

CITATION: Radice Management Services v. Baum, 2024 ONSC 5758
COURT FILE NO.: CV-23-712131
DATE: 20241017

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
RADICE MANAGEMENT SERVICES) Robert Kalanda, for the Plaintiff
INC.)
)
Plaintiff)
)
– and –)
)
ALEX BAUM)
Defendant)
)
)
) Heard: October 17, 2024

2024 ONSC 5758 (CanLII)

PAPAGEORGIU J.

Overview

[1] This is a motion for default judgment in respect of rental arrears brought by the landlord Radice Management Services Inc. (the “Landlord”) as against the tenant Alex Balm (the “Tenant”), wrongly named Alex Baum. The Landlord has also sought to amend the title of proceeding as well as an order for possession.

[2] There is no issue as to service of the Claim or the Motion for Default judgment on the defendant. The Statement of Claim was served personally on the Tenant at the premises he rents and the Motion Record was mailed to him by regular mail at these same premises. The Amended Notice of Motion seeking to amend the title of proceeding was served by email.

[3] There were a number of issues that had to be clarified and so this matter proceeded to a case conference before me.

Decision

[4] For the reasons that follow I am granting the judgment as sought.

The Issues

[5] The main issues are:

- Issue 1: Do the materials provide a basis for a finding of liability?
- Issue 2: If so, what are the damages to which the Landlord is entitled?
- Issue 3: Can the Landlord obtain an order directing that the Tenant vacate the premises?
- Issue 4: Can the Court correct the title of proceeding to correct a misnomer?

Analysis

Issue 1: Do the materials provide a basis for a finding of liability?

Consequences of noting in default

[6] Pursuant to r. 19.02, having not defended the proceeding, a defendant is deemed to admit the truth of all allegations of fact made in the Statement of Claim.

[7] However, pursuant to r. 19.06 a plaintiff is not entitled to judgment on a motion for judgment or at a trial merely because the facts alleged in the statement of claim are deemed to be admitted, unless the facts entitle the plaintiff to judgment.

[8] In particular, r. 19.05 provides that a motion for judgment which involves unliquidated damages shall be supported by evidence given by affidavit.

The test on a motion for default judgment

[9] The test on a motion for default judgement was set out in *Elekta Ltd. v. Rodkin*, 2012 CarswellOnt 2928 (ONSC) as follows: A. What deemed admissions of fact flow from the facts pleaded in the Statement of Claim? B. Do those deemed admissions of fact entitle the plaintiff, as a matter of law, to judgement on the claim? C. If they do not, has the plaintiff adduced admissible evidence which, when combined with the deemed admissions, entitle it to judgement on the pleaded claim?

[10] I am satisfied that the Landlord has established liability based upon the following deemed admissions in the Statement of Claim:

- The Landlord and the Tenant entered into a lease on June 24, 2022.
- The lease specified rent at \$6,000 per month and that the Tenant would pay for utilities.
- The Tenant failed to pay all rent due and owing.

- The Landlord sought to terminate the lease but the Tenant continues to reside there notwithstanding that he has not paid rent for over a year as at the present date.

Issue 2: What are the damages to which the Landlord is entitled?

[11] The Landlord is entitled to be compensated for its loss of bargain which means it is entitled to be put in the same position it would have been in if the Tenant had not breached the Lease: *Morguard Corporation v. Bramalea City Centre Equities*, 2013 ONSC 7213.

[12] The Landlord does not claim future rent, only past rent due and owing.

[13] The Landlord provided detailed evidence regarding the amount of rent outstanding. It has also provided evidence that it has credited the Tenant with interest due on his last month rental deposit.

[14] I am satisfied based upon the evidence before me that the Tenant owes rent in the amount of \$108,565.72 and \$3,090.43 for utilities up to October 15, 2024, for a total of \$111,656.15.

[15] I am also satisfied that this court may award this amount pursuant to s. 207 of the *Residential Tenancies Act*, 2006, S.O. 2006, c. 17, that provides that a proceeding may be commenced in any court of competent jurisdiction where a complainant is seeking money in excess of the monetary jurisdiction of the Board, and which states that the court is authorized to exercise any “powers” in that proceeding that the Board could have otherwise exercised.

[16] The outstanding rent is beyond the jurisdiction of the Board which is up to \$35,000.

Issue 3: Can the Landlord obtain an order directing that the Tenant vacate the premises?

[17] In *Dagarsho Holdings Ltd. v. Bluestone*, 2004 CanLII 11271 (ON SC) at para 88 the court interpreted the predecessor to the *Residential Tenancies Act* which had an identical provision to s. 207. The court concluded that it had jurisdiction to order that the tenant vacate the premises. The court stated:

It would not serve the interests of justice to require that all issues be dealt with in this court but then require the owners to bring separate proceedings before the ORHT for an order to vacate. The legislature contemplates such a situation and clearly provides that once a claim is properly before this court because of the size of the monetary claim, the court may exercise any powers that the ORHT could have exercised if the proceeding had been before it and within its monetary jurisdiction.

[18] Similarly, in *Montague v. West*, 2024 ONSC 652 at paras 66-68, the Court considered an application for an order directing the respondent to vacate the property and provide vacant possession to the applicant. The Court concluded that while the Board may have jurisdiction, the Court has concurrent jurisdiction to grant the relief, pursuant to section 207 and the court’s inherent jurisdiction to grant orders for possession.

[19] See also *Kiama v. Graham*, 2009 ONCA 77 at para 15 where the Court of Appeal came to the same conclusion.

Issue 4: Can the Court correct the title of proceeding to correct a misnomer?

[20] The title of proceeding specifies Alex Baum as the defendant whereas his name is Alex Balm. The Landlord seeks an amendment on the basis of misnomer. No limitation period has passed and the Tenant was served.

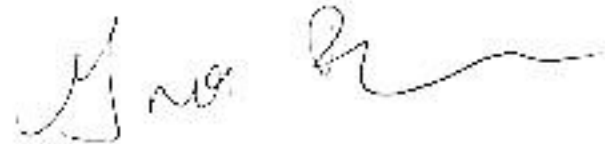
[21] Therefore, I grant the amendment.

Costs

[22] The Landlord requests costs on a partial indemnity basis in the amount of \$18,748.56 inclusive of disbursements. The Landlord has provided a detailed Bill of Costs. I have reviewed the rates and time charged which I find fair and reasonable. I also find that such costs were within the reasonable contemplation of the Tenant.

Conclusion

[23] Therefore, Order to go awarding damages in the amount of \$111,656.15 as well as an Order that the Tenant vacate the premises within 30 days and costs in the amount of \$18,748.56.



Papageorgiou

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Plaintiff

– and –

ALEX BAUM

Defendant

REASONS FOR JUDGMENT

Papageorgiou J.

Released: October 17, 2024