



## Delic v. Princeton Apartments, 2024 ONSC 2387 (CanLII)

Date: 2024-04-23  
File number: 138/24; LTB-L-030506-23  
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**CITATION:** Delic v. Princeton Apartments, 2024 ONSC 2387

**Divisional Court File No.:** 138/24

**LTB File No.** LTB-L-030506-23

**Date:** 20240423

**SUPERIOR COURT OF JUSTICE – ONTARIO  
DIVISIONAL COURT**

**BETWEEN:**

ANDREW DELIC, TENANT/APPELLANT

AND

PRINCETON APARTMENTS, Landlord/Respondent  
/Moving Party

**BEFORE:** Leiper J.

**COUNSEL:** *S. Toole* for the Landlord/Respondent/Moving Party

*E. Fellman* for the Landlord and Tenant Board

*Andrew Delic*, Self-Represented Tenant/Appellant/Responding Party

**HEARD:** In writing on April 23, 2024

### ENDORSEMENT

[1] In this appeal from a decision of the Landlord Tenant Board dated February 7, 2024 relative to the appellant's tenancy, the Court sent notice to the parties that it is considering dismissing this appeal pursuant to Rule 2.1 of the *Rules of Civil Procedure* on the basis that it is frivolous, vexatious and an abuse of the Court's process.

[2] The landlord submits that the tenant is in arrears of rent in the amount of \$23,362.46 as of March 1, 2024, and has not been current with the rent since November 2022. The Notice of Appeal does not raise a question of law, but it seeks a reconsideration on appeal of the Board's proper exercise of its discretion to reject the Tenant's payment plan. As of March 1, 2024, the Appellant is in arrears of rent in the amount of \$ \$23,362.46.

[3] The tenant submits four reasons why this appeal should not be dismissed pursuant to r. 2.1:

i) The appeal is not frivolous or vexatious because it involves the LTB rejecting the appellant's evidence as to his ability to meet his rent and arrears payments. The appellant states that this is a "substantive issue warranting careful review and consideration by this court."

ii) The tenant proposed a structured payment plan to catch up on his rental arrears, being \$1712.18 on the first of

each month, starting May 1, 2024 and \$1600 toward arrears to be paid on the 20<sup>th</sup> of each month, beginning on April 20, 2024.

iii) The tenant states he is “fully committed” to repaying the arrears owing in rent.

iv) The tenant also notes that this unit has significant to him since it is in the vicinity of the area where he spent his childhood.

[4] I note that relative to a second unit possessed by the tenant which is the subject of a motion to lift the automatic stay obtained by filing an appeal (Delic v. 864447 ONTARIO LTD - File # 018/24), the tenant provided the court with information concerning a recent medical issue which he has stated in his response to the landlord’s motion, has interfered with his ability to pay his rent. Although that material was not filed on this motion, I note that I have read this material and it does not provide a basis for the issue of the merits of this appeal. I conclude this appeal is without merit, given that it raises no question of law. The appeal seeks to have this court re-weigh findings of fact made by the Landlord and Tenant Board. This is not an issue of law. This appeal is frivolous on the basis that it cannot succeed.

[5] As the Court of Appeal wrote in *Visic v Elia Associates Professional Corporation*, [2020 ONCA 690](#), at para 8:

Rule 2.1 must be “interpreted and applied robustly so that a motion judge can effectively exercise his or her gatekeeping function to weed out litigation that is clearly frivolous, vexatious, or an abuse of process”: *Scaduto v. The Law Society of Upper Canada*, [2015 ONCA 733](#), at para. 8, leave to appeal refused, [2015] S.C.C.A. No. 488. The Rule is not for close calls — it may be used only in “the clearest of cases where the abusive nature of the proceeding is apparent on the face of the pleading and there is a basis in the pleadings to support the resort to the attenuated process”: *Scaduto*, at paras. 8-9; *Khan v. Law Society of Ontario*, [2020 ONCA 320](#) (“*Khan*”), at para. 6, leave to appeal to S.C.C. requested, 39321.

[6] I find that Rule 2.1 applies in this circumstance and should be used as part of this court’s gatekeeping function.

The appeal is dismissed.

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Leiper, J.

**Date: April 23, 2024**

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