

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Angai Vimalanathan, Landlord/Respondent

AND:

Racheal O'Callaghan and Randall Erwin Patterson, Tenants/Appellants

BEFORE: The Honourable Mr. Justice R.E. Charney

COUNSEL: Mario Pushparatnam, Counsel for the Landlord/Respondent

Racheal O'Callaghan, In Person

HEARD: May 26, 2022

CASE CONFERENCE ENDORSEMENT

- [1] The Tenants have filed a Notice of Appeal with respect to the Consent Order of the Landlord and Tenant Board (LTB) dated April 1, 2022.
- [2] The LTB Order terminates the tenancy as of May 31, 2022 and indicates that the Tenants must move out of the rental unit on or before that date.
- [3] The LTB Order also states that the Tenants owe the Landlord \$26,000 rent. The Tenants have not paid rent in 18 months.
- [4] As indicated, the LTB Order indicates that it was made on the consent of the parties.
- [5] Section 133(a) of the *Courts of Justice Act*, R.S.O. 1990, Chap. C. 33, provides that leave to appeal is required to appeal an order made with the consent of the parties.
- [6] On May 19, 2022 I sent the following direction to the parties:

The Tenants have filed a Notice of Appeal with respect to the Order of the Landlord and Tenant Board dated April 1, 2022. This Order indicates that it was made on the consent of the parties. Section 133(a) of the *Courts of Justice Act*, R.S.O. 1990, Chap. C. 33, provides that leave to appeal is required to appeal an order made with the consent of the parties.

Accordingly, it appears as though the Appellants' Notice of Appeal must be struck out, and the Appellants must seek leave to appeal in accordance with Rule 61.03 of the Rules of Civil Procedure. In order to do this, the Appellants must file a Notice of Motion for Leave to Appeal, and a

motion to extend the time for bringing the motion for leave to appeal, since the time for seeking leave has now expired (see Rule 61.03(1)(b)).

The purpose of the case conference scheduled for May 26, 2022 at 9:00 a.m. is to determine the Appellants' intentions with regard to this matter and to discuss the correct procedure going forward. If the Appellants intend to proceed with a motion for leave to appeal the court will establish a schedule for the necessary steps. Procedural orders may be made at this case conference.

- [7] Ms. O'Callaghan appeared on her own behalf at this case conference. She advised that she intends to bring a motion for leave to appeal and has prepared the paper work. She acknowledges that the amount of rent found owing by the LTB is the correct amount, but advises that she is challenging the LTB Order because both her name and Mr. Patterson's name are spelled incorrectly (there should be no apostrophe in her name, and Mr. Patterson should have the Roman numeral "II" following his name.
- [8] I advised the parties that because there is no right of appeal in this case, the Notice of Appeal is invalid, and the automatic stay of the eviction pending an appeal to the Divisional Court set out in s. 25 of the *Statutory Powers Procedure Act*, R.S.O. 1990, chap. S-22 does not apply. No stay of the Order has been issued by the Court.
- [9] I advised Ms. O'Callaghan that if she wants to seek a stay of the eviction order pending the court's decision on her proposed motion for leave to appeal, she must bring a motion for a stay. I declined to grant a stay of the LTB Order at this case conference.

Conclusion

- [10] The Notice of Appeal is struck out, without prejudice to the Appellants' right to bring a motion for leave to appeal and a motion to extend the time for bringing a motion for leave to appeal.



Justice R.E. Charney

Date: May 26, 2022