

Rathnayaka v. 650 Parliament Residences, 2024 ONSC 860 (CanLII)

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DIVISIONAL COURT FILE NO.: 696/23
DATE: 20240208

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

RE: Ujitha Sanjaya Rathnayaka, Tenant/Moving Party
AND:
650 PARLIAMENT RESIDENCES, Landlord/Moving Party
BEFORE: Leiper J.
COUNSEL: *Ujitha Rathnayaka*, Tenant/Moving Party
Charlie Bobrowsky, for the Landlord/Moving Party
Eli Fellman, for the Landlord and Tenant Board
HEARD: In writing at Toronto on February 7, 2024

ENDORSEMENT

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[1] The Appellant/Tenant has brought a motion to extend the time to file an appeal from an order of eviction made by the Landlord and Tenant Board on August 30, 2023.

[2] Following a case conference held on December 19, 2023, I ordered a temporary stay of the eviction order and set a schedule for the motion on terms which required the tenant to bring his rent into good standing and to pay enforcement costs of the landlord. I also permitted the tenant to seek dismissal of the appeal as an abuse of process in the responding material.

[3] The tenant has filed evidence that he has brought his rent into good standing. Both parties have filed material on this motion to extend time. The landlord seeks an order

quashing the appeal on the basis that it does not raise a question of law and is an abuse of process.

[4] The tenant's affidavit alleges that he and other tenants were required to live elsewhere after their building was damaged by an electrical fire in 2018, and that in the aftermath of that, a class action lawsuit has been brought against the landlord. Although not disputing the fact that he had a pattern of late rent payments, the tenant has alleged that the proceedings before the Board were brought for an oblique motive, that is as reprisal for his participation in the class action lawsuit. None of that material was put before me on the motion. The tenant's affidavit describes his financial struggles as a student and part time ride sharing driver during this period. He deposes that he has started working again. This means that he is able to, and has, made his rent payments in accordance with the terms of his lease.

[5] The tenant missed his hearing and did not participate, he says, because he misunderstood the time of the hearing. He sought a review, but his request was denied, which led to the order of the Board.

[6] The tenant has not yet filed a Notice of Appeal. An appeal is only permitted on a question of law, and although a failure of procedural fairness may constitute a question of law, the Board has a broad discretion in determining whether a further hearing should be held or whether a hearing should be adjourned when a party does not attend despite receiving notice. In cases where tenants raise the issue of their inability to participate, coupled with ongoing failure to pay their rent and where there are outstanding arrears, this court frequently finds that those circumstances amount to an abuse of process and/or an appeal that is devoid of merit and quashes those appeals: see for example *Byfield v. Gill*, [2021 ONSC 4008 \(CanLII\)](#) at para. 23.

[7] In this case, the facts are slightly different. The tenant has described his circumstances and has made efforts to bring his rent into good standing. This is not a case of arrears that have accumulated such that the combination of an appeal plus arrears would lead to an inference that the tenant is using the legal system unfairly to the disadvantage of the landlord. While the alleged grounds of appeal are unlikely to amount to an error in law, I would not conclude that they are so completely devoid of merit that this appeal should be quashed. It appears that the tenant has made some effort to seek legal representation and he is well advised to do so in pursuing this appeal. Further, he will have to continue to make payments on account of his rent, on time, pending the appeal so that the landlord is not prejudiced.

[8] Accordingly, I order that the motion for an extension of time is granted. The tenant is to serve and file a Notice of Appeal within 15 days of release of these reasons and is to order the recordings of the hearing before the Landlord and Tenant Board. He will continue to pay his rent as a term of maintaining the stay. Failure to do so will mean the landlord may move in writing for an order lifting the stay of eviction supported by an affidavit and on notice to the tenant.

[9] The parties are to confer on a schedule for the exchange of materials on the appeal and provide it to the court within 30 days of the release of these reasons for approval.

Leiper J.

