CITATION: Pelletier v. Bloorston Farms Ltd., 2023 ONSC 5626
DIVISIONAL COURT FILE NO.: 161/23
DATE: 20231006

ONTARIO

SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

BETWEEN:	
DEREK PELLETIER Appellant	*Samuel Mason*, for the Appellant
– and –	
BLOORSTON FARMS LTD. Respondent	*Timothy Duggan*, for the Respondent
	HEARD at Toronto by videoconference: 25 September 2023

Leiper, J.

Introduction

[1] Derek Pelletier appeals orders made by the Landlord and Tenant Board on December 5, 2023, and February 15, 2023, which denied his motion to set aside an eviction order and denied his request to review that decision.

[2] Mr. Pelletier has lived in a rent-controlled building in the Parkdale neighbourhood in Toronto for the past 10 years. At the time of the hearing, Mr. Pelletier was paying a monthly rent of $652. Mr. Pelletier is in his 60's. He has a disability that affects his

ability to walk. He is employed by Canada Post and works nights. His adult son lives in another unit in the same building.

[3] At the heart of the proceedings before the Board was the validity of an agreement which Mr. Pelletier signed with the former corporate landlord, agreeing to terminate his tenancy in exchange for a $6,000 payment from the landlord. After signing the document, he contacted the landlord because he did not want to give up his tenancy. The landlord refused. Proceedings before the Board followed. The landlord requested and obtained an order to evict Mr. Pelletier, who then brought a motion to set aside that order.

[4] At the hearing of the motion to set aside the eviction order, Mr. Pelletier raised issues of duress, unconscionability, and misrepresentation on the part of the agent for the former landlord. The Board found that Mr. Pelletier was not credible in his evidence of duress. During his evidence, the Board questioned Mr. Pelletier on whether he could hold up his phone to prove the number of times that the landlord's agent contacted him. The Board also asked during his evidence in chief whether he had brought his pay records to show he missed time at work, because he testified that this occurred due to the stress caused by the agent for the landlord. The Board made findings of credibility against Mr. Pelletier in part on his failure to bring corroborative evidence on the issue of duress. It concluded he had not made out duress.

[5] The Board's reasons did not address evidence from Mr. Pelletier in support of his alternative argument that the landlord's agent had misrepresented to him the facts and his rights by telling him that the building was condemned, that he was going to be evicted whether he signed the document presented to him or not, without any compensation, and that a visit from the sheriff was imminent. The Board's reasons did not address evidence from Mr. Pelletier's adult son, who lives in the same building, that similar representations were made to him by the same agent for the landlord.

[6] Mr. Pelletier submits that the Board's failure to consider the misrepresentation evidence led it to err in its application of the *Residential Tenancies Act, 2006*, SO 2006, c. 17 ("*RTA*") to the question of setting aside the order for eviction. He submits in the alternative that the Board applied the wrong test in law for what amounts to an unconscionable agreement.

[7] Counsel for the landlord submits that the findings of credibility that applied to the argument that Mr. Pelletier acted under duress are equally applicable to the misrepresentation argument, and that he was either credible or he was not. Counsel for the landlord submits that the Board did not err in how it approached the question of setting aside the eviction order, because that decision was based on facts and credibility findings arising from the evidence before the Board. Counsel for the landlord also submits that the Board did not err in making the findings that it did on unconscionability because the facts did not support a finding that the agreement was unconscionable.

[8] I will consider each issue raised on the appeal in turn. In doing so, I apply the standard of correctness, given that only questions of law are the proper subject of an appeal from the Board. See: *RTA* ss. 210(1), (4) and (5); *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 37.

Did the Board fail to comply with its duties pursuant to s. 77(8)(a) and (b) of the Residential Tenancies Act?

[9] Mr. Pelletier exercised his rights under s. 77(8) of the *RTA* to bring a motion to seek relief from eviction. The applicable part of this section reads:

77 (8) If the respondent makes a motion under subsection (6), the Board shall, after a hearing,

(a) make an order setting aside the order under subsection (4) if,

(i) the landlord and tenant did not enter into an agreement to terminate the tenancy, ...

(b) make an order setting aside the order under subsection (4), if the Board is satisfied, having regard to all the circumstances, that it would not be unfair to do so; or ...

[10] The Board's guidelines describe these provisions in plain language that:

Even though a landlord proves their case in an application to evict a tenant, the Board must review and consider the circumstances of each case to determine whether or not the eviction should be refused or delayed. In some cases, the Board must refuse the eviction. These powers are referred to as "relief from eviction".

See: *Landlord and Tenant Board Interpretation Guideline 7: Relief from Eviction – Refusing or Delaying an Eviction*

[11] In applying this section on a motion for relief from eviction, the Board is required to examine the facts and circumstances surrounding the making of the agreement and the broad context of the dispute between the parties: *Pinto v. Regan and White v. Regan*, 2021 ONSC 5502 at paras. 28-29. Failure to consider facts it was bound to consider under these provisions will constitute an error in law by the Board.

[12] Mr. Pelletier explicitly raised the issue of misrepresentation by the agent for the landlord in his motion materials, which alleged that, "[T]he Landlord further misled the tenant that there was nothing he could do to protect his tenancy, and if he refused to sign the Agreement he would still be evicted and removed from his home."

