

Akbari et al. v. Blenkinsop et al., 2024 ONSC 1184 (CanLII)

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File number: DC-23-186
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DIVISIONAL COURT FILE NO.: DC-23-186
DATE: 20240227

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT
SACHS, KING, AND DOYLE JJ.

BETWEEN:
Behzad Akbari, Kalanithy Sriskandamoorthy,
and Thirunavukkarasu Sriskandamoorthy
Appellants/Landlords
- and -
Sydney Blenkinsop and Emily Wilson
Respondents/Tenants
Timothy Duggan, for the Appellant Behzad Akbari
No one appearing for the Respondents, Sydney Blenkinsop and Emily Wilson
Eli Fellman, for the Landlord and Tenant Board
HEARD at Hamilton : January 30, 2024

REASONS

KING, J.

[1] This is a statutory appeal brought by Behzad Akbari (hereinafter the “Appellant”) pursuant to [s. 210](#) of *The Residential Tenancies Act, 2006, S.O. 2006, c. 17* (the “RTA”).

[2] The appeal relates to three decisions (“Appealed Orders”) made by members of the Landlord and Tenant Board (“LTB”) as follows:

- i) the order of Steven Mastoras, dated March 29, 2022 (the “Preliminary Order”);
- ii) the order of Steven Mastoras, dated November 8, 2022 (the “Compensation Order”); and
- iii) the order of Sandra Macchione, dated January 9, 2023 (the “Review Order”)

Background

[3] The issues in this matter relate to a property located at 161 Iona Avenue, Hamilton, Ontario. This was a detached home that contained multiple separate rental units (the “Complex”).

[4] The owners of this property were Kalanithy Sriskandamoothy and Thirunavukkarasu Sriskandamoothy (collectively the “Landlords”). Although named as Appellants, these two persons did not participate in the appeal.

[5] The Appellant was a tenant in a unit in the Complex. He was not an owner of the property. However, he was responsible for providing Sydney Blenkinsop and Emily Wilson (the “Respondents”) with vacant possession of a rental unit in the complex on behalf of the Landlords.

[6] On November 2, 2020, the Appellant provided the Tenants with an N12 Notice To Terminate The Tenancy (the “Eviction Notice”) pursuant to [s. 48](#) of the *RTA*, effective on December 30, 2020. He did this on behalf of the Landlords. In that notice, the Appellant indicated on the N12 form that the Landlord intended to occupy the rental unit for at least one year. He identified himself on the Notice as both “a Landlord and a Representative.”

[7] As a result of receiving the N12 notice, the Tenants vacated the property on November 30, 2020.

[8] When the Tenants discovered that the Complex containing the rental unit was listed for sale less than one year after they had vacated the rental unit, they filed a Bad Faith Application with the LTB pursuant to [s. 57](#) of the *RTA* on February 23, 2001.

[9] [Section 57 \(5\)](#) of the *RTA* establishes a presumption (refutable on a balance of probabilities) that a s. 48 notice was made in bad faith if, within one year of the Tenant vacating the rental unit, that unit or the building containing the rental unit is advertised for sale.

[10] Through the various steps of that process, the LTB found that the Appellant had permitted the tenants to occupy the rental unit with the knowledge of the Landlords. In the Preliminary Order, the LTB also concluded the Appellant was a “Landlord” within the meaning of the [s. 2\(1\)](#) of the *RTA*.

[11] As well, the LTB held that the Appellant “may have been acting as an agent” of the Landlords when he served the Eviction Notice on the Tenants.

[12] Pursuant to a Compensation Order, dated November 8, 2022, the LTB held that the Appellant had acted as a Landlord for the duration of the tenancy and that the presumption prescribed in [s. 57 \(5\)](#) was not rebutted. As a result, an order was made that both the Landlords and the Appellant were jointly liable to pay compensation to the tenants in the amount of \$7, 253.

[13] In the Review Order dated January 9, 2023, the original finding that the Appellant was a Landlord was upheld. Further, it was found that the fact that the Appellant was acting as agent for the Landlords in serving the N12 Eviction Notice, was “not material to the results of the order.” The Appellant’s submission that he should not be liable pursuant to [s. 57](#) of the *RTA* was rejected.

The Law

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[14] It is not disputed that this section only permits an appeal to this court on a question of law ([s. 210 \(1\)](#)).

[15] The applicable standard of review on a question of law is correctness: see *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019 SCC 65](#), [2019] 4 S.C.R. 653 at paras. 36-37.

Issue

[16] At the hearing of this appeal, the Appellant only advanced one ground of appeal.

[17] The Appellant asserts that the LTB committed an error in law by finding him jointly liable, pursuant to [s. 57](#) of the *RTA*, for serving the Eviction Notice in bad faith because the LTB did not analyze the separate roles and responsibilities of the Landlords and the Appellant in the serving of the N12 Notice of Eviction.

Positions of the Parties

Appellant

[18] The Appellant concedes that it was open to the Board to conclude that the Appellant was a Landlord within the meaning of the *RTAL* see *Tremblay v. Ogunfelbo*, [2019 ONSC 7423](#), 441 D.L.R. (4th) 347.

