

Order under Section 69
Residential Tenancies Act, 2006

File Number: SWL-30741-19

In the matter of: UPPER, 89 ELGIN STREET NORTH
CAMBRIDGE ON N1R5H5

Between: Terry Charbonneau
Leo Charbonneau

Landlords

And

Jennifer Roloson
Steven Resendes

Tenants



Terry Charbonneau and Leo Charbonneau (the 'Landlords') applied for an order to terminate the tenancy and evict Steven Resendes and Jennifer Roloson (the 'Tenants') because they have been persistently late in paying their rent. The Landlords also claimed compensation for each day the Tenants remained in the unit after the termination date (L2).

The Landlords also applied for an order to terminate the tenancy and evict the Tenants because they did not pay the rent that they owe (L1).

These applications were heard in Kitchener on July 8, 2019.

Only the Landlords and the Landlords' Legal Representative, Shaun Harvey (Mr. Harvey), attended the hearing. As of 11:14 a.m. the Tenants were not present or represented at the hearing, although properly served with the Notice of Hearing by the Board.

Determinations:

1. At the outset, Mr. Harvey on behalf of the Landlords, oddly enough, requested an order dismissing the applications on the ground that both N4 and N8 notices of termination as well as the L1 and L2 applications were signed by Brittany Colley OBO [on behalf of] Rentcorp Property Management.
2. Mr. Harvey submitted that Brittany Colley (BC) is not in good standing as licensed paralegal under the Law Society of Ontario. Mr. Harvey submitted that BC has been suspended administratively as of July 13, 2018. Mr. Harvey requested an order that strongly denounces the provision of legal services by persons who are not licensed as paralegals or lawyers by the Law Society of Ontario so that the Landlords may "hold accountable" BC and Rentcorp Property Management (Rentcorp).



3. For the reasons stated below, I denied Mr. Harvey's motion to dismiss his own clients' applications.
4. Section 43 (1) of the *Residential Tenancies Act*, 2006 (the "Act") provides:

Where this Act permits a landlord or tenant to give a notice of termination, the notice shall be in a form approved by the board and shall,

 - (a) Identify the rental unit for which the notice is given;
 - (b) State the date on which the tenancy is to terminate; and
 - (c) Be signed by the person giving the notice, or the person's agent.
5. Section 185 of the Act provides:
 - (1) An application shall be filed with the Board in the form approved by the Board, shall be accompanied by the prescribed information and shall be signed by the applicant.
 - (2) An applicant may give an agent written authorization to sign an application and, if the applicant does so, the Board may require the agent to file a copy of the authorization.
6. The Landlords signed a Client Management Contract dated March 20, 2017 whereby they appointed Rentcorp as Property Manager on the rental unit on a sole and exclusive basis. Paragraph C (c) and (d) specifically authorize Rentcorp to do the following on behalf of the Landlords:
 - c. To terminate tenancies, provided that the Property Manger shall obtain the Owner prior consent before terminating any tenancy and to sign and to serve in the name of the Owner such notices as are deemed necessary for such termination by the Property Manager if prior to the term agreement end date;
 - d. Preparation and service of all legal notices in a timely manner for breach of lease or rent increases (provided that the Owner shall be responsible for any legal, tribunal, court, lawyer or legal services costs required, including appeals) if necessary, in eviction or termination proceedings.
7. At the hearing, the Landlords confirmed that they signed the Client Management Contract as well as authorized Rentcorp to sign the N4 and N8 notices of termination and L1 and L2 applications filed with the Board.
8. I find that "BC OBO Rentcorp" signed the N4 and N8 notices of termination as the Landlords' agent, in compliance with Section 43 (2) of the Act.
9. I find that "BC OBO Rentcorp" signed and filed the L1 and L2 application as the Landlords' agent with the Landlords' written authorization under the Client management Contract, in compliance with Section 185 of the Act.

10. Mr. Harvey requested reasons for denying his motion to dismiss, which would distinguish this scenario from the Ontario Court of Appeal case cited as *The Law Society of Upper Canada v. Chiarelli*, 2014 ONCA 391.

11. The specific issue in *Chiarelli* was the appellant's appearance before the Landlord and Tenant Board. The application judge had found that the appellant "acts as a legal professional without a licence when he appears before the Board as paid representative" and that "the public interest is best served when properly licensed legal professionals appear before administrative tribunals". The OCA framed the issue as follows:

The question is whether the provisions of the Residential Tenancies Act permit the appellant to self-represent because he is a person "who permits occupancy of a rental unit" and/or because he is a person who is "entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent".
(para. 23)

The question that remains is whether the appellant as a landlord under the *Residential Tenancies Act* has a right to self-represent.
(para. 25)

12. The OCA further defined and narrowed the issue in paragraph 36:

...the conduct complained of by the Law Society in its application for the injunction was that the appellant has represented and continues to represent parties at the Board. That was the impugned activity argued before the application judge. It is clear that the focus of the application was the appellant's representation of his clients at the Board.

