

Salih v. Lacroix, 2024 ONSC 730 (CanLII)

Date: 2024-02-09
File number: DC-23-126
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ONTARIO

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SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

SACHS, KING, and DOYLE JJ.

BETWEEN:

ABDUL SALIH

Appellant/Landlord

- and -

JEANNE LACROIX and JONATHAN LACHANCE

Respondents/Tenants

Derek Chou, for Appellant/Landlord

Tyson Burke, for the Respondents/ Tenants

HEARD at Hamilton: February 1, 2024

SACHS, J. (Orally):

REASONS FOR DECISION

[1] This is an appeal from the decision of The Landlord and Tenant Board (the “Board”) dated March 29, 2023, where the Board exercised its discretion under s.83(1) of *The Residential Tenancies Act S.O. 2006, C.17* (the “Act”), and declined to evict the Respondent Tenants. A review of that decision was dismissed by the Board on April 5, 2023.

[2] The Divisional Court’s jurisdiction on appeals from the Board is confined to questions of the law. The applicable standard of review is correctness.

[3] The appellant Landlord advanced six grounds of appeal in his factum. During the course of the hearing, his counsel advised us that the Landlord was no longer seeking to advance any of those grounds of appeal, as he agreed that, as the Tenants asserted in their factum, none of those grounds raised proper questions of law.

[4] Last week, the Landlord notified the Tenants that he was seeking to put forward a new argument. The Tenants objected, relying on the provisions of *Rule 61.08(2)* of the *Rules of Civil Procedure*, which state that “no grounds other than those stated in the notice of appeal...may be relied on at the hearing, except with leave of the court hearing the appeal”. They also argued that we should not grant leave in this instance, as the Board was entitled to appear on this appeal and chose not to do so after having reviewed the material file by the Landlord. The Board might have made a different decision if it had been given notice of the new ground raised.

[5] We agree with the Tenants that leave to argue the new ground should not be granted. First, the Board never had the opportunity to consider or address this ground at first instance. Second, it has also been denied the opportunity to address the ground on appeal. It is no answer to say that the way to remedy this problem is to adjourn the appeal.

[6] In the event that we are found to be in error in denying leave, we will go on to address the new ground of appeal, which we find has no merit.

[7] Essentially, the Landlord argues that the Board erred in law in its application of the test under s.83(1) of the *Act*, as it failed to address an essential element of the test under that section – namely unfairness to the Landlord if the eviction is not granted. The Landlord also submits that s.83(1) imposes a positive obligation on the Board to inquire into the circumstances of the landlord,

an obligation the Board failed to fulfill in this case. According to the Landlord, the focus of s.83(1) is meant to be on the circumstances of the Landlord and any unfairness that the Board's orders may cause to the Landlord.

[8] As the Tenants correctly point out, courts have long recognized that the [Act](#) is remedial legislation with a tenant protection purpose. As such it must be given "a fair, large, and liberal construction" to ensure the attainment of its objects (*Honsberger v. Grand Lake Forest Resources Ltd.* 2019 ONCA 44, at para. 19). Most recently, in *Smith v. Youth Link Youth Services* 2022 ONCA 313, at para. 25, the Court of Appeal confirmed that the [Act](#) is "remedial legislation designed to address the imbalance of power between landlords and tenants".

[9] One of the places where the [Act's](#) tenant protection focus is enhanced is in s.83, which prohibits the Board from granting an eviction application, even where circumstances for terminating a tenancy are proven, unless it has considered all of the circumstances.

[10] The Landlord is correct that these circumstances include both the circumstances of the Tenant and the circumstances of the Landlord. The Landlord is incorrect when he maintains that this was not done in this case, or more particularly when he asserts that the Board failed to consider the circumstances of the Landlord. A review of the transcript makes it clear that the Board inquired about and received evidence from the Landlord as to why he chose to evict the Tenants. After hearing this evidence, the Board member stated explicitly that he was going to take all of that evidence into consideration when making his decision.

[11] The Board's decision makes it clear that this was done. Paragraph 4 of that decision highlights those circumstances. The Board then considered the Tenants' circumstances and found, in effect, that it would be more unfair to grant the eviction than to refuse the eviction. While the Board may not have expressed itself in precisely these terms, our task is not to demand formulaic precision or perfection from an administrative decision maker's reasons, but to ensure that those reasons, reviewed in light of the record as a whole, demonstrate that the Board did what it was required to do under its governing legislation. In this case, we are satisfied that the Board met this threshold.

[12] For these reasons, the appeal is dismissed. As agreed by the parties there shall be no order as to costs.

H. E. Sachs J.

I agree

G. W. King J.

I agree

A. Doyle J.

Date of Reasons for Judgement: February 1, 2024

Released: February 9, 2024

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ORAL REASONS FOR DECISION

SACHS, KING, and DOYLE JJ.

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