[13] Mr. Pelletier gave evidence on this point and was cross-examined. His adult son testified that similar representations were made to him. The agent for the landlord described the conversation that he had with Mr. Pelletier about the offer in general terms. The agent testified that Mr. Pelletier was interested in the compensation offered to him. The words of misrepresentation were not put to the agent for the landlord either by the landlord's lawyer or in cross-examination.

[14] Mr. Pelletier argued the issue of misrepresentation in his final submissions. The Board's reasons did not address this argument or the evidence of misrepresentation, confining its analysis to the evidence of duress and its findings of credibility in favour of the landlord.

[15] I conclude that the Board erred in law. The alleged misrepresentation was a separate argument from that of duress. Similar representations were the subject of evidence from another tenant, Mr. Pelletier's son, who did not sign the agreement presented to him. This evidence went to the heart of the question: why someone who had lived 10 years in a building with rent commensurate with his income, objectively far below market rent in Toronto, would sign such an agreement? Section 77(8) of the *RTA* required the Board to grapple with this evidence, the submissions, and to explain why it had rejected the evidence of misrepresentation, which was confirmed by other evidence. It did not do so.

[16] The error at first instance was repeated at the review stage which found that the Board member at the motion had "considered the validity of the agreement, including any misrepresentations, and provided cogent reasons for her rejection of the Tenant's claims of misrepresentation."

[17] This is not an accurate description of the reasons for rejecting Mr. Pelletier's motion for relief from eviction.

[18] Alternatively, if the Board at the hearing or on review concluded that duress and misrepresentation arose from the same factual and/or legal foundation, this is an error. Duress and misrepresentation are separate legal concepts: *Deschenes v. Lalonde*, 2020 ONCA 304, at paras. 28-29.

[19] As the Supreme Court noted at paras. 81 and 86 of *Vavilov,* reasons are the way that administrative decisions are explained to parties. This is particularly important where the reasons are silent on critical evidence that affects the significant rights and interests, in this case accessible and affordable housing, of a vulnerable individual: see *Vavilov* at para. 133.

[20] I conclude that the Board erred in law by failing to undertake its statutory duty under s. 77(8) of the *RTA* to have regard to all the circumstances around the making of this agreement, including any misrepresentations and in considering those facts in determining whether it would not be unfair to set aside the order of eviction.

[21] This finding is sufficient to address the issues on appeal, however I will briefly discuss the two other issues raised on appeal.

Other Issues: Section 202 of the *RTA* and the Unconscionability of the Agreement

[22] Mr. Pelletier also submits that the Board erred in its failure to apply s. 202 of the *RTA* which requires that the Board "in making findings 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, may disregard the outward form of a transaction or the separate corporate existence of participants; and may have regard to the pattern of activities relating to the residential complex or the rental unit."; *RTA,* s. 202(1)(b).

[23] As with the submissions under s. 77(8), the landlord does not dispute the application of these remedial portions of the legislation but relies on the findings of credibility by the Board as applying equally to the aspects of the evidence relative to misrepresentations that are absent from any discussion in the Board's reasons. For the reasons provided above in the analysis under s. 77(8), I do not accept this submission as it relates to the Board's duty to consider s. 202 of the *RTA*. There is no indication that the Board considered the good faith of the landlord given the evidence of misrepresentation before it, and circumstances that suggested that the agreement was at the landlord's instance, for the landlord's objective benefit.

[24] As the Divisional Court noted at para. 40 of *Pinto v. Regan*:

> Section 202 of the RTA imposed a statutory duty on the Member to determine questions of fact and to apply governing principles of law to ascertain the real substance of the transactions and activities regarding the rental units at issue, and the good faith of the parties to the N11. The Member did not consider all the evidence to determine the element of good faith on the part of the respondent other than making a passing reference in the Reasons. The Member did not take the totality of the evidence into account when he applied the substantive law. This amounted to an error of law.

I adopt this reasoning and apply it in the instant case.

[26] On appeal, Mr. Pelletier also argued that the Board erred in its treatment of his argument that the agreement was void for being unconscionable. An agreement is liable to

being found unconscionable where there is evidence of inequality of bargaining power and an improvident transaction: *Uber Technologies Inc. v. Heller*, 2020 SCC 16, at paras. 62 - 63.

[27] I would not give effect to this argument on this record. Mr. Pelletier did not pursue this submission on review, relying on the errors relative to the misrepresentation argument which in my view are stronger points. The evidence of vulnerability or issues of capacity on the part of Mr. Pelletier to contract with his landlord is not as compelling as the issue of misrepresentation and the failure of the Board to carry out its statutory duty given that evidence.

Conclusion

[28] I allow the appeal and set aside the orders of the Landlord and Tenant Board dated December 5, 2022, and February 15, 2023, which refused to set aside the eviction order, and set aside the *ex parte* eviction order. Given the time that this matter has taken, the evidence before the Board and the change in ownership since these events transpired, I set aside the orders for eviction.

[29] By agreement of the parties, there are no costs ordered for or against any party.

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Leiper, J.

Date: October 06, 2023

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Appellant

– **and** –

BLOORSTON FARMS LTD.

Respondent

REASONS FOR JUDGMENT

Leiper, J.

Released: 06 October 2023