CanLII

Shnier v. Begum, 2023 ONSC 5556 (CanLII)

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DIVISIONAL COURT FILE NO.: 328/22
DATE: 20231003

ONTARIO

SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

BETWEEN:	)	
	)	
MITCHELL L. SHNIER	)	*Alyn James Johnson*, for the Appellant
Appellant	)	
	)	
– and –	)	
	)	
SYEDA SUFIA BEGUM	)	*David Strashin*, for the Respondent
Respondent	)	
		Linda Naidoo, for Tribunals Ontario
	)	**HEARD at Toronto:** 26 September 2023

Leiper, J.

Introduction

[1] Mitchell Shnier appeals from two orders of the Landlord and Tenant Board pursuant to section 210 of the *Residential Tenancies Act, 2006* (the "Act"). On February 7, 2022, LTB Member Greg Joy evicted the Appellant from residential premises he rented from the Respondent Syeda Begum.

[2] The Appellant requested a review of the eviction order. On May 10, 2022, LTB Member Dawn Wickett upheld the Eviction Order on review.

[3] The Appellant alleges three errors in law, two related to the eviction hearing before Member Joy, and a third, a denial of procedural fairness linked to the inadequacy of reasons on review before Member Wickett.

[4] For the reasons that follow, I conclude that the Board did not commit any errors in law at either stage of the proceedings. I dismiss the appeal.

Background

[5] The Appellant has rented a home from the Respondent at 162 Banbury Road in North York on an annual lease basis since June 1, 2013. The final lease signed by the parties ran from November 1, 2020, to November 1, 2021. The rent was set at $4400 per month.

[6] Schedule A to the 2020-2021 lease agreement included a renewal provision which read:

> The Landlord and the Tenant agree that the lease may be renewed for a further period of one year on the same terms and conditions at a mutually agreed upon rent, with the Tenant having the option to terminate the Lease by giving 60 days notice to the Landlord. The 60 days notice period would be counted from the last day of the month.

[7] On August 12, 2021, the Respondent served an N12 notice of eviction on the Appellant based on her wish to re-occupy the premises as of the end date of the lease agreement, that is on November 1, 2021.

[8] On August 30, 2021, the Appellant sent notice of his wish to renew the lease for a further year and to extend the lease to November 30, 2022.

[9] The Respondent sought a hearing before the Board to obtain an order for eviction. On February 3, 2022, the Board held a hearing at which the parties testified. In its reasons the Board found that the Respondent had a good faith basis for re-occupying the premises. The Board rejected the Appellant's arguments that the renewal provision in the lease allowed him to unilaterally choose to extend the lease for a further year without the consent of the Respondent.

[10] The Board terminated the tenancy effective July 31, 2022, based on the Appellant's health and other family issues related to finding replacement housing.

[11] On February 17, 2022, the Appellant sought a review of the Board's decision to terminate his tenancy. On May 10, 2022, the Board denied the request to review.

Standard of Review

[12] The parties agree that the standard of review is one of correctness, because an appeal from a decision of the Board may only be taken on questions of law: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 37.

[13] On questions of procedural fairness in the context of an appeal, the standard of review is also one of correctness: *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, 470 D.L.R. (4th) 328, at paras. 26-30.

Issues on Appeal

[14] The Appellant raises three issues on appeal:

a. Did the Board err by failing to interpret the language of the renewal provision in the lease with reference to the correct principles of contractual interpretation?

b. Did the Board err by incorrectly finding that the rent increase provisions in the renewal provisions could lead to an illegal rental agreement?

c. Did the Board in review deny the Appellant procedural fairness by issuing inadequate or "boilerplate" reasons for dismissing his request for a review?

[15] I will address each issue in turn.

Did the Board err by failing to interpret the language of the renewal provision in the lease with reference to the correct principles of contractual interpretation?

[16] The Appellant submits that the Board's reasons show that it neither identified nor applied the relevant principles of contractual interpretation to the question of what the renewal provision in this lease meant. These include the principles of *contra preferentum*, seeking an interpretation which makes commercial sense and avoids absurdity or redundancy and the requirement that it reads the terms in the context of the whole agreement.

[17] The portion of the Board's reasons concerning the renewal provision and the timing of the Respondent's notice to reoccupy are as follows:

1. The Tenant submits that there is an agreement that the Tenant has the option to renew the tenancy agreement for a one-year term is [sic] he exercises his right to do so. The tenancy agreement under Schedule A states "The Landlord and Tenant agree that the lease may be renewed for a further period of one year on the same terms and conditions at a mutually agreed upon rent, with the Tenant having the option to terminate the Lease by giving 60 days notice to the Landlord. The 60 days period would be counted from the last day of the month".

