



Order under Section 69 Residential Tenancies Act, 2006

Citation: Balasingam v SacredHand Canada (SHC), 2024 ONLTB 74725

Date: 2024-10-03

File Number: LTB-L-020098-24

In the matter of: 1757 Rowntree Court
Mississauga, ON L4W 4V3

Between: Balayogendiran Balasingam
Ranjini Balayogendiran

And

SacredHand Canada (SHC)

I hereby certify this is a
true copy of an Order dated

OCT 3 2024

Landlord and Tenant Board

Landlords

Tenant

Balayogendiran Balasingam and Ranjini Balayogendiran (the 'Landlords') applied for an order to terminate the tenancy and evict SacredHand Canada (SHC) (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on July 22, 2024.

The Landlord Balayogendiran Balasingam (the 'Landlord'), the Landlord's Legal Representative Sriram Rangan, the Landlord's witness Raminder Nagpal, the Tenant's Legal Representative Moezzam Alvi, the Tenant's witness Badar Rizwan, the Tenant's agent Raza Iqbal and the Tenant Rabia Shahid attended the hearing.

Determinations:

Preliminary Issues - Service

1. At the outset of the hearing, the Tenant's Legal Representative took issue with the Landlord's certificate of service, submitting that the while the certificate states that the notice of termination was mailed and e-mailed, that the notice was only received by e-mail.
2. The certificate of service was uploaded to the Tribunals Ontario Portal ('TOP') on March 28, 2024. Rule 3.9 of the Board's *Rules of Procedure* outlines that a document is considered served on the fifth day after mailing, and the day it was sent by e-mail. That said, I accepted the Landlord's position that the notice of termination was properly served and the Tenant's Legal Representative's motion to summarily dismiss the application on this issued was denied.

Section 82 Issues

3. On July 15, 2024, 7 days prior to the hearing, the Tenant's Legal Representative served upon both the Board and the Landlord the evidence he intended to rely upon at the

hearing, including evidence he intended on raising under s. 82 of the *Residential Tenancies Act, 2006* (the 'Act').

4. The Landlord's Legal Representative took issue with the evidence, as the evidence did not include a written list of each issue the Tenant intended on raising.

5. *Interpretation Guideline 11* of the Board's *Interpretation Guidelines* states;

"The tenant must give the landlord and LTB a written description of each issue at least 7 days before the hearing, unless the LTB orders otherwise. The tenant should include details such as a description of the issue, when it began, and when the landlord became aware of the issue."

6. Rule 19.4 of the Board's *Rules* states;

"Unless the LTB has directed otherwise, a tenant who intends to raise issues under sections 82(1) or 87(2) of the RTA during a hearing for a landlord's application about rent arrears shall provide the other parties and the LTB with the following at least 7 days before the scheduled CMH or hearing:

- 1. A written description of each issue the tenant intends to raise; and*
- 2. A copy of all documents, pictures and other evidence that the tenant intends to rely upon at the hearing.*

7. Rule 19.5 goes on to state that a tenant who fails to provide the LTB and other parties with a written description of each issue they intend to raise at the hearing as required under Rule 19.4 shall not be permitted to raise issues under sections 82(1).

8. Section 82(2) of the Act states that:

- 1. The tenant shall give advance notice to the landlord of the tenant's intent to raise the issue at the hearing.*
- 2. The notice shall be given within the time set out in the Rules.*
- 3. The notice shall be in writing and shall comply with the Rules.*

9. In this case, having reviewed the materials that were disclosed by the Tenant's Legal Representative prior to the hearing, no list of issues was provided, nor were any specific claim amounts indicated in the information the Tenant's Legal Representative provided.

10. While the information was disclosed in time in accordance with the *Rules*, I find that the concept of procedural fairness demands that a party who is seeking to make a claim shall make clear to the defending party what the claim is and what he intended remedy is being sought so that the defending party may make fulsome answer and defense.

11. The Tenant's Legal Representative submitted that the issues he intends to raise should displace the entirety of the arrears allegedly owed by the Tenant. While that may have been his intention, no notice of these amounts was provided to the Landlord.

12. As such, I had only permitted the Tenant to raise issues in accordance with s. 19 of the Act, and the Tenant's position that the lease has been voided due to the contract having been frustrated.

