

Kweku Kuffuor vs Sanjeev Singal & Pratibha Singal, 2023 ONSC 4704 (CanLII)

Date: 2023-08-15
File number: CV-23-91518
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ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
KWEKU KUFFUOR)
Applicant)) Self-represented
- and -))
))
SANJEEV SINGAL Self-represented
Respondent

HEARD: July 18, 2023

ENDORSEMENT

Justice H. J. Williams

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OVERVIEW

[1] Kweku Kuffuor seeks an extension of time to appeal a November 10, 2022 decision of the Landlord and Tenant Board. (The decision appealed from is LTB file # HOL-11487-21-RV).

CHRONOLOGY OF THE MOTION

[2] This is the fourth time Mr. Kuffuor has appeared in court in relation to this motion.

[3] In an endorsement dated March 14, 2023, Doyle J. found that Mr. Kuffuor had shown an intention to appeal within the relevant time period and that he had provided some explanation for the delay. Doyle J. adjourned the hearing to permit Mr. Kuffuor to order the transcripts of the LTB hearing so that the court could consider whether the appeal has merit.

[4] Mr. Kuffuor then appeared before Fortier A. J. on April 14, 2023 and asked that the transcripts be made at the cost of the court. Fortier A. J. made the order.

[5] The motion was returnable before Labrosse J. on June 6, 2023. In an endorsement, Labrosse J. described Mr. Kuffuor's "plethora" of documents as incomprehensible. Labrosse J. noted that Mr. Kuffuor had explained that his motion was to extend the time for an appeal. Labrosse J. ruled that Mr. Kuffuor would have the right to re-file his motion, but that he would be limited to filing a notice of motion, an affidavit accompanied by properly labelled exhibits explaining the history of this proceeding, and a factum setting out the proper test to extend time.

[6] At the time of the hearing before Labrosse J., there were 202 Plaintiff/Applicant documents in the Master Bundle on Caselines. At the time of the hearing before me on July 18, 2023, the Master Bundle contained 1,164 Plaintiff/Applicant documents, many of which were duplicates.

[7] Mr. Kuffuor was able to identify the documents he had filed further to Labrosse J's endorsement: Notice of motion (Caselines Master Bundle #1164); affidavit (Caselines Master Bundle #706); factum (Caselines Master Bundle #707).

[8] Mr. Kuffuor's notice of appeal was document #7 in the Caselines Master Bundle.

[9] Asked whether these documents had been served on him before the hearing, the respondent Sanjeev Singal^[1] said he could not be sure. He said that he receives so many emails from Mr. Kuffuor – hundreds – that he cannot read them all.

[10] In his arguments before me, Mr. Kuffuor maintained that Doyle J. and Fortier A. J. did not agree with the LTB decision and that this was why they had concluded that the transcripts should be ordered and paid for. Mr. Kuffuor's interpretation of Doyle J.'s and Fortier A. J.'s decisions was not reflected in their endorsements.

[11] Mr. and Ms. Singal were Mr. Kuffuor's landlords. They had applied to the LTB for an order to terminate Mr. Kuffuor's tenancy and to evict him on the basis that the rented unit had been wilfully or negligently damaged. The Singals also claimed compensation for the damage. The application was heard on February 23, 2022.

[12] On May 24, 2022, the LTB found that Mr. Kuffuor had wilfully or negligently caused undue damage to the rental unit. The LTB terminated the tenancy effective June 4, 2022^[2] and ordered Mr. Kuffuor to pay repair costs of \$6,237.60.

[13] On May 27, 2022, Mr. Kuffuor asked the LTB to review the May 24, 2022 decision and to stay the order in the meantime.

[14] On May 31, 2022, the LTB stayed the May 24, 2022 order and ordered a review hearing to consider the issues raised by the tenant, including but not limited to whether the order contained a serious error concerning the remedies ordered.

[15] The review hearing was scheduled for July 28, 2022 but was adjourned at Mr. Kuffuor's request.

[16] The review hearing took place on September 7, 2022.

[17] In its November 10, 2022 decision, the LTB denied Mr. Kuffuor's request for a review.

[18] In its decision, the LTB considered the arguments raised by Mr. Kuffuor. It considered its guidelines for the review of an order, which included examples of serious errors and circumstances in which errors of fact may be successful grounds for appeal. The LTB noted that the member who conducted the May 24, 2022 hearing had heard the evidence first-hand, considered the oral and documentary evidence presented and assessed the credibility of the parties and the evidence before her. The LTB determined that there was nothing in the record to suggest that the member had applied improper principles in arriving at her conclusions, that her findings were unreasonable or that there was insufficient evidence before her to enable her to come to her conclusions. The LTB determined that the compensation ordered by the LTB was in respect of costs incurred by the landlord as a direct result of the tenant's breach and that the LTB had the jurisdiction to award the costs. The LTB was not satisfied that there was a serious error in the order or proceedings of May 24, 2022.

