

2001 CarswellOnt 6334
Ontario Rental Housing Tribunal

Pignanelli v. Parish

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**In the Matter of Upper and Lower 241
McKay Ave., Windsor, ONT N9B 1Z3**

Biagio Pignanelli, Landlord and Donald Parish and Lynda Parish, Tenants

Gascoyne Member

Judgment: August 27, 2001

Docket: SWL-30131

Counsel: None given

Subject: Property

Headnote

Landlord and tenant

Gascoyne Member:

1 The Landlord have brought this application to terminate the tenancy and evict the Tenants for rental arrears. The application was heard at Windsor, Ontario on August 22, 2001, in the presence of the Landlord, no one appearing for the Tenants, although properly served with notice of this hearing as appears from the Certificate of Service, filed.

2 The uncontradicted evidence before me is that the Tenants occupy both of the rental units pursuant to the terms of a single "**rent** to **own**" agreement. The agreement requires the Tenants pay the following sums monthly:

- (a) \$1,300.00 in respect of rent;
- (b) \$100.00 in respect of taxes;
- (c) \$1,000.00 in respect of equity to the home.

3 The Landlord has claimed arrears dating back to October, 2000, at a rate of \$2,400.00 per month. This Tribunal does not have the jurisdiction to address the full amount of the monies claimed. A portion is to be applied to the acquisition of an equity interest in the home, while another portion is applied towards the municipal taxes. These payments are not "rent" within the meaning of the *Tenant Protection Act*. I have restricted the amounts recovered by the Landlord to the \$1,300.00 monthly designated for rent under the agreement. Based on the evidence before me I find that the Tenants are in arrears of rent in the amount of \$12,140.28 *to the date of hearing*.

4 It is clear that the arrears exceed the monetary jurisdiction of this Tribunal. Section 193 of the *Act* provides:

193. (1) The Tribunal may, where it otherwise has the jurisdiction, order the payment to any given person of an amount of money up to \$10,000 or the monetary jurisdiction of the Small Claims Court in the area where the residential complex is located, whichever is greater...

(3) If a party makes a claim in an application for payment of a sum equal to or less than the Tribunal's monetary jurisdiction, all rights of the party in excess of the Tribunal's monetary jurisdiction are extinguished once the Tribunal issues its order.

Therefore, the maximum recoverable before this Tribunal is \$10,000.00. There will be an order for the recovery of this sum from the Tenants.

5 Having said that, this is an eviction application. Section 72(3)(b) of the *Act* requires that the Tribunal inform the Tenants that the order will become void if the Tenants pay the full arrears and any costs awarded before the order becomes effective:

72(3) An order of the Tribunal terminating a tenancy and evicting the tenant in an application under section 69 based on a notice of termination under section 61 shall,

(a) specify the following amounts:

(i) the amount of rent that is in arrears under the tenancy agreement,

(ii) the daily amount of compensation that must be paid under section 45, and

(iii) any costs ordered by the Tribunal; and

(b) inform the tenant and the landlord that the order will become void if, before the order becomes enforceable, the tenant pays to the landlord or to the Tribunal the amount required under subsection (4) and specify that amount.

(4) An eviction order referred to in subsection (3) is void if, before the order becomes enforceable, the tenant pays to the landlord or to the Tribunal,

(a) the rent that is in arrears under the tenancy agreement;

(b) the additional rent that would have been due under the tenancy agreement as at the date of payment by the tenant had notice of termination not been given; and

(c) the costs ordered by the Tribunal.

I have calculated the amount referred to in in subsection 72(4) of the *Act* to be \$12,560.00, if paid before August 31, 2001. This amount increases to \$13,860.00 if the payment is made after August 31, 2001, but on or before September 4, 2001.

6 Does the monetary jurisdiction of the Tribunal affect the amount that the Tenants need pay so as to void the order? In my view it does not. I see no reason why the Tenants should not pay the full extent of the arrears and costs if they wish to continue the tenancy. That is the plain meaning of the subsection. When making a determination under subsection 72(3)(b) of the *Act*, the Tribunal is not ordering this money to be paid, and therefore the Tribunal's monetary jurisdiction does not come into issue. To use the words of the sub-section, the Tribunal is doing nothing more than *informing* the Tenant of certain rights given to them by the *Act* based on the calculation set out in the *Act*.

7 *IT IS ORDERED THAT:*

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before September 4, 2001.

PURSUANT TO SUBSECTION 72(3)(b) OF THE *TENANT PROTECTION ACT*
this order for eviction will be void if the Tenants pay to the Landlord or to the Tribunal in trust:

(a) \$12,560.00 on or after August 22, 200, but on or before August 31, 2001; or

(b) \$13,860.00, if the full payment is not made on or before August 31, 2001, but is made on or before September 4, 2001.

This means that the tenancy would not be terminated and the Tenants could remain in the unit.

8 *IF THIS PAYMENT IS NOT MADE IN FULL AND ON TIME, IT IS ORDERED THAT:*

2. The Tenants shall pay to the Landlord \$10,000.00, which represents the amount of rent owing and compensation and costs up to August 22, 2001, that is within this Tribunal's monetary jurisdiction.
3. If the Tenants do not pay the Landlord the full amount owing on or before September 4, 2001, they will start to owe interest. This will be simple interest calculated from September 5, 2001 at 6.00% annually on the balance outstanding.
4. If the unit is not vacated on or before September 4, 2001, then starting September 5, 2001, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
5. 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 5, 2001.
6. The part of this order relating to the eviction of the Tenants expires on March 4, 2002 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) which has territorial jurisdiction where the rental unit is located.