Landlord's Evidence

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 \$6,200.00. It is due on the 1st day of each month.
16. Based on the Monthly rent, the daily rent/compensation is \$203.84. This amount is calculated as follows: $\$6,200.00 \times 12$, divided by 365 days.
17. The Tenant has not made any payments since the application was filed.
18. The rent arrears owing to July 31, 2024 are \$31,000.00.
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 \$6,200.00 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 \$125.71 is owing to the Tenant for the period from October 1, 2023 to July 22, 2024.

Zoning & Frustrated Contract

22. The Tenant is a charitable organization. The Landlord testified that when he was approached by the Tenant he was advised that the unit, which is a house, would be used as supportive housing for senior citizens.
23. The Tenant testified that in the City of Mississauga, the purpose in which she intended for the home was that of a Group Home. The Tenant testified that the Landlord had been aware of her intention throughout the entire process.
24. The Tenant testified that in the City of Mississauga, she requires an occupancy certificate, as the Tenant is a charitable organization and requires same for the use of the property as a group home.
25. The Tenant testified that she had applied to the City in October 2023 for an occupancy certificate to permit transitional housing use on the property. The application was supported by the City's planner and the application went to the Committee of Adjustment on December 14, 2023. The Tenant's application was refused on December 21, 2023, and the Tenant filed an appeal to the Ontario Land Tribunal ('OLT') on January 10, 2024.
26. In January of 2024 the Landlord had become aware of the OLT proceedings and had requested that the appeal be withdrawn, which it was on February 9, 2024.
27. As such, the Tenant argues that the tenancy was frustrated as a result of the Landlord withdrawing her OLT appeal.

Analysis & Findings

28. Section 19 of the Act speaks to the issue of frustration of contract.
29. There are different types of frustration: where the rental unit is either completely destroyed or extremely damaged that would make repairs very protracted; and where an intervening event was not contemplated (unforeseeable), by the parties, and was not the fault of either party.
30. The Tenant's Legal Representative relies upon the Superior Court of Justice decision of *Taseko Mines Limited v. Franco-Nevada Corporation*, 2023 ONSC 2055.
31. On the basis of the evidence before me and on a balance of probabilities, I do not agree with the Tenant's Legal Representative that the contract had been frustrated.
32. While the lease states under the "use" clause is that of a "Senior's Residence" and that s. 14 under Schedule "A" of the lease does permit the Tenant use of the unit in accordance with the charity's mission, I do not find there having been a meeting of the minds at the outset of the tenancy as to just exactly what the Tenant's intentions with the unit were.
33. Whether this was due to the inclusion of various realtors who were employed by both parties, or some other miscommunication regardless, it is clear to me that the Landlord and his realtor were given the impression that the unit would be used a "senior's residence" when the actual use was that of a "group home" or "transitional housing".
34. The Landlord testified about the fact that shortly after the Tenant had moved in, he became aware of the Tenant's minor variance application and the local opposition to same, which prompted his withdrawal of the OLT appeal.
35. As such, this issue cannot be seen as "unforeseen" or not contemplated. Zoning use is an important part of any tenancy, especially where there is a commercial intention regarding occupancy as is the case here. I find this issue to have been one that should have been confirmed by both parties prior to the signing of the lease as it is clear to me that the Landlord would have never agreed to the Tenant's intended use had it been made abundantly clear to the Landlord that the unit would be used as a group or transitional home and not a senior's residence.
36. As such, the Tenant's application that the tenancy was frustrated is dismissed.

Section 83 Considerations

37. Due to maintenance issues, and the issue with zoning, the Tenant has not moved into the unit or used it for its charitable intent. That said, the Tenant testified that she just wanted to vacate the unit.
38. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until October 14, 2024 pursuant to subsection 83(1)(b) 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:**
 - \$49,786.00 if the payment is made on or before October 14, 2024. 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 October 14, 2024 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 October 14, 2024.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$23,144.78. 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 \$203.84 per day for the use of the unit starting July 23, 2024 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 October 14, 2024, the Tenant will start to owe interest. This will be simple interest calculated from October 15, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before October 14, 2024, then starting October 15, 2024, 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 October 15, 2024.

October 3, 2024
Date Issued



Jagger Benham
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 15, 2025 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 October 14, 2024

Rent Owing To October 31, 2024	\$49,600.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$49,786.00

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

Rent Owing To Hearing Date	\$29,284.48
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$37,200.00
Less the amount of the interest on the last month's rent deposit	- \$754.19
Total amount owing to the Landlord	\$(8,483.71)
Plus daily compensation owing for each day of occupation starting July 23, 2024	\$203.84 (per day)