



Order under Section 78(11) Residential Tenancies Act, 2006

Citation: Kamal v Rampersad, 2024 ONLTB 67384

Date: 2024-09-10

File Number: LTB-L-051854-24-SA

In the matter of: Upper, 31 ENFORD CRES
BRAMPTON ON L7A4C8

Between: Ahmed Kamal
Yasmin Akram

And

Kyle Rampersad
Darren Rampersad

I hereby certify this is a
true copy of an Order dated
Sep 10 2024
Landlord and Tenant Board

Landlord

Tenant

Ahmed Kamal and Yasmin Akram (the 'Landlord') applied for an order to terminate the tenancy and evict Kyle Rampersad and Darren Rampersad (the 'Tenant') and for an order to have the Tenant pay the rent they owe because the Tenant did not meet a condition specified in the mediated order issued by the LTB on June 28, 2024 with respect to application LTB-L-013820-24.

The Landlord's application was resolved by order LTB-L-051854-24, issued on July 16, 2024. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-051854-24.

This motion was heard by videoconference on September 4, 2024.

The Landlord, the Landlord's Representative Victora Zarif and the Tenants attended the hearing.

Determinations:

Motion:

1. The Tenants failed to meet conditions specified in the order issued by the LTB on June 28, 2024 with respect to application LTB-L-013820-24. The Tenants file their motion because the Tenant, DR filed a consumer proposal on May 27, 2024 which puts an automatic stay on the Landlord's claim for arrears owing to June 14, 2024.
2. After considering all of the circumstances, I must set aside order LTB-L-051854-24 because of the following:
3. The Tenant, DR filed a consumer proposal under section 66.13 of the Bankruptcy Insolvency Act (BIA) on May 29, 2024 which provides an automatic stay on these proceedings. Section 69.2(1) of the BIA provides that on the filing of the consumer

proposal under subsection 66.13, no creditor has any remedy against the debtor or the debtors property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy until: (a) the consumer proposal has been withdrawn, refused, and annulled or deemed annulled; or (b) the administrator has been discharged.

4. The Landlord's claim for arrears to June 14, 2024 is a claim provable in bankruptcy. The Landlord's claim as of the consumer proposal date of filing on May 29, 2024, is stayed that means the Board cannot order eviction or order payment based on the Landlord's claim for arrears owing to June 14, 2024.
5. The Landlord requested an order against the other joint Tenant (KR) since the stay only applies to the Tenant, DR's debt. In a joint tenancy both would be liable for the amount owing to the Landlord. However, a joint tenancy cannot be severed, and an eviction order cannot apply to one tenant and not the other. Allowing the Landlord to proceed with this eviction application may result in KR being evicted as a result of the debt (rent arrears up to June 14, 2024) that is subject to the consumer proposal. This would be inconsistent with the purpose and intent of the *Bankruptcy & Insolvency Act* (the "Act") which is to prevent a creditor from continuing any action or other proceedings, for the recovery of a claim provable in bankruptcy. Section 66.34 of the BIA also indicates a lease cannot be terminated by reason only that the debtor has not paid rent in respect of a period preceding the filing of the consumer proposal.
6. The stay only applies to claims provable in bankruptcy upto June 14, 2024. The BIA does not prohibit the termination of leases for non-payment of rent due after the filing of the notice of intention and this was supported by court case *Canadian Petcetera Limited Partnership v. 2876 R Holdings Ltd.*, 2010 BCCA 469 at para. 31. Therefore, the Board has authority to consider the Landlord's claim for non-payment of rent starting June 15, 2024.
7. Section 78(12) of the RTA gives the Board authority to amend the previous order issued on June 28, 2024 because it states, "in an order under clause (11)(b) the Board may amend a settlement agreement to under section 194 or an order made with respect to the previous application if it considers it appropriate to do so".
8. Since the arrears to June 14, 2024, of \$16,186.00 is subject to the stay, and the Tenants have not paid additional rent that came due after applying for bankruptcy protection, the application for eviction can proceed and the previous order LTB-L-013820-24 issued on June 28 2024 can be amended.

Claim after filing Consumer Proposal:

9. As of the hearing date, the Tenants were still in possession of the rental unit.
10. The lawful rent is \$3,000.00. It is due on the 15th day of each month.
11. Based on the Monthly rent, the daily rent/compensation is \$98.63. This amount is calculated as follows: \$3,000.00 x 12, divided by 365 days.
12. The Tenants have not made any payments after the consumer proposal was filed.

13. The Tenants owe the Landlord \$9,000.00 which represents rent for the period starting June 15, 2024 to September 14, 2024.
14. There's no last month rent being held by the Landlord.

Costs

15. The consumer proposal was filed on May 29, 2024, and it was filed before the LTB hearing held on June 13, 2024. The Tenants nor their legal representative disclosed this material information to the Landlord, the Landlord's Representative or to the LTB before or during mediation which resulted in an unjust outcome, and waste of the Landlord's and the Board's time and resources. The Tenant did not attend the hearing on June 13, 2024, but was in constant contact with their legal representative during the negotiations of the payment plan on June 13, 2024. They knowingly agreed to a payment plan in bad faith. This is an abuse of process.
16. The Board's Guideline 4 on Costs permits the Board to order a party to pay the costs of another party. The Landlord incurred unnecessary legal costs to attend and prepare for the hearing held on June 13, 2024 and September 4, 2024. The Landlord is seeking \$500.00 each day for 15 hours of attendance and preparation time. The Board's Rule of Procedure #23 indicates "where the LTB orders a party to pay the representation/ preparation fees incurred by another party, these fees shall not exceed \$100 per hour for the services of a paid representative to a maximum of \$700.00. The Tenant therefore owes the Landlord \$700.00 for seven hours for the service of the paid representative.
17. The total amount the Tenants owe to September 4, 2024, the day of the motion hearing, is \$8,771.23 (\$8,071.23 arrears + \$700.00 costs).

It is ordered that:

1. The motion to set aside Order LTB-L-051854-24, issued on July 16, 2024, is granted.
2. Order LTB-L-051854-24 is set aside.
3. The previous order issued on June 28, 2024 with respect to LTB-L-013820-24 is amended as follows:
4. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
5. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 1. \$9,000.00 if the payment is made on or before September 14, 2024; or
 2. \$12,000.00 if the payment is made on or before September 21, 2024
6. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before September 21, 2024**

7. If the tenancy is terminated the Tenants shall pay to the Landlord \$8,771.23 which represents the rent owing from June 15, 2024 to September 4, 2024 and the Landlord's costs.
8. The Tenants shall also pay \$98.63 per day for compensation for the use of the unit starting September 5, 2024 until the date the Tenants move out of the unit.
9. If the Tenants do not pay the Landlord the full amount owing on or before September 21, 2024, the Tenants will start to owe interest. This will be simple interest calculated from September 22, 2024 at 7.00% annually on the balance outstanding.
10. If the unit is not vacated on or before September 21, 2024, then starting September 22, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
11. 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 September 22, 2024.

September 10, 2024
Date Issued



Sandra Macchione
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 March 22, 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.