ANALYSIS

[19] Although Mr. Kuffuor's 12-page notice of motion dated June 20, 2023 (Caselines #1164) states that he is seeking leave to appeal, I am satisfied that, as Mr. Kuffuor told Labrosse J., he is actually seeking an extension of time to appeal, the relief Mr. Kuffuor was seeking when he appeared before Doyle J.

[20] In considering this matter, I have limited my review of Mr. Kuffuor's written materials to the documents he was ordered to file by Labrosse J. on June 6, 2023: Notice of motion (Caselines MB #1164); affidavit (Caselines MB #706); and factum (Caselines MB #707). I have also reviewed Mr. Kuffuor's notice of appeal (Caselines MB #7).

[21] Mr. Kuffuor's documents were repetitive and confusing, traits shared by his oral submissions.

[22] Although Mr. Kuffuor brought this motion under a Superior Court of Justice file number, I consider myself to have heard it in my capacity as a judge of the Divisional Court.

Right of appeal a decision of the LTB

[23] Under s. 210(1) of the *Residential Tenancies Act*, any person affected by an order of the LTB may appeal the order to the Divisional Court within 30 days after being given the order, but only on a question of law.

Time for an appeal

[24] An appeal to an appellate court shall be commenced by serving a notice of appeal and a certificate of evidence within 30 days after the making of the order appealed from: Rule 61.04(1) of the *Rules of Civil Procedure*. The notice of appeal and proof of service must then be filed within 10 days of service: Rule 61.04(4).

The test for an extension of time to appeal

[25] As Schabas J. noted recently in *Attorney General of Ontario v. Hazout*, [2023 ONSC 1961](#), at para. 6, the test on a motion to extend time is well-settled and was summarized by Simmons J.A. in *Sheth v. Randhawa*, [2022 ONCA 89](#), at para. 15:

The test on a motion of this kind is well-established. The ultimate question is whether the justice of the case warrants the order requested. Factors to be considered in making the decision are: (i) whether the appellant formed an intention to appeal within the appeal period; (ii) the length of the delay; (iii) the explanation for the delay; (iv) the merits of the proposed appeal; and (v) prejudice to the responding parties.

The application of the test for an extension of time to appeal to this case

[26] Justice Doyle has already found that Mr. Kuffuor formed an intention to appeal the November 10, 2022 decision within the appeal period and that he provided some explanation for the delay.

[27] The remaining issues to be decided are the length of the delay, the merits of the proposed appeal and prejudice to the responding party.

The length of the delay

[28] I have carefully reviewed the documents filed by Mr. Kuffuor and the respondent.

[29] Although, as I will discuss below, there is an issue about whether the manner of service of Mr. Kuffuor's notice of appeal strictly complied with the *Rules of Civil Procedure*, the notice appears to have been served in time. For perhaps understandable reasons, however, the Divisional Court understood Mr. Kuffuor to be bringing a motion for leave to appeal and told him that his motion was out of time and that an extension of time was required.

[30] Mr. Kuffuor did not file his notice of appeal within 10 days of service, as required, because, as directed by the Divisional Court, he embarked upon this motion to extend time.

[31] The decision appealed from was a Landlord and Tenant Board review order dated November 10, 2022. Mr. Kuffuor says he left a copy of his notice of appeal at the respondent's home the afternoon of Saturday, December 10, 2022. (Mr. Singal says he received nothing.)

[32] It is clear from the documents filed by both parties that at 7:09 p.m. on December 10, 2022, Mr. Kuffuor sent an email to the paralegal who had been on the record for the respondent at the September 7, 2022 review hearing (Lori Shepherd at info@accesstojusticeottawa.ca) and to the Divisional Court. Mr. Kuffuor says the notice of appeal was attached.

[33] Under Rule 3.01(1)(c) of the *Rules of Civil Procedure*, where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday. In this case, the 30-day period for serving a notice of appeal expired on Saturday, December 10, 2022. Therefore, by operation of Rule 3.01(1)(c), Mr. Kuffuor had until Monday, December 12, 2022 to serve his notice. He was not out of time.

[34] On Monday, December 12, 2022, the Divisional Court responded to Mr. Kuffuor's December 10, 2022 email, with a copy to Mr. Singal's paralegal. (See Caselines document #B-1-96.) The Divisional Court clerk said that based on the documents provided, it appeared that Mr. Kuffuor was seeking leave to appeal a November 10, 2022 decision. The clerk said the motion was out of time and that Mr. Kuffuor would not be permitted to pursue it without an order to extend the time. The clerk said that Mr. Kuffuor could do this by serving and filing a notice of motion for an extension of time.