2. The Tenant argues that he provided the Landlord with 60 days notice and therefore the end of the term would be November 30, 2022 and not the termination date on the notice of November 30, 2021.

3. I note that the wording of Schedule A says the lease "may" be renewed. The word suggests that this is not mandatory for either party to agree to this renewal period. This Schedule also states that it is renewed at a mutually agreed upon rent which could be contrary to the provisions of the *Residential Tenancies Act* for a rent increase which the Act limits.

4. To accept the Tenant's position on this point would mean that the Tenant could stay in the rental unit indefinitely, if the Landlord wanted to move in for their own use, should he have the unilateral ability to renew the tenancy agreement as suggested.

5. In addition, the Landlord served the notice on August 13, 2021. The Tenant's email showing his request to renew for a on-year term was sent on August 30, 2021. At the time the notice was sent the end of the term was November 30, 2021.

6. I find the Landlord chose not to agree to the extension of the tenancy for a one-year term and that at the time the notice was served the end of the fixed term was November 30, 2021.

[18] The essence of the Appellant's submission is that the renewal provision was complex, ambiguous, and required more than the cursory analysis found in the Board's reasons. I disagree. Although I agree with counsel for the Appellant that this was not a lengthy analysis, the reasons sufficiently demonstrate that the Board interpreted this contractual provision by reading the words of the text and considering them in the context of where they appeared, in a residential lease agreement. This accords with a fundamental principle of contractual interpretation: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633, at para. 57.

[19] The Board focused on the sole provision which addressed the ability of the parties to renew the lease for a further year. It set out and understood the nature of the lease and the wording of the renewal term. The Board noted the permissive language of the provision by virtue of the use of the word "may." The Appellant did not provide any examples of other provisions that would logically bear on alternative interpretations of this renewal provision. Although counsel submitted that this provision could be read as mandatory at the election of the tenant, the words of the provision do not say that. The use of the word "may" to describe the renewal, and the addition of a "mutually agreed upon rent" suggest that the renewal is subject to further agreement, and that this provision does not exist for the sole benefit of the tenant who may elect to renew without the agreement of the landlord.

[20] The Board concluded that the renewal provision was clear. It is implicit in the Board's reasons that it did not find this term to be ambiguous. That conclusion does not amount to evidence of a failure to apply the principle of *contra preferentum*, that is the principle that an ambiguous term will be resolved in favour of the person who has not drafted the contract. Rather, it is the logical result of the Board's finding that the wording was clear, and supported the finding that the parties could extend the lease, on terms satisfactory to the parties for a further year period.

[21] The Appellant also submitted that the provision as interpreted by the Board is redundant and does not make commercial sense, because the parties did not need to stipulate that they could agree to a further term. Again, I disagree. The provision regularizes and recognizes the ability of the parties to agree to an extension, to agree on rent to be paid during the period of extension (leaving aside for now the potential for unlawful rent being agreed upon given Ontario's legislated rent regime, which is discussed below) and permitted the tenant the ability to be relieved from the lease on 60 days' notice.

[22] In reviewing the provision and the reasons, I conclude that there is no "extricable error in law" revealed by the Board's decision. As the Supreme Court has noted in *Sattva* at para. 47, "the interpretation of contracts has evolved towards a practical common-sense approach that is not dominated by technical rules of construction." On my reading of the reasons, the Board read and understood the provision in its ordinary and grammatical meaning, required by the case law: See *Sattva* at para. 46.

[23] Thus, I find that the Board did not err in law in making its findings on the meaning of the lease renewal provision.

Did the Board err by incorrectly finding that the rent increase provisions in the renewal provision could lead to an illegal rental agreement?

[24] This issue is raised because of the Board's observation in its reasons that the provision in the renewal clause referring to mutually agreed upon rent "could be contrary to the provisions of the *Residential Tenancies Act* for a rent increase which the Act limits."

[25] The Appellant submits that this is an erroneous reading of this part of the term because it does not clearly stipulate rents that exceed the statutory limits, but only raises the

possibility. During oral argument, counsel did not suggest that this should be read as a finding that the renewal clause is an illegal clause. Rather, counsel for the Appellant submitted that this comment informs the submission that the Board made other errors in its contractual interpretation.

[26] I disagree. This comment is best described as an observation from the Board about another portion of the renewal clause which would be subject to the legislated limits on rent increases in the province of Ontario. It demonstrates that the Board read the entire provision and gave thought to how it could operate within the legislative scheme. Counsel for the Appellant acknowledged that this term *could* lead to an unlawful rent increase if it were to exceed the legislated maximum rent increases. That possibility does not alter the findings above relative to the interpretation of the renewal of the lease.

