

Ravadgar v. Kaftroudi, 2023 ONSC 5471 (CanLII)

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OSHAWA DIVISIONAL COURT FILE NO.: DC-23-1409
DATE: 20230928

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Shayan Ravadgar, Landlord/Respondent

AND:

Zahra Feizi Kaftroudi, Tenant/Appellant

BEFORE: The Honourable Mr. Justice R.E. Charney

COUNSEL: Wade Morris, Counsel for the Landlord/Respondent

Jeff Schlemmer, Counsel for the Tenant/Appellant

Eli Fellman, Counsel for the Landlord and Tenant Board

HEARD: September 28, 2023

CASE CONFERENCE ENDORSEMENT

Background

[1] On August 29, 2023, the Tenant filed a Notice of Appeal to the Divisional Court from the Order of the Landlord and Tenant Board (LTB) issued on July 4, 2023 and the Review Order issued on August 17, 2023.

[2] The LTB Order of July 4, 2023 states that it is a consent order. That Order terminated the tenancy between the Landlord and the Tenant on August 15, 2023, and indicated that the Tenant could be evicted if the unit was not vacated on or before that date. The Order indicated that the parties agreed that the total outstanding arrears and costs for the period ending June 30, 2023 was \$8,976.

[3] The August 17, 2023 Review Order confirms that the July 4, 2023 Order was made on the consent of the parties. The Review Order states:

I listened to the hearing recording. The order under review was made on consent of the parties. The Tenant was assisted at the hearing by Tenant Duty Counsel and an

interpreter. The member went over the terms of the consent with the Landlord's representative and then went over the terms with the Tenant through the interpreter. The member asked if the Tenant understood and agreed that these terms mean she would have to "leave and move out" by August 15 2023 and the Tenant stated that she did. No one present at the hearing said that either party wanted the termination to be voidable. No one characterized the order to which they consented as a "standard order" (in which it would be reasonable to assume that there would be a voiding clause less specifically excluded). The order exactly reflects the terms that were given to the member at the hearing.

[4] The Tenant takes the position that [Section 74\(3\)\(b\)](#) of the *Residential Tenancies Act 2006*, [S.O. 2006, c. 17](#), provides that an Order of this type must inform the tenant and the landlord that the Order will become void if, before it becomes enforceable, the tenant pays to the landlord or to the Board the amount required under subsection (4) and specifies the amount. The Order in this case did not contain a voiding clause.

[5] An appeal lies to the Divisional Court from a decision of the LTB, but only on a question of law: [s. 210\(1\)](#) of the *Residential Tenancies Act 2006*.

[6] Pursuant to [s. 25](#) of the *Statutory Powers Procedure Act, R.S.O. 1990, chap. S-22*, (SPPA), unless the court orders otherwise, there is an automatic stay of the eviction order pending the appeal to the Divisional Court. [Section 25](#) of the SPPA provides:

25. (1) An appeal from a decision of a tribunal to a court or other appellate body operates as a stay in the matter unless,

(a) another Act or a regulation that applies to the proceeding expressly provides to the contrary; or

(b) the tribunal or the court or other appellate body orders otherwise.

[7] The wrinkle in this case arises because [s. 133\(a\)](#) of the *Courts of Justice Act, R.S.O. 1990, c. C.43*, (CJA) provides that leave to appeal is required from a consent order. [Section 133\(a\)](#) states:

133 No appeal lies without leave of the court to which the appeal is to be taken,

(a) from an order made with the consent of the parties;

[8] In response to a triage direction from the Court, counsel for the Appellant sent the Trial Coordinator and the other parties an email on September 14, 2023, which stated:

[A]fter commencing the appeal, it struck the appellant that the order under appeal might be considered a consent order, in which case leave of the court is required to proceed pursuant to [s. 133\(a\)](#) of the *Courts of Justice Act*. The reason I say it "might" be considered a consent order is that the central issues in the appeal are all about that very consent. The appellant disputes that she consented to the order enforced by the Board.

In an abundance of caution, we have just now been speaking with the Trial Coordinator's office to arrange a motion for leave to appeal, in the event the Court finds that leave is necessary in this context.

[9] The parties were advised that the issue of whether leave to appeal is required could be addressed at this case conference.

[10] Out of an abundance of caution, counsel for the Tenant served a Notice of Motion for Leave to Appeal on September 20, 2023, and has obtained a motion date of November 15, 2023 for the hearing of the motion for leave to appeal.

Leave to Appeal is Required

[11] There are several Divisional Court cases that confirm that [s. 133\(a\)](#) of the [CJA](#) applies to consent orders of the LTB, and that therefore leave to appeal is required.