[35] Although the document Mr. Kuffuor had sought to serve and file was a Form 61A notice of appeal, the subject line of his email was "motion of appeal." This was the likely source of the confusion at the Divisional Court. Under Rule 61.03(3), the deadline for service of notice of motion for leave to appeal is 15 days. If Mr. Kuffuor had been seeking leave to appeal, he would have been out of time to serve his notice of motion. However, despite the misleading subject line of his email, Mr. Kuffuor was not seeking leave to appeal, he was seeking to appeal, and he had 30 days to serve his notice of appeal.

[36] Mr. Singal says he was not served properly. He denies having received a copy of the notice of appeal at his home. Mr. Singal says the paralegal who represented him before the LTB, to whom Mr. Kuffuor had emailed the notice of appeal, was not qualified to work in the Superior Court and Mr. Singal had not retained her for purposes of the appeal. Regardless, the paralegal was on the record for the Singals at the LTB review hearing. Even if she could not represent Mr. Singal on the appeal, she was required to bring Mr. Kuffuor's notice of appeal and the Divisional Court's response to Mr. Singal's attention when she received them. If validation of service is required, I would validate service. Although Mr. Singal says he was not served properly, he does not suggest that the notice of appeal did not come to his attention and I am satisfied that it did.

[37] For these reasons, I have concluded that Mr. Kuffuor's notice of appeal was served in time but was not filed in time because of a misunderstanding and the ensuing direction given to Mr. Kuffuor by the Divisional Court to bring a motion to extend time.

Conclusion

[38] Even when Mr. Kuffuor's notice of appeal is read generously, considering Mr. Kuffuor's self-represented status, it is difficult to identify a meritorious basis, or any basis, for his appeal, particularly as appeals of LTB decisions are restricted to questions of law.

[39] Mr. Singal describes Mr. Kuffuor as an experienced, serial litigant who is using the legal system to harass and torture him. Mr. Singal says Mr. Kuffuor caused serious damage to the brand-new home Mr. Singal leased to him, that Mr. Singal has been required to expend more than \$30,000 in legal fees and repair costs, and that Mr. Singal's and his and his wife's

mental and physical health are suffering as a result. Mr. Singal says that he and his wife have attended nine hearings related to Mr. Kuffuor's tenancy.

[40] Mr. Singal says he would he would be severely prejudiced if Mr. Kuffuor is permitted to proceed with this appeal.

[41] However, on a motion such as this, the court must not consider prejudice that would be caused by the progress of the appeal itself, but prejudice resulting from the delay in filing the notice of appeal. (*40 Park Lane Circle v. Aiello*, [2019 ONCA 451](#) at para. 6.) There is no evidence of any prejudice resulting from the filing delay.

[42] I am not without sympathy for Mr. Singal and his wife, who are obviously extremely distressed by the events associated with Mr. Kuffuor's tenancy and now feel that they are being unfairly punished by the litigation that has followed, initially before the LTB and now in the courts. I have, however, concluded that Mr. Kuffuor served his notice of appeal in time. There was, therefore, no delay in relation to the service of the notice of appeal. The only reason that Mr. Kuffuor now requires an order extending the time to file his notice of appeal is that when he emailed it to the Divisional Court on December 10, 2022, the clerk understood, incorrectly, that he was bringing a motion for leave to appeal and informed him that he was out of time and that a motion to extend time was required.

[43] I have concluded that, in these circumstances it would be unjust to deny Mr. Kuffuor the right to proceed with his appeal, regardless of its dubious merits.

[44] Further, the Court of Appeal has made it clear that even though the merits of the appeal are in doubt, a party should not be deprived of a right of appeal where there is no real prejudice to the other side: *Correct Building Corporation v. Lehman*, [2022 ONCA 723](#) at para. 15, citing *40 Park Lane Circle*, a para. 8.

[45] For these reasons, I do not believe that I have any option but to make an order extending the time for Mr. Kuffuor to file his notice of appeal.

Disposition

[46] I make the following orders:

1. Mr. Kuffuor shall serve the respondent with the certificate of evidence required under Rule 61.05(1) within 10 days of the date of this decision;
2. Mr. Kuffuor shall file the notice of appeal he served on December 10, 2022 and the certificate of evidence, with proof of service of both, within 15 days of the date of this decision;

3. Mr. Kuffuor shall ensure that the notice of appeal is assigned a Divisional Court file number.

Costs

[47] The costs of this motion shall be reserved to the Divisional Court panel which hears the appeal.



Justice H. J. Williams

Date: August 15, 2023

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SUPERIOR COURT OF JUSTICE

BETWEEN:

KWEKU KUFFUOR

Applicant

– and –

SANJEEV SINGAL & PRATIBHA SINGAL
Respondents

ENDORSMENT

H. J. Williams J

Released: August 15, 2023

[1] Mr. Singal's wife, Pratibha Singal also attended the hearing before me. However, as only Mr. Singal was named as a respondent in Mr. Kuffuor's notice of appeal and notice of

motion, I will refer in this decision to “the respondent”, singular, and only to Mr. Singal.
[2] The Singals say that Mr. Kuffuor moved out of the rental unit on April 6, 2022.