

SUPERIOR COURT OF JUSTICE – ONTARIO

DIVISIONAL COURT

RE: Gina Van Raalte, Tenant/Appellant

AND:

Jeff Westwood, Landlord/Respondent

BEFORE: Heeney, Conway and Sutherland JJ.

COUNSEL: Gina Van Raalte, self-represented

Vikram Dhillon, for Jeff Westwood

HEARD: November 1, 2018 at Hamilton

ENDORSEMENT

[1] The Appellant seeks various orders with respect to her appeal of the May 31, 2017 decision of the Landlord and Tenant Board, which terminated her tenancy. The Appellant had requested and obtained several adjournments of the Board hearing. The last adjournment was peremptory on the Appellant. The hearing finally proceeded on May 26, 2017. The Appellant did not attend the hearing. The Appellant has appealed the Board's decision and claims that the May 26, 2017 hearing was improper.

[2] After filing her Notice of Appeal, the Appellant asserted that she had made payments to the Respondent totaling \$4950. The Respondent disputed that the payments had been made and said that the Appellant had fabricated the payments. The Respondent sought production of Interac e-Transfer information held by Acxysy Corporation. On September 17, 2017, Justice Skarica ordered production of email information concerning e-Transfers between the parties. The production order misspelled the Respondent's email address.

[3] The Respondent brought a motion to correct the spelling mistakes, which was heard by Justice Goodman. He also heard the Appellant's motion to set aside the production order. In his November 17, 2017 order, Justice Goodman declared the Appellant's appeal of the production order a nullity, as it did not comply with Rule 62.02. On January 11, 2018, Justice Goodman set out a timetable to perfect the original appeal. On April 3, 2018, Justice Skarica ordered the Appellant to pay \$10,000 into court as security for costs for the appeal. He found that there was good reason to believe that the appeal is frivolous and vexatious.

[4] The Appellant seeks (i) leave to appeal Justice Goodman's order of November 17, 2017 declaring her appeal of the production order a nullity; (ii) leave to amend Justice Goodman's timetable order of January 11, 2018; and (iii) leave to appeal Justice Skarica's security for costs order of April 3, 2018.

[5] All of the orders in question were made by single motions judges of the Divisional Court. They were not interlocutory orders that are subject to the leave to appeal requirements. The correct procedure to set aside or vary an order of a single judge of the Divisional Court is to move before a panel of the Divisional Court pursuant to s. 21(5) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. As a panel of the Divisional Court, we are hearing the Appellant's motions as if they had been brought under s. 21(5) of the Act.

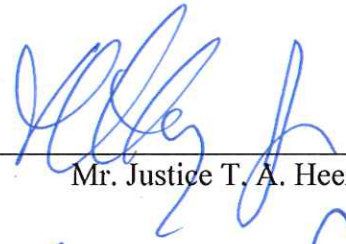
[6] With respect to the November 17, 2017 order of Justice Goodman, we note that when Justice Skarica granted the production order, he was sitting as a motions judge of the Divisional Court. The Appellant moved to set aside the production order. Justice Goodman erred when he treated the Appellant's motion as an appeal and declared it a nullity. Rather, he should have directed it to a panel of the Divisional Court. We will consider it as if he had done so.

[7] A panel will set aside or vary an order of a single judge only if he or she made an error of law or a palpable and overriding error of fact (see *Marsden v. Her Majesty the Queen*, 2012 ONSC 6118 (Div Ct)). We are not persuaded that there was any error of law or fact in Justice Skarica's production order. We would therefore not set aside or vary the production order.

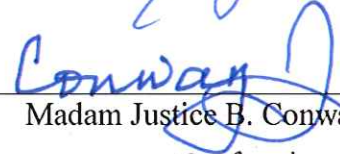
[8] With respect to the timetable order of January 11, 2018, there is no evidence that the Appellant contacted the Respondent to request an amendment of the timetable, nor did she bring a motion before Justice Goodman. However, the Appellant advised us that she was unable to meet the timetable because the transcripts of the Board hearing were delivered late. She filed the certificate of completion showing the transcripts would not be ready until February 1, 2018, six days after the deadline of January 25, 2018. The court registrar refused to accept the transcripts, so she is unable to perfect the appeal. Under the circumstances, we provide the Appellant with 30 days to file all documents to perfect her appeal and direct the registrar to accept those materials. The Respondent has 60 days thereafter to file his responding materials.

[9] With respect to the security for costs order of April 3, 2018, Justice Skarica was aware of all the surrounding circumstances of the Board hearing when he ordered the Appellant to pay security for costs. He considered her claim of impecuniosity. He determined that her claim is frivolous and vexatious because she had adequate notice of the hearing and is simply seeking to prolong these matters to resist eviction. We see no error of law or fact in his decision to require her to post security for costs. We decline to set aside or vary that order.

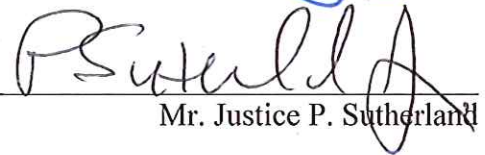
[10] Except for the amendment to the timetable, the Appellant's motions are dismissed. The Appellant shall pay costs of these motions to the Respondent in the amount of \$1000, all inclusive.



Mr. Justice T. A. Heeney



Madam Justice B. Conway



Mr. Justice P. Sutherland

Date: November 2, 2018