

Jones v. Morris, 2023 ONSC 5763 (CanLII)

Date: 2023-10-17  
File number: 913/21  
Citation: Jones v. Morris, 2023 ONSC 5763 (CanLII), <<https://canlii.ca/t/k0mtk>>, retrieved on 2023-10-26

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**DIVISIONAL COURT FILE NO.:** 913/21  
**DATE:** 20231017

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

**RE:** ROY JONES, Appellant

**AND:**

STEPHEN MORRIS, Respondent

**BEFORE:** Matheson J.

**COUNSEL:** *Self-represented Appellant/Tenant*

*Petar Guzina, for the Respondent/Landlord*

**HEARD at Toronto:** October 16, 2023, by video-conference

**ENDORSEMENT**

[1] The tenant appeals the decision of the Landlord and Tenant Board (“LTB”) dated October 27, 2021 (the “Decision”). In the Decision, the LTB denied a motion to set aside an order that the tenancy was terminated because the tenant had failed to meet the conditions specified in a prior LTB consent order. The LTB found that the tenant had failed to make the financial payments required under the consent order. The LTB ordered the tenancy terminated and required that the landlord be given vacant possession by August 17, 2021. The appellant then exercised his right to bring a motion to set aside the eviction order, which had been made without notice as permitted in the consent order. After a hearing with testimony, the motion was dismissed, as set out in the Decision.

[2] The tenant appealed the Decision in 2021 and obtained an automatic stay of the eviction order. A schedule was set for the exchange of court materials for the appeal. That schedule required that the tenant/appellant serve his appeal materials within 30 days after receiving the audio recording from the LTB, which he had already requested.

[3] In May 2023, counsel to the landlord, newly appointed, notified the Court that it appeared that the appellant had failed to comply with the Court's schedule, and requested a case conference. At the case conference, a new schedule was set, giving the appellant until August 15, 2023 to file all his appeal materials. He failed to do so. At an August 31, 2023 case conference he was given another extension, to September 11, 2023. The appellant again failed to meet that schedule. I gave the appellant one last chance. In response, the appellant sent a one-page word document last week responding to certain submissions in the respondent's factum.

[4] Despite the appellant's failure to comply with the Court's directions and failure to deliver the required court material, I permitted the appeal to proceed. This appeal is therefore proceeding without an appeal record, although the landlord's counsel has filed the LTB decisions and the notice of appeal. No transcript of the LTB hearing has been filed by the appellant.

[5] An appeal under the *Residential Tenancies Act, 2006, S.O. 2006, c. 17*, is limited to questions of law.

[6] The appellant submits that there is a question of law because, under his tenancy agreement with the landlord, he attempted to pay his rent and the landlord refused to accept it. There are a number of difficulties with this submission. First, the eviction decision was made because the appellant failed to make the required payments under a consent LTB order. The payments were set out in that order. Second, the issue of refusing payments was expressly considered by the LTB in the hearing resulting in factual findings that are not the subject of this appeal.

[7] As set out in the Decision, the appellant testified at the hearing, as did the landlord. They both testified about incidents regarding rents payments, and mutual distrust. At the LTB, the appellant clarified that apart from one incident in 2018, the landlord did not actually refuse to accept his rental payments but did not attend at the rental unit to collect the money. The landlord explained that often, when he went to the unit, no one answered the door. Further, this incident took place in 2018. The LTB consent order required payments in 2021.

[8] Focusing on the relevant time period, the appellant testified about an incident in July 2021 when he attempted to hand five cheques to the landlord, which the landlord did not accept. The appellant also sent one payment to the LTB on August 11, 2021. The LTB found that there was no indication that the appellant had made any payments to either the landlord, or to the LTB, after the August 11, 2021 payment. The appellant submitted that he had the funds to make the payments but would do so only if his tenancy was preserved.

[9] As set out in the Decision, the LTB found that the appellant had not met his evidentiary burden regarding breach of the consent order.

[10] There is no error of law. The LTB heard evidence, made factual findings that cannot be challenged now, and found that the appellant has not shown compliance with the LTB consent order. The LTB consent order provided that if the appellant failed to make one payment, the landlord could seek an eviction order without notice to the appellant. That is what transpired.

[11] This appeal is dismissed, with costs to the respondent landlord fixed at \$1,500, all inclusive. The appellant shall pay those costs within 30 days of today.

[12] The tenant requests a six-month extension of time to move out because he needs access to public transit. This reason was raised before the LTB in the hearing giving rise to the Decision, resulting in an extension until November 30, 2021. The appellant has had

almost two more years to plan for the possibility that his appeal could be unsuccessful. Another lengthy delay is not justified. The automatic stay of the eviction order has come to an end. The eviction can be enforced as of November 15, 2023. The respondent may submit a form of order to the Court to that effect.

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Matheson J.

**Date:** October 17, 2023