



Order under Section 69 Residential Tenancies Act, 2006

Citation: GALAXY REAL ESTATE CORE ONTARIO LP v Kirpichova, 2022 ONLTB 8644

Date: 2022-11-15

File Number: LTB-L-005543-22

In the matter of: 305, 245 LAKE SHORE DR
ETOBICOKE ON M8V2A8

Between: GALAXY REAL ESTATE CORE ONTARIO LP Landlord

And

Marta Kirpichova Tenant

GALAXY REAL ESTATE CORE ONTARIO LP (the 'Landlord') applied for an order to terminate the tenancy and evict Marta Kirpichova (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on August 3, 2022. The Landlord's Legal Representatives Michelle Forrester and Halima Channiwala, the Landlord's Agent Margaret Stasiak, the Landlord's Witness Sergiy Garesov, the Tenant, and the Tenants support person/partner Elmad Elgunidy attended the hearing.

Preliminary Issues:

1. The Tenant raised the doctrines of res judicata and estoppel submitting that the issues as contained in the application before the Board was already addressed in TSL-16705-20-RV.
2. The doctrines of res judicata and estoppel promote fairness and integrity in the justice system by ensuring finality of decisions. The test for issue estoppel was set out by the Supreme Court in *Angle v. Minister of National Revenue*, [1974 CanLII 168](#) (SCC), [1975] 2 S.C.R. 248 at p. 254:
 - (a) that the same question has been decided;
 - (b) that the judicial decision which is said to create the estoppel was final; and,
 - (c) that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised their privies.

2022 ONLTB 8644 (CanLII)

8. In *Danyluk v. Ainsworth Technologies Inc.*, [2001 SCC 44](#), [2001] 2 S.C.R. 460, the Court confirmed that the doctrine of issue estoppel applies to administrative tribunals.
9. At para. 33 of *Danyluk*, Binnie, J., who gave the judgment for the Court, stated that issue estoppel involves a two-step analysis:

The rules governing issue estoppel should not be mechanically applied. The underlying purpose is to balance the public interest in the finality of litigation with the public interest in ensuring that justice is done on the facts of a particular case. (There are corresponding private interests.) The first step is to determine whether the moving party (in this case the respondent) has established the preconditions to the operation of issue estoppel set out by Dickson J. in *Angle, supra*. If successful, the court must still determine whether, as a matter of discretion, issue estoppel *ought* to be applied: [citations omitted].

10. In the current case before the Board, final determinations of the issues had not been made. While the Landlord filed a prior L1 application, Board file # TSL-16705-20 this file was subsequently the subject of a review in Board file # TSL-16705-20-RV, resulting in review being granted and the L1 application being dismissed. Provided that the L1 application was dismissed, albeit on a technicality, there was no order from the Board on the merits of the eviction and arrears issues – as such this matter proceeded to hearing.

Determinations:

1. 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,673.28. It is due on the 1st day of each month.
4. Based on the evidence, I am satisfied on a balance of probabilities that as of the hearing date, the Tenant owed the Landlord \$49,283.76., including arrears of rent to August 31, 2022. Since the hearing, three months' rent has become due and that rent is included in the total owing in this order. Accordingly, as of the date of this order, the Tenant owes the Landlord \$54,489.60, including arrears of rent to November 30, 2022 and the application filing fee. If, since the hearing, the Tenant paid the Landlord rent or made any other payments to the Landlord, the Landlord shall deduct those payments from the total owing in this order.
5. Based on the Monthly rent, the daily rent/compensation is \$55.01. This amount is calculated as follows: \$1,673.28 x 12, divided by 365 days.
6. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

7. The Landlord collected a rent deposit of \$1,516.99 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.
8. Interest on the rent deposit, in the amount of \$3.19 is owing to the Tenant for the period from June 1, 2022 to August 3, 2022.

The Board's Monetary Jurisdiction

9. The amount claimed by the Landlord exceeds the monetary jurisdiction of the Board. Section 207(1) of the *Residential Tenancies Act, 2006* (the 'Act'), limits the monetary jurisdiction of the Board to that of the Small Claims Court. At this time that amount is \$35,000.00.
10. The Landlord was advised of this limitation and agreed to waive any amount that exceeds the Board's monetary jurisdiction. The Landlord was also advised of section 207(3) which states if the party allows the Board to proceed and order any amount up to the maximum amount that party extinguishes the right in excess of the Board's monetary jurisdiction. The Landlord acknowledged this and agreed to allow the Board to determine the amount, if any, that is outstanding and issue an order accordingly.
11. The Landlord's Representative submitted that a standard order for eviction is being sought as the Tenant had not paid rent in 2.5 years. In the proceeding months to the hearing the Landlord had made attempts to reach out to the Tenant, submitted on record was a December 30, 2021 letter in which a repayment plan was addressed. Additionally, it was submitted that the Landlord forwarded the Tenant information about the EPIC program which was in place to assist tenants gain access to grants in an effort to preserve their tenancy.
12. The Tenant submitted that she is on CPP disability, both her and partner have health issues and that the household income is \$1,700.00 per month. Provided the current rent of \$1,673.28, there is simply not enough income to live off and cover the monthly rent. The Tenant requested a 6 month delay as consideration of relief from eviction based on the Tenant's ability to find affordable housing. While the Tenant submitted that they have been actively searching for alternative housing, any comparable units in today's market ranged in price from \$3,000.00 to \$3,500.00 and that they have extended their areas of search to Burlington, Oakville and Hamilton.

Section 83 Considerations

1. 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. Specifically, I considered Landlord Representative submissions about attempts made to negotiate a payment agreement with the Tenant to resolve the arrears. Under section 83 of the Act, I also considered that the arrears are significant and that they exceed the Board's monetary jurisdiction. Finally, I considered

the Tenant's submission that based on the household income she is simply not able to pay the monthly rent. In summary, any further delay in eviction would pose to be prejudicial to both parties, the Landlord not being able to collect rent and the Tenant falling into further arrears as the rent is not affordable.

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:**
 - \$54,675.60 if the payment is made on or before November 26, 2022. 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 November 26, 2022 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 November 26, 2022.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$35,186.00. 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 \$55.01 per day for the use of the unit starting November 16, 2022 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 November 26, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 27, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 26, 2022, then starting November 27, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 November 27, 2022.

November 15, 2022

Date Issued

Alicia Johnson

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 April 23, 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.

*Note: When the Board 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 to void the eviction order and continue the tenancy if the payment is made on or before November 26, 2022

Rent Owing To November 30, 2022	\$54,303.60
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	- \$
Total the Tenant must pay to continue the tenancy	\$54,489.60

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

Rent Owing To Hearing Date	\$36,520.18
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	- \$1,516.99
Less the amount of the interest on the last month's rent deposit	- \$3.19
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	- \$
Total amount owing to the Landlord	\$35,186.00
Plus daily compensation owing for each day of occupation starting August 4, 2022	\$55.01 (per day)