

Midwest Property Ltd. v. Pare, 2024 ONSC 806 (CanLII)

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CITATION: Midwest Property Ltd. v. Pare, 2024 ONSC 806
DIVISIONAL COURT FILE NO.: 416/23
DATE: 20240206

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

RE: MIDWEST PROPERTY LTD., Landlord/Respondent

AND:

CHRISTIAN PARE, Tenant/Appellant

BEFORE: Leiper J.

COUNSEL: *Caryma S'ad*, for the Appellant
Douglas Levitt and Spencer Toole, for the Respondent
E. Fellman, for the Landlord and Tenant Board

HEARD: In writing at Toronto on February 5, 2024

ENDORSEMENT

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[1] The respondent in this appeal is the landlord of the residential rental unit at Upper Floor Unit, 658 The Queensway, Etobicoke, Ontario, M8Y 1K7).

[2] Christian Pare is the appellant/tenant in this appeal from a decision of the Landlord and Tenant Board concerning the unit.

[3] On or about March 16, 2022, the landlord served with a notice to end the tenancy. When the tenant did not vacate the unit by the deadline in the notice, the landlord filed before the Board for an order to evict the tenant.

[4] Member Kovats of the Board held a hearing on the question of termination and on February 13, 2023, issued an order which terminated the tenancy and required the unit

be vacated by March 31, 2023. The order also made provisions for payment of use and interest.

[5] The tenant sought a review of the Board's decision on the basis that he had not been reasonably able to participate in the hearing before Member Kovats. The Board stayed the termination order pending the review.

[6] On April 12, 2023, Member Priest heard the tenant's application for a review. On June 12, 2023, Member Priest denied the request to review and lifted the stay of termination.

[7] The tenant then appealed to the Divisional Court and received a stay of the Board's order. In those proceedings, the parties were directed to agree upon a schedule for the exchange of materials. They did so, and in accordance with that agreement, the tenant's materials were due on October 15, 2023. The tenant has not sought any extension to the schedule or explanation for his failure to perfect the appeal.

[8] On December 13, 2023, on notice to the tenant, the landlord filed a motion to dismiss the appeal for delay. The tenant has not responded to the motion, filed any material or provided any explanation for his failure to perfect his appeal.

[9] In the circumstances, I find that the appeal should be dismissed for delay. In *Capreit Limited Partnership v. Hume and McFarlane*, 2022 ONSC 5655 (CanLII), this court applied [Subrule 61.13\(3.1\)](#) of the *Rules of Civil Procedure, R.R.O. 1990, Reg. 194* which provides that where an appellant has not perfected the appeal within the time prescribed by an order of the appellate court or a judge of that court, the Registrar shall make an order dismissing the appeal for delay.

[10] Although subrule 61.13(3.1) speaks to the Registrar's authority to dismiss, O'Brien J. reasoned that given that, r. 1.04(2) provides that where matters are not provided for in the Rules, the practice shall be determined by analogy to them, that she could likewise dismiss the appeal before her for delay given that in that case, as in the one here, the appellant had failed to perfect the appeal and was in default of this Court's directions.

[11] The unexplained delay is now greater than three months, without explanation. The landlord's motion was served in December of 2023. The appeal is dismissed for delay.

Leiper J.

Released: February 6, 2024