

Order under Section 69
Residential Tenancies Act, 2006

File Number: EAL-81351-19

In the matter of: UPPER, 888 BEACONHILL COURT
KINGSTON ON K7P2A9

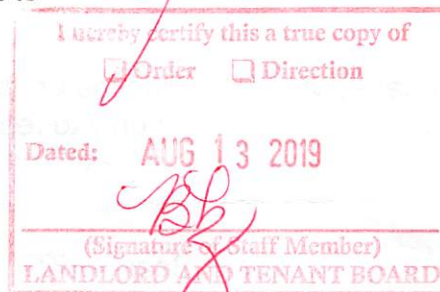
Between: Kruti Parmar

Landlord

and

Ken Chanski
Laurie Chanski

Tenants



Kruti Parmar (the 'Landlord') applied for an order to terminate the tenancy and evict Laurie Chanski and Ken Chanski (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard in Kingston on May 29, 2019.

The Landlord was not present but was represented by the Landlord's agent, Joel Thompson (JT) of Proactive Property Management. The Tenants, represented by John Done (JD) of the Kingston Community Legal Clinic also attended the hearing.

Determinations:

1. For the reasons that follow, the application is denied.

Tenants' Preliminary Matters

2. Mr. Done raised preliminary matters regarding the validity of the notice to terminate the tenancy for non-payment of rent (the 'N-4' notice) and to the application (the 'L-2' application).
3. Initially, JD raised the point that the female Tenant's last name was not correct; this challenge was later withdrawn.
4. It was not disputed that Mr. Thompson is employed by a third-party property management company and not by the Landlord.
5. The property management company does not own the rental unit and the lease was not signed by the property management company. Therefore, the property management company does not permit occupancy of the rental unit and does not meet the definition of "landlord" as set out in the *Residential Tenancies Act, 2006*.

6. It was also agreed that the 'N-4' notice and the L-2 application were drafted, signed and served by Mr. Thompson, who is neither a lawyer nor a paralegal, nor otherwise exempt from the licensing requirements of the *Law Society Act*.
7. JD submitted that in *Law Society of Upper Canada v. Chiarelli*, 2014 ONCA 391, it was established by the Court of Appeal for Ontario, that although Chiarelli operated a property management company, he did not meet the Act's definition of Landlord and furthermore since he was an unlicensed individual he was not authorized to provide legal services to the Landlord.
8. JD stated that legal services includes the drafting of notices and application and the serving of notices and is not limited only to representation on the day of the hearing. Therefore, the notice was invalid as was the application and the application ought to be dismissed.
9. JD also cited the decision of the Board in TEL-97410-18 where the presiding Member dismissed the application based on finding that the applicant (third party property management company) did not have standing to serve the notice or file the application with the Board. This decision is currently awaiting review.
10. Also cited by JD was the Board Order EAL-80406-19 in which the presiding Member concluded that since the application was signed by the owner of a private property management company retained by the landlord, who was not authorized to provide legal services, the application was not properly before the Board. The application was dismissed.

Position of Landlord and Landlord's Agent:

11. JT submitted that the N-4 notice and the L-1 notice were in all other respects technically valid and the fact that both were drafted and signed by someone in contravention of the *Law Society Act* did not result in an abuse of process and furthermore, that the Board has policies and procedures in place to ensure that there is no abuse of process.
- 12. JT testified at the hearing that he believed there was no prejudice to the Tenants by proceeding since the amounts were owed regardless of who had signed the notice and application and that the Tenants had been provided the opportunity to know the case against them and to meet it.
13. It was his view that this technical failing would only result in the re-service of the N-4 and delay proceedings. As a result, JT requested that the application proceed.

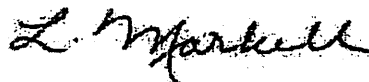
Analysis:

14. I have considered the argument made by JT that there having been no demonstrated prejudice to the Tenants or abuse of process, the matter ought not be dismissed on what appears to be a technicality.
15. However, the principles set out in the *Chiarelli* case are binding upon me. I have re-examined the *Chiarelli* case at length. The decision quotes relevant sections from the Law Society Act (the 'LSA') in deciding what activities are the "provision of legal services".

16. Section 1.(6) of the LSA specifically includes the giving of advice regarding legal interest rights or responsibilities (sub-paragraph 1.(6)(1)), the selection, drafting, completion or revision of documents for use in a proceeding before an adjudicative body (sub-paragraph 1.(6)(2)), and representing a person in a proceeding before an adjudicative body (subsection 1.(6)(3)).
17. In the *Chiarelli* case, the decision was unanimous on this point: an unlicensed person, such as a property manager, who is not a statutory party to an application (i.e. meets the definition of Landlord) may not provide legal services, including the completion of forms and documents, and does not have standing before the Board.
18. Therefore, I have concluded that JT does not have standing before the Board, and as such could not represent the Landlord at the hearing, nor file the application, nor complete and serve the N-4 on the Landlord's behalf.
19. Although decisions of the Board are not binding in the same way as decisions of Divisional Court or Court of Appeal are binding, I find both Board decisions (TEL-97410-18 and EAL-80406-19) to be informative and to be consistent with the direction set by the Chiarelli decision and the analysis remains valid.
20. As a result, since the notice and application were not completed by the Landlord or the Landlord's authorized *and* licensed representative as required by the *Chiarelli* decision, they are not valid. Furthermore, the Landlord was also represented by an agent at the hearing who is not a licensed representative and thus did not have standing before the Board. For these reasons, the application is denied.
21. All of my reasons in support of this order are contained in the above paragraphs. No further reasons will be issued.

It is ordered that:

1. The Landlord's application is dismissed.



August 13, 2019
Date Issued

Linda Markell
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.