13. The OCA determined that the appellant was participating in mediations and attending hearings which qualify as the provision of legal services under the Law Society Act. The OCA determined that the appellant's interests, when appearing before the Board, were derived from his provision of services to the property owner; therefore he was not acting on his own behalf but on behalf of his client, the property owner. Therefore, Section 8 (3) of the Law Society Act which permits self-representation where an individual "is acting on his or her own behalf" did not apply.

14. Consistent with its narrowing of the issue, the OCA restricted the breadth of the injunction order against the appellant under paragraph 37:

The provisions of the injunction prohibit conduct which is much wider than the appellant's appearances before the Board. The injunction is, therefore, overly broad because it goes beyond the *lis* between the parties. Accordingly, I would limit the injunction order to an order which prohibits the appellant from appearing before the Board on behalf of his clients or on behalf of himself, save for situations where he is an owner of a property subject to a proceeding before the Board.

15. The issue in the applications before me, is different from the issue in *Chiarelli*. The issue before me is not whether BC OBO Rentcorp can appear before the Board as either a self-represented party or representative of the landlord. It is whether the BC OBO Rentcorp can sign notices of termination and applications on behalf of the Landlord. It is whether the notices and applications are defective because they were signed by BC OBO Rentcorp, warranting dismissal of the applications.
16. As stated, BC OBO Rentcorp meets the definition of "agent" authorized to sign notices of termination under sections 43 (2) and 185 of the Act.
17. In my view, *Chiarelli* does not stand for the proposition that only a licensed paralegal or lawyer may act as agent for the purposes of signing and serving a notice of termination under Section 43 (2) and signing and filing an application under Section 185 of the Act. There is certainly nothing in the language of the Act that requires such agent to be licensed by the Law Society.
18. In my view, *Chiarelli* does not state that signing and serving a notice of termination and signing and filing an application constitute legal services which *only* an individual licensed by the Law Society can carry out.
19. "Landlord" as defined in Section 2 of the Act includes

A person other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent.
20. Rentcorp, as property management company, authorized by the Landlord to process and review tenant applications, to collect and receive rent, to terminate tenancies and to prepare and serve all legal notices, among other duties, falls within the broad definition of "landlord" under Section 2 of the Act.
21. Rentcorp's actions in signing and serving notices of termination and signing and filing applications, are "attempts to enforce...the rights of a landlord under a tenancy agreement of this Act, including the right to collect rent".
22. Yes, they have legal consequences, as most acts do, but under the definition of "landlord", these fall within the rights of a landlord (as defined) which a landlord should be able to exercise, without having to incur legal fees. Landlords routinely prepare and serve their own notices of termination and sign and file their own applications, no different from self-represented parties preparing their own demand letters and filing their own claims in court. To render these acts, which flow from a landlord's authority to permit occupancy of a rental unit, as acts which only paralegals or lawyers can carry out, would unduly curtail and make extremely onerous and expensive, a landlord's ability to enforce their rights.

23. Having rendered my ruling on the motion to dismiss, I asked Mr. Harvey how he wished to proceed. Despite his concern that any eviction order I make on the applications may contain a reviewable error based on BC OBO Rentcorp's signing of the documents, Mr. Harvey declined to withdraw the applications.
24. Mr. Harvey elected to proceed on the L2 application based on the Tenants' persistent late payment and requested an adjournment of the L1 application based on rent arrears to allow an opportunity to amend the application (to include May rent omitted in the application filed in May 2019). I granted the request to adjourn the L1 application.
25. On the L2 application, I accept the Landlords' evidence and make the following findings:
 - i. The lawful rent is \$1,404.84, due and payable on the first day of every month.
 - ii. The Tenants have failed to pay the rent on the date it was due ten (10) times in the last twelve (12) months.
26. I find that the Tenants have persistently failed to pay the rent on the date it was due.
27. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
28. This order is styled as a final order because it finally disposes of the L2 application based on persistent late payment.
29. The L1 application shall be severed and heard on a date to be scheduled by the Board. To be clear however, the finding herein that the notices of termination and applications are valid and comply with the Act, apply to the N4 and L1.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated, as of August 11, 2019. The Tenants must move out of the rental unit on or before August 11, 2019.
2. If the unit is not vacated on or before August 11, 2019, then starting August 12, 2019, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after August 12, 2019.
4. The Board shall sever the L1 application and schedule a hearing date to consider the application.

5. The Landlord shall amend the L1 application in accordance with Rule 15 of the LTB Rules of Procedure on or before August 11, 2019.

July 31, 2019
Date Issued



Cristina De Leon-Culp
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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on February 12, 2020 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.