CITATION: Linhares v. Rahman, 2023 ONSC 1435
DIVISIONAL COURT FILE NO.: 540/22
DATE: 20230302

SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT

RE: FELIX LINHARES, Responding Party/Appellant

AND:

NAFISA RAHMAN, Moving Party/Respondent

BEFORE: Nishikawa J.

COUNSEL: *Felix Linhares*, in person

Kent Wakely, for the Respondent/Moving Party

HEARD at Toronto: February 28, 2023 (by videoconference)

ENDORSEMENT

Overview

[1] The Appellant tenant, Felix Linhares, has rented a residential premises from the Respondent landlord, Nafisa Rahman, since 2013. On December 31, 2021, the Respondent gave the Appellant notice of termination of the tenancy under s. 48(1) of the *Residential Tenancies Act 2006*, S.O. 2006, c. 17 (the "*RTA*"), on the basis that she required possession of the rental unit for the purpose of residential occupation for at least one year.

[2] In her decision dated August 17, 2022 (the "Decision"), Member Tancioco of the Landlord Tenant Board ("LTB") made an order terminating the tenancy and evicting the Appellant as of September 30, 2022.

[3] The Appellant raises the following grounds of appeal:

(i) The Member failed to apply s. 71.1(3) of the *RTA* by proceeding with the hearing even though the Respondent had not disclosed all previous applications;

(ii) The Member did not properly consider the prior N12 notices issued by the Respondent;

(iii) The Member failed to consider evidence that the N12 notice was given in reprisal for the Appellant's objection to an unlawful increase in rent; and

(iv) The Member failed to consider the absence of evidence supporting the Respondent's application.

[4] The Respondent brings a motion to quash the appeal on the basis that the Appellant has failed to raise a question of law.

[5] At the hearing of the motion, it became evident from the transcript of the hearing before the LTB that the Member had stated that the parties would be permitted to make post-hearing submissions on the issue of whether the landlord or owner of the unit was a corporation, as the Appellant alleged, in which case, the Respondent would not be entitled to deliver notice under s. 48(1) of the *RTA*. See: *RTA*, s. 48(5). In the Decision, without having provided an opportunity for post-hearing submissions, the Member found that the Respondent owned the unit with her daughter and carried out the duties of landlord. While the Appellant did not raise this as a ground of appeal, I have nonetheless considered it, as further detailed below.

[6] For the reasons that follow, the appeal is quashed.

Analysis

The Applicable Principles

[7] Under s. 134(3) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, a court to which an appeal is taken may, in a proper case, quash the appeal.

[8] Section 210 of the *RTA* provides a statutory right to appeal a decision of the LTB, but only on a question of law. An appeal that fails to raise a question of law is manifestly devoid of merit and may properly be quashed on a motion: *Thompson v. Parish of Hastings*, 2013 ONSC 6829, at para. 30; *White Spruce Apartments v. Anne Deschenes,* 2016 ONSC 5058, at paras 10-12.

[9] In *Yatar v. TD Insurance Meloche Monnex*, 2021 ONSC 2507, at para. 28, this court explained what constitutes a question of law in the context of a statutory appeal, as follows:

> On a statutory appeal limited to questions of law alone, the court considers whether the decision-maker correctly identified and interpreted the governing law or legal standard relevant to the facts found by the decision-maker. There are limited circumstances in which findings of fact, or the administrative decision-maker's assessment of evidence, may give rise to an error of law alone for the purposes of appeal. If the adjudicator ignored items of evidence that the law required him or her to consider in making the decision, then the adjudicator erred in law: *Canada (Director of Investigation and Research) v. Southam Inc.*, 1997 CanLII 385 (SCC), [1997] 1 S.C.R. 748 at para. 41. Challenges to the sufficiency or weight of evidence supporting a finding of fact do not give rise to a question of law. An error in law or legal principle made during the fact-finding exercise, however, can give rise to an extricable question of law. A "misapprehension" of the evidence does not constitute an error of law unless the failure is based on a wrong legal principle: *R. v. J.M.H.*, 2011 SCC 45, [2011] 3 S.C.R. 197, at paras. 25 and 29. It is an error of law to make a finding of fact on a material point where the factual finding is based solely

on (a) no evidence, (b) irrelevant evidence, or (c) an irrational inference (*Johannson v. Saskatchewan Government Insurance*, 2019 SKCA 52 at paras. 24-25).

Application

[10] In my view, the grounds raised by the Appellant do not fall within the limited circumstances in which an administrative decision-maker's assessment of evidence gives rise to an error of law. The Appellant essentially disagrees with the Member's findings made on the evidence that was before her. These are questions of fact which fall outside this court's jurisdiction under s. 210.

[11] Specifically, the Member did not ignore evidence that the law required her to consider. The Decision reflects that the Member considered the previous N12 applications and the Appellant's testimony that the notice was issued in reprisal but rejected the inferences urged by the Appellant. Similarly, the Member did not disregard the Appellant's evidence of bad faith. The Member accepted on the evidence before her that the Respondent had met the requirements of s. 71.1 of the *RTA*. In addition, the Appellant does not identify an error in law or legal principle made during the fact-finding exercise or a misapprehension of the evidence based on a wrong legal principle.

[12] Although the Appellant did not raise it as a ground of appeal, out of an abundance of caution, I have considered whether the Member's failure to provide an opportunity for post-hearing submissions, despite having stated that she would, could give rise to an issue of procedural fairness, which would be within this court's jurisdiction. However, even if the parties had been afforded an opportunity to make post-hearing submissions, this would not have affected the outcome before the LTB. On this motion, the Respondent filed the parcel register which shows that her daughter, Sabreen Rahman, is the owner of the premises. The Respondent had testified before the LTB that she contributed toward the purchase of the unit and that she and Sabreen owned the unit. Moreover, the Appellant admitted that he always dealt with the Respondent as his landlord. Had post-hearing submissions been made, the Appellant would not have been able to show that the landlord and/or the owner of the premises was not an individual. In short, although the Appellant did not allege a breach of procedural fairness, if the parties had made post-hearing submissions, the inevitable legal result would have been a finding that the Respondent could avail herself of s. 48(1) of the *RTA*.

[13] Accordingly, I find that the appeal raises no question of law and is devoid of merit.

Conclusion

[14] For the foregoing reasons, the Respondent's motion to quash the appeal is granted. The automatic stay of the LTB's order is to be lifted. In order to permit the Appellant to make arrangements to vacate the premises, the lifting of the stay is not to take effect until 15 days after the release of this endorsement, on March 17, 2023.

[15] As the successful party, the Respondent is entitled to costs. The Respondent submitted a costs outline for partial indemnity costs to the date of her offer to settle and substantial indemnity costs thereafter, for a total of $7,720.00, all-inclusive. I find that the Respondent's offer to settle is not a true compromise that would attract cost consequences. I fix costs of the motion on a partial indemnity basis at $5,000, all-inclusive, payable by the Appellant to the Respondent, which I find to be fair and proportionate in the circumstances.

[16] Counsel for the Respondent may file a draft order by email with the Divisional Court Office (to my attention), copied by email to the Appellant and to counsel for the LTB. I

dispense with the requirement that the Appellant approve the draft order as to form and content.

"Nishikawa J."

Date: March 2, 2023