

2002 CarswellOnt 3795
Ontario Rental Housing Tribunal

O'Shanter Development Co. v. Zhulina

2002 CarswellOnt 3795, 37 C.B.R. (4th) 111

**In the Matter of 804, 299 Glenlake Avenue, Toronto
ON M6P 4A6; O'Shanter Development Company
Ltd. (Landlord) and Galyna Zhulina (Tenant)**

Rogers, Member

Heard: September 10, 2002

Judgment: October 3, 2002

Docket: TSL-42284

Counsel: Mr. D. Ciobotaru, agent for Landlord

Galyna Zhulina in person

Subject: Property; Insolvency

Headnote

Landlord and tenant --- Residential tenancies — Termination of tenancy — General
Landlord served tenant with notice of termination for non-payment of rent on May 22, 2002 —
Tenant filed consumer proposal on June 6, 2002 — On June 21, 2002 landlord applied for order
terminating tenancy and evicting tenant and for order for payment of arrears of rent — Application
dismissed — Remedy sought by landlord was based on debt for rent and was claim provable in
bankruptcy — Once tenant filed proposal landlord could no longer proceed to recover debt —
Remedy of eviction had its origin in debt and was stayed by [s. 69\(1\) of Bankruptcy and Insolvency
Act](#) — Only relief available to landlord was order for payment of rent that accrued after filing of
proposal — [Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, s. 69\(1\)](#).

Bankruptcy --- Proposal — Effect of proposal — Effect on other legal processes
Landlord served tenant with notice of termination for non-payment of rent on May 22, 2002 —
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Act](#) — Only relief available to landlord was order for payment of rent that accrued after filing of
proposal — [Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, s. 69\(1\)](#).

Table of Authorities

Statutes considered:

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Generally — referred to

s. 69(1) — considered

s. 69(1)(a) — considered

Tenant Protection Act, 1997, S.O. 1997, c. 24

s. 61 — referred to

s. 61(3) — referred to

APPLICATION by landlord for order terminating tenancy and evicting tenant for non-payment of rent and for order for payment of arrears of rent.

Rogers, Member:

1 The simple question in this application is whether a Notice of Termination for non-payment of rent survives, where the Tenant subsequently files a Consumer Proposal under the *Bankruptcy and Insolvency Act*.

2 The facts are as follows: The Landlord served the Tenant with a Notice of Termination for non-payment of rent on May 22, 2002. The Tenant filed a Consumer Proposal on June 6, 2002. On June 21, 2002 the Landlord applied, based on the earlier Notice, for an order terminating the tenancy and evicting the Tenant and for an order for payment of arrears of rent.

3 When this application was heard on September 10, 2002, the Tenant had paid no rent to the Landlord after the Notice was served and it was not disputed that the Tenant had not paid the rent that the Landlord claimed in the Notice.

4 I raised the question of whether the Landlord could proceed with the application in light of the following provision in [subsection 69\(1\) of the *Bankruptcy and Insolvency Act*](#):

Subject to subsections (2) and (3) and [sections 69.4 and 69.5](#), on the filing of a notice of intention under [section 50.4](#) by an insolvent person

(a) no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution or other proceeding, for the recovery of a claim provable in bankruptcy.

5 The agent for the Landlord submitted a copy of the decision of the Tribunal in EAL-18923, where it was ruled, as the Tribunal has in other cases, that a the filing of a proposal does not operate

as a stay with regard to an application based on rent owing for a period after the proposal was filed. In that case, the Tenant filed a proposal on December 29, 2000, the Landlord applied on January 9, 2001 and the Member made an order for payment of rent by the Tenant that had filed the proposal, for the period after the proposal was filed. The Member also ruled that the Notice of Termination was void because of a technical defect.

6 It was argued that subsection 61(3) of the *Tenant Protection Act* provides that a Notice of Termination for non-payment of rent is void if the Tenant pays all of the rent due, before the Landlord applies to terminate the tenancy. Since the Tenant had not made the required payment, the application was properly filed and the Notice was not void.

7 I ruled that the earlier decisions of the Tribunal were made in circumstances where the Notice was served after the proposal was filed, therefore they do not address the issue raised in this application of whether a Notice survives a subsequent proposal. The agent for the Landlord indicated that there was jurisprudence that was directly on point and he was therefore given leave to provide additional written submissions.

8 Those submissions were received on September 30, 2002. They add nothing to the submissions made at the hearing.

9 It is clear that, had the proposal been made after the Landlord filed the application, [subsection 69\(1\) of the *Bankruptcy and Insolvency Act*](#) would operate to stay the application. Is the result different where the debtor makes the proposal after the Notice but before the application?

10 The remedy that the Landlord seeks in this application is eviction of the Tenant based on a debt for rent. This is a claim provable in bankruptcy. The Landlord must serve a Notice of Termination under Section 61 of the *Tenant Protection Act* as a condition precedent to obtaining the remedy of eviction. When this Tenant filed the proposal, the Landlord could no longer proceed to recover the debt.

11 However, [subsection 69\(1\) of the *Bankruptcy and Insolvency Act*](#) is wider than that. It also says that that the creditor does not have any remedy against the insolvent person. The remedy of eviction that has its origin in the debt is therefore also stayed, based on the plain meaning of [subsection 69\(1\)](#).

12 This means that the only relief available to the Landlord in this application is an order for payment of rent that accrued after the filing of the proposal. Since the Landlord expressed no interest in obtaining such an order, I have made an order dismissing the application.

Application dismissed.