[19] However, the Appellant submits that the LTB committed an error of law by concluding that he was jointly liable for the amounts ordered by the LTB without considering or analyzing the separate roles and responsibilities that the Landlords and the Applicant had with respect to the Complex. He notes the fact that the Appellant was not an owner of the property. Therefore, as he did not have legal authority to sell the property, he could not be legally responsible for a breach of [section s. 48](#) of the *RTA* by selling the Complex within one year of the Respondents vacating the Complex.

[20] The Appellant submits that a proper interpretation of [s. 57](#) of the *RTA* is that in situations of multiple Landlords, only landlords who are owners of a property can be held legally responsible for acting in bad faith termination of a tenancy where a sale is involved contrary to the provisions of [s. 48](#).

[21] Had the LTB conducted this necessary inquiry to consider to what degree the Appellant was legally responsible, they would have concluded he was not liable because while he was a landlord; he was not an owner with the legal ability to sell the property.

[22] Section 202 requires the LTB to take a careful look at the nature of the relationship. This was not done in this instance.

[23] Section 202 of the *RTA* provides as follows:

202(1) in making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so,

(a) may disregard the outward form of a transaction or the separate corporate existence of participants; and

(b) may have regard to the pattern of activities relating to the residential complex or the rental unit; and

(c) may have regard to the pattern of activities, relating to the residential complex or rental unit.

[24] The appellant submits it was an error of law for the LTB not to examine the nature of the relationship between the Landlords and the Appellant as required by s. 202 and allocate responsibility accordingly.

Landlord Tenant Board

[25] The position of the LTB is that the decision to find that the Appellant met the definition of “Landlord” within the wording of the *RTA* and that the N12 Notice of Eviction was served in bad faith are findings of mixed fact and law. Accordingly, such decisions are not reviewable on appeal by this court.

[26] As well, the LTB submits that it did not err in law by not considering the roles and responsibilities of the respective Landlords.

[27] The *RTA* is legislation introduced to provide protection to tenants in the province of Ontario. It covers the rights and obligations between Landlords and Tenants. The purpose of the legislation is to establish and enforce those rights and obligations. The legislation does not set out a requirement or process for the LTB to determine the respective rights, responsibilities, and obligations as between Landlords.

[28] Section 202 cannot be interpreted as requiring the LTB to inquire and determine the degree of responsibility that each Landlord bears when there has been a breach of s. 48.

[29] Accordingly, once the LTB made a determination that the Appellant was a Landlord, the provisions of s. 51 (5) apply equally to him.

Analysis

[30] For the reasons that follow, the appeal is dismissed. There is no requirement in the *RTA* for the LTB to adjudicate and apportion responsibility and liability as between multiple Landlords in the event of a breach of the s. 48 of the *RTA*.

[31] Section 1 of the *RTA* states as follows:

The purposes of this act are to provide protection for residential tenants from unlawful rent increases and unlawful evictions, to establish a framework for the regulation of residential rents, to balance the rights and responsibilities of residential Landlords and tenants and to provide for the adjudication of disputes and for other processes to informally resolve disputes. 2006, c. 17, s. 1.

[32] The balancing of rights referenced in this section is between residential Landlords and Tenants. It is, specifically, not a statute designed to address the balancing of rights between multiple Landlords with respect to a specific residential unit.

[33] Nowhere in this consumer protection legislation is there language requiring the LTB to make such inquiries and determine issues as between multiple Landlords.

[34] If the legislation required the LTB to make an inquiry and determination with respect to determining and apportioning responsibilities and liability as between multiple

Landlords, as part of an inquiry to determine whether there has been a breach of [s. 48](#) of the [RTA](#), the [RTA](#) would clearly and unequivocally state this. It does not.

[35] As well, such a statutory scheme runs contrary to the general purpose of the legislation. For example, it would require tenants who file a bad faith application pursuant to [s. 57](#) to participate in a process that could stretch out extensively beyond a finding a violation of [s. 48](#) in order for the Tribunal to apportion responsibility and liability among multiple Landlords.

[36] Such a process could be factually complicated and legally lengthy. It could involve extensive evidence determining contractual rights and responsibilities between any number of Landlords with respect to a specific property.

[37] There are also numerous other methods or processes to apportion liability among multiple Landlords, including, but not limited to, contractual arrangements between Landlords who are owners and their agents, such as the Appellant. In many (if not most) instances that would involve the hearing of evidence with respect to the contractual relationships between Landlords. In many instances, the Tenants would have no knowledge of any such contracted arrangements.

[38] The purpose of [s. 202](#) of the [RTA](#) is to assist the Tribunal in determining the real nature of the relationship between Landlords and Tenants. It is not to require the Tribunal to determine the relationship between multiple Landlords in the event of a breach of the [RTA](#).

[39] Had the legislature mandated that the LTB address and apportion responsibility for breaches of [s. 48](#) of the [RTA](#), it would have been an error in law for the LTB not to undertake such an inquiry. However, as this requirement is not mandated or directed by the [RTA](#), there can be no error of law due to a failure of the LTB to make such an inquiry and determination.

Conclusion

[40] Accordingly, the appeal is dismissed.

[41] As the successful party, the LTB is not seeking costs. Therefore, the appeal is dismissed without costs.

Justice George W. King

Justice Harriet Sachs

Justice Adriana Doyle

Released: February 27, 2024

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