[12] In *Lou v. Abagi*, [2018 ONSC 1587](#), the parties entered into a settlement agreement that was incorporated into a consent order requiring the tenant to vacate his rental unit. The tenant then sought to appeal the order. Peterson J. held that the no consent order from the LTB may be appealed without leave of the Court:

[Section 133](#) of the *Courts of Justice Act* stipulates that no appeal lies from a consent order without leave of the court. The LTB termination order that is the subject of this appeal was made on consent of the parties, yet no leave has been obtained (or sought) by Mr. Abagi to bring the appeal.

[13] Peterson J. declined to adjourn the proceedings to permit the appellant to bring a motion for leave to appeal and quashed the appeal for failure to seek leave, and because it was “manifestly devoid of merit” and constituted an abuse of process.

[14] Similarly, in *Arnold v. Lulu Holdings Inc.*, [2021 ONSC 8125](#), Matheson J. was confronted with a case very similar to this one, in which the consent itself was challenged or disputed. She concluded that leave to appeal was required, at paras. 34 – 37:

This appeal should also be quashed because no leave to appeal has been sought or granted.

[Section 133](#) of the *Courts of Justice Act* provides that no appeal lies, without leave, from an order made with the consent of the parties. The appellant submits that leave is not required in this case because the consent is disputed on the appeal.

The appellant relies on *Ruffudeen-Coutts v. Coutts*, [2012 ONCA 65](#), however, that case does not hold that leave is not required when the consent is challenged. It does provide a test for the granting of leave from a consent order where the consent is challenged.

On its face, the LTB order is a consent order. This is further confirmed by the recording of the hearing. The majority of the court in *Ruffudeen-Coutts* held that “where the issue relates to the validity of the consent, leave to appeal should not be granted unless the evidence before the court on the leave application demonstrates that there is an arguable case that, at the time the agreement that formed the basis of the consent order was entered into, the moving party could not or did not consent”: at para. 64 (per Epstein J.). Further, the adjudicator’s determination should attract deference and the threshold for granting leave is high: at paras. 69 and 72 (per Epstein J.). The court did not hold that leave to appeal was not required.

[15] In *Morgan v. Whing*, 2009 CarswellOnt 2927 (Div. Ct.), a tenant did not abide by a consent order requiring her to pay back rent or move out of her unit. She argued that the order of the LTB incorrectly set out the terms of the agreement and appealed to the Divisional Court. Lederer J. held, at para. 7, that leave to appeal was required. He also concluded that the appeal did not raise any question of law.

[16] In *Eldebron Holdings Limited v. Mason*, [2016 ONSC 2544](#), Broad J. held, at para. 14, that leave was required to appeal a consent order of the LTB. This was one of several reasons

for granting the landlord's motion to quash the appeal.

[17] *Eldebron* was followed by Myers J. in *Singh v. Mylvaganam*, 2018 ONSC 5955, at para. 2:

The Tenant consented to the eviction order that she now appeals. The Tenant did not obtain leave to appeal under s. 133(a) of the *Courts of Justice Act* RSO 1990 c.43. Leave to appeal is required for a consent order.

[18] In this regard, the decision of the Divisional Court in *Trust Construction Corporation v. McKie*, 2017 ONSC 4702, at para. 6 is germane:

It is also a matter of concern that parties ought not to be easily able to revisit orders that have been made on consent. The effective resolution of matters that come before the Board will be greatly impaired if parties can continually seek to revisit issues that they have earlier agreed to resolve.

[19] As *Arnold* makes clear, leave to appeal a consent order is required even if the consent itself is challenged or disputed.

Conclusion

[20] The Notice of Appeal in this case must, therefore, be quashed.

[21] As a result, the statutory stay of the LTB eviction order is also terminated: *Arnold* at para. 39.

[22] The Appellant is granted an extension to bring the motion for leave to appeal.

[23] The parties must comply strictly with the time limits set out in Rule 61.03 for motions for leave to appeal to the Divisional Court, subject to any adjustments required to accommodate this case conference.

[24] Motions for leave to appeal from a decision of an administrative tribunal are heard by a single judge pursuant to s. 21(3) of the CJA. This motion for leave to appeal shall proceed before a single judge on November 15, 2023.

[25] The parties confirm that the arrears identified by the LTB (\$8,976 as of June 30, 2023) have been paid in full.

[26] The monthly rent is \$1,465. The parties agree that there are two months' rent currently owing.

[27] I will grant a stay of the eviction order pending the Court's decision on the motion for leave to appeal. The Landlord consents to this stay on the condition that the Tenant continues to pay her monthly rent on the first day of each month and pays the two months arrears by October 13, 2023. This condition is reasonable and is a condition of the stay order.

[28] If payment is not made in accordance with para. 27 above, the Landlord may prepare and forward forthwith a draft order lifting the stay of the eviction order, in WORD format, for issuance.

Justice R.E. Charney

Date: September 28, 2023