

Goldfeder v. Kanagathurai, 2023 ONSC 6130 (CanLII)

Date: 2023-10-30
File number: 411/23
Citation: Goldfeder v. Kanagathurai, 2023 ONSC 6130 (CanLII),
<<https://canlii.ca/t/k0vgv>>, retrieved on 2024-02-22

CITATION: Goldfeder v. Kanagathurai, 2023 ONSC 6130
DIVISIONAL COURT FILE NO.: 411/23
DATE: 20231030

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

RE: KELLY GOLDFEDER, Appellant/ Tenant

AND:

PAVAL KANAGATHURAI, Respondent/ Landlord

BEFORE: O'BRIEN, J.

COUNSEL: Self-represented Appellant/ Tenant

Michael W. Ruso and Khaled Gheddai, for the Respondent/ Landlord

HEARD: In Writing

ENDORSEMENT

[1] The respondent landlord has brought a motion in writing for an order dismissing the appeal.[1] The landlord submits the appeal should be dismissed because of the tenant, Ms. Goldfeder's, delay in filing her appeal material and failure to comply with the court's directions. I agree.

[2] Following a lengthy history before the Landlord and Tenant Board, which I will not address in detail, this court has given Ms. Goldfeder more than one opportunity to demonstrate she intends to proceed with her appeal. At a case conference on August 17, 2023, which Ms. Goldfeder did not attend, Justice Schabas declined to dismiss the appeal summarily as an abuse of process, as requested by the landlord, but stated:

[I]n light of the long history of these proceedings and the recent comments of the LTB that the tenant has not been acting in good faith, I am satisfied that this matter needs to be dealt with expeditiously.

[3] Justice Schabas then established a schedule requiring Ms. Goldfeder to file her materials by September 1, 2023. He stated that if she failed to comply with the schedule, the

landlord could seek an urgent case conference to request that the appeal be dismissed.

[4] The landlord then sought such a case conference because Ms. Goldfeder had not complied with Justice Schabas's directions.

[5] Ms. Goldfeder did not attend the subsequent case conference on September 19, 2023. Following that case conference, Justice Matheson gave Ms. Goldfeder a further opportunity to file her materials. Pursuant to Justice Matheson's directions, Ms. Goldfeder was required to file her appeal materials by October 3, 2023. Justice Matheson wrote:

Over the landlord's objections, the tenant shall have one more opportunity to serve and file their court materials required for this appeal. If the tenant fails to comply, the landlord may request that the court lift the stay, that the eviction proceed, and that the appeal is dismissed.

[6] The landlord has now filed an affidavit stating that Ms. Goldfeder still has not filed her material.

[7] It has been almost a month since Ms. Goldfeder's materials were due pursuant to Justice Matheson's directions and she has not filed any information to contest the landlord's affidavit. [Rule 3.04\(4\)](#) of the *Rules of Civil Procedure, R.R.O. 1990, Reg. 194* authorizes the court to dismiss a proceeding for failure to comply with a timetable. Rule 61.13(1)(b) permits a Registrar and, by analogy, a judge, to dismiss an appeal for delay.

[8] I am satisfied that Ms. Goldfeder has been given sufficient opportunity to demonstrate she intends to pursue her appeal and has failed to do so. The appeal is dismissed. The landlord may provide a draft order to my attention. Ms. Goldfeder's consent to the order is dispensed with.

O'Brien J.

Date: 20231030

[1] The landlord directed the motion to Justice Matheson's attention pursuant to her case conference directions. However, it has been assigned to me as the case management judge for this matter.