvency Act* (the 'BIA'). The request alleges there is a serious error in the order, or a serious error occurred in the proceedings.
2. On the basis of the submissions made in the request, I am not satisfied that there is a serious error in the order or that a serious error occurred in the proceedings.
3. 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 (s. 69.3(1) BIA).
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).
5. Furthermore, a lease cannot be terminated due to pre-bankruptcy arrears by operation of section 84.2 of the BIA, which states:

Certain rights limited

84.2 (1) No person may terminate or amend — or claim an accelerated payment or forfeiture of the term under — any agreement, including a security agreement, with a bankrupt individual by reason only of the individual's bankruptcy or insolvency.

Lease

(2) If the agreement referred to in subsection (1) is a lease, the lessor may not terminate or amend, or claim an accelerated payment or forfeiture of the term under, the lease by reason only of the bankruptcy or insolvency or of the fact that the bankrupt has not paid rent in respect of any period before the time of the bankruptcy.

(emphasis added)

6. The member's decision to dismiss is reasonable and is supported by the above provisions of the BIA. The Landlord's application concerns termination of the tenancy for rent arrears that came due for a period before the time of the bankruptcy (March 1, 2022 to October 31, 2022). The Landlord is not entitled to a standard order for termination and rent owed commencing October 27, 2022. This is because the rent for the entire month of October 2022 is a "claim provable in bankruptcy" as defined by the BIA that came due in full on October 1, 2022 (a period before the time of the bankruptcy).
7. The decision does not mean that the Tenants are permitted to remain at the residential complex without paying any rent. The Landlord's may serve a new N4 and subsequently file a new application with the LTB for termination and for rent arrears that come due after the bankruptcy (e.g. November 1, 2022 onwards) as these arrears would not be "claims provable in bankruptcy" as defined by the BIA (See *Global Royalties Limited v David Brook*, 2015 ONSC 6277).
8. The member's failure to consider evidence of a phone discussion with the trustee in bankruptcy (where the trustee advised that the Landlord was at liberty to proceed with termination if the Tenants did not attend the hearing) is not a serious error. This evidence was irrelevant to the member's consideration. This is because the stay of legal proceedings for the recovery of claims provable in bankruptcy and the prohibition on termination of a lease for pre-bankruptcy arrears is in place by operation of law. I am not aware of any provisions of the BIA, and the Landlord's request does not refer to any authority, that suggest that a trustee has the authority to override the stay imposed by the BIA.
9. The member did not err by making his determination entirely based on the Landlord's evidence. The member was entitled to rely on the evidence adduced at the hearing regardless of the Tenants failure to attend to participate, give evidence and make submissions. In fact, it would likely have been a serious jurisdictional error to ignore the evidence of the bankruptcy filing and proceed with the application given the stay imposed by the BIA.
10. While I can appreciate the Landlord disagrees with the member's decision, the decision is reasonable interpretation of the governing legislation and is supported by the evidentiary record. The decision is entitled to deference.

It is ordered that:

1. The request to review order LTB-L-021769-22 issued on November 24, 2022 is denied.
2. The order is confirmed and remains unchanged.

December 6, 2022
Date Issued

Khalid Akram
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.