

Teixeira v. Akelius Canada Ltd., 2024 ONSC 288 (CanLII)

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

RE: DANIEL TEIXEIRA Tenant/Appellant

AND:

AKELIUS CANADA LTD. Landlord/Respondent

BEFORE: Justice O’Brien

COUNSEL: *Self-Represented* Appellant

S. F. Toole, for the Respondent

HEARD: In-writing motion

ENDORSEMENT

[1] The tenant, Mr. Teixeira has filed a notice of motion seeking an extension of time to file an appeal of an order of the Landlord and Tenant Board. The Board’s order, which was dated October 13, 2023, denied a review of a previous Board order that terminated the *tenancy* between Mr. Teixeira and the respondent landlord. Mr. Teixeira had 30 days to file his notice of appeal with this court. Almost two weeks after that deadline, he filed a notice of motion seeking an extension of time to file an appeal. He still has not filed a notice of appeal.

[2] In its October 13 order, the Board found arrears of rent to total \$16,542.01 as of October 31, 2023. The landlord’s evidence on this motion is that Mr. Teixeira has not paid any rent since August 1, 2022. According to the landlord’s ledger, the total amount Mr. Teixeira now owes is \$19,891.40.

[3] As part of this court’s case management process before hearing this motion, I directed a temporary, without prejudice stay of the eviction order pending a case conference. At the case conference, which took place on December 4, 2023, I established a schedule for the exchange of materials on the motion. I also directed terms of the ongoing stay pending the determination of the motion. These terms required Mr. Teixeira to pay the monthly rent

of \$1,092.96 on the first of each month and \$1,250 on the 15th of each month towards the arrears of rent.

[4] In my directions, I provided Mr. Teixeira with the test for seeking an extension of time as set out in *Enbridge Gas Distribution v. Froese*, 2013 ONCA 131, which states as follows at para. 15:

The test on a motion to extend time is well settled. The overarching principle is whether the "justice of the case" requires that an extension be given. Each case depends on its own circumstances, but the court is to take into account all relevant considerations, including

- (a) whether the moving party formed a *bona fide* intention to appeal within the relevant time period;
- (b) the length of, and explanation for, the delay in filing;
- (c) any prejudice to the responding parties caused, perpetuated, or exacerbated by the delay; and
- (d) the merits of the proposed appeal.

[5] For the reasons that follow, I deny the motion for an extension of time.

[6] In his notice of motion, Mr. Teixeira explains that he mistakenly believed the 30 days for filing his appeal began from the date the Board's stay was lifted, which was October 31, 2023.

[7] The delay in seeking an extension of time was not long. But even if I accept that Mr. Teixeira meets the first two factors listed in *Enbridge Gas*, the justice of the case militates against an extension of time for the following reasons:

(a) It is not clear whether Mr. Teixeira still intends to pursue his appeal. Following the case conference and despite being provided with the test he needed to meet in *Enbridge Gas*, he did not file any further material on the motion. As set out above, he also has not filed a notice of appeal.

(b) The landlord is experiencing ongoing prejudice by the delay. Mr. Teixeira has not paid any rent for almost a year and a half. Contrary to my direction, he did not pay monthly rent in December, nor the \$1,250 he was required to pay towards arrears. These breaches are sufficient to lift the stay.

(c) The basis for Mr. Teixeira's appeal as set out in his notice of motion is that (1) he did not receive notice of the initial Board hearing and therefore was unable to participate; (2) the Board did not permit him to raise the issue of illegal entry contrary to s. 82(1) of the *Residential Tenancies Act, 2006, S.O. 2006, c. 17 (RTA)*; and (3) the Board's calculations of rent owed were incorrect.

(d) Pursuant to s. 210 of the *RTA*, the court's jurisdiction on appeal is only with respect to questions of law. The Board found that Mr. Teixeira was properly served with the Notice of Hearing but that he rarely checked his mailbox. A lack of due diligence is sufficient for the Board to decline to set aside an order when a party fails to appear: *Boychuck v. JDM Apartments*, 2019 ONSC 5805, at para. 10.

(e) Mr. Teixeira has not filed any material to explain or provide evidence regarding the issue of illegal entry. The issue also does not appear to have been raised before the Board and therefore is being referenced in his notice of motion for the first time.

(f) Even if the Board's calculations regarding the amount of rent owing were not entirely correct, Mr. Teixeira only claims to have paid an additional \$2,000. Mr. Teixeira failed to comply with my directions and, even accepting his position, is now almost \$18,000 in arrears.

[8] In short, Mr. Teixeira has not shown that he intends to pursue his appeal, nor that there is merit to his appeal that justifies granting an extension of time. Meanwhile, the landlord is suffering increased prejudice each month.

[9] The therefore motion is dismissed. The stay is lifted such that the landlord may enforce the Board's order dated August 10, 2023 terminating the tenancy.

[10] The landlord requests costs of the motion on a substantial indemnity basis but has not filed any costs materials. Mr. Teixeira filed minimal material on the motion, though it is evident the landlord was required to incur some expense to respond. I order costs payable by Mr. Teixeira to the landlord in the amount of \$2,000.

Date: January 12, 2024

O'Brien J