Did the Board in review deny the Appellant procedural fairness by issuing inadequate or "boilerplate" reasons for dismissing his request for a review?

[27] The Appellant sought a review of the Board's decision, which under Rule 26.8(e) of the *Landlord and Tenant Board, Rules of Procedure, September 1, 2021*, need only establish a "serious error" made by the Board at first instance. He submits that the reasons rejecting his request for a review hearing were seriously deficient, amounting to cursory "boilerplate."

[28] The reasons on review read as follows:

1. ln the request, the Tenant makes several submissions rearguing their position and submitted case law in support of their position.

2. The Tenant identifies several points they believe to be errors in law. However, in my view, concerns identified by the Tenant in their request is in fact the Tenant rearguing their position, which should have been submitted at the hearing held on February 3,2022.

3. A request to review is not an opportunity for a party to re-litigate or reargue their position in hopes of a more favorable outcome. Nor is it an opportunity to present evidence and submissions that could and should have been presented at the hearing.

4. ln the request to review, the Tenant does not identify any serious error in the order or in the Board's proceeding.

5. On the basis of the submissions made in the request, I am not satisfied that there is a serious error in the order or that a serious error occurred in the proceedings.

6. It is ordered that:

   The request to review order TNL-34432-21 issued on February 7,2022, is denied. The order is confirmed and remains unchanged.

[29] The application of the principles of procedural fairness to procedures adopted by a statutory tribunal benefit from considering the well-known *Baker* factors in the relevant context of the tribunal's procedural options. Here, as a creature of statute, the Board is directed by the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17, s. 183 as follows:

183 The Board shall adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an

adequate opportunity to know the issues and be heard on the matter.

[30] The request to review followed a full hearing on the merits, at which the parties gave evidence, were able to cross-examine and test the evidence, and make submissions. They received written reasons from the Board on all of the matters in issue. The request to review came before a different Board member who provided reasons in writing. Those reasons revealed an awareness of the allegations of errors in law, case law in support and the reviewing Member's conclusion that there were no errors of law, and that the arguments were an attempt to relitigate findings of the Board that had been made.

[31] Taking these procedural steps into account, and applying the *Baker* factors to the review stage, I conclude as follows:

(1) the nature of the decision and the process followed in making it were aligned with fairness principles—the parties had the benefit of a full hearing prior to the review process and although the decision is an important one, the review took place as a secondary review, and not as a final potential step in the process. If there had been errors of law made by the Member at first instance, these are subject to correction on appeal;

(2) the nature of the statutory scheme and the terms of the statute pursuant to which the body operates—s. 183 provides for expeditious methods which is aligned both with the importance of regulating rental housing which often affects vulnerable members of the population and is responsive to the high volume nature of the work of the Board. The review step achieves a balance and provides an intermediate level of oversight to the work of the Board conducting hearings, while ensuring that clear errors can be caught and corrected on a review hearing;

(3) the importance of the decision to the individual or the individuals affected—it is evident that housing is a critical factor in matters of health, well-being, stability and personal and community stability;

(4) the legitimate expectations of the person challenging the decision- the Board's *Rules* allow for persons affected by its decisions to know the criteria and role of the review process; thus it can be said that the procedures adopted by the Board in conducting its reviews are not arbitrary and can create expectations that they will be carried out in accordance with its *Rules*. Here there is no suggestion that the Board did not carry out the review in accordance with its *Rules* and the reasons advert to the material put before the decision maker, who can be presumed to have read and considered them; and

(5) the choices of procedure made by the agency itself—the Board is an expert tribunal and is permitted by its statutory framework to make rules and procedures that are expeditious. This choice is reflected in the review process.

See *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 S.C.R. 817 at paras. 22-27.

[33] I find that on balance, the reasons provided on review although general in nature, do not amount to a failure to provide responsive reasons, particularly in circumstances where the review is a written record and submissions. I conclude that the Appellant was not denied procedural fairness in the request to review the Board's decision.

Conclusion

[34] The appeal is dismissed. By agreement of the parties, costs are payable by the

Appellant to the Respondent in the amount of $7,000. No costs are ordered to be paid by or to the Board.

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J. Leiper

Date: October 3, 2023

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SUPERIOR COURT OF JUSTICE

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BETWEEN:

MITCHELL L. SHNIER

Appellant

– and –

SYEDA SUFIA BEGUM

Respondent

REASONS FOR JUDGMENT

Leiper, J.

Date of Release: October 3, 2023