2016 ONSC 5380, 2016 CarswellOnt 13929

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Ontario Superior Court of Justice (Divisional Court)

Baig v. Williams

2016 CarswellOnt 13929, 2016 ONSC 5380

Amir Baig (Applicant / Respondent in Appeal) and Michelle Williams (Respondent / Appellant in Appeal)

Sachs J., Nordheimer J., C. Horkins J.

Heard: August 25, 2016
Judgment: August 25, 2016
Docket: Toronto 15-00000005-000

Counsel: Timothy **Duggan**, for Applicant / Respondent in Appeal

Subject: Property

Headnote
Real property

Sachs J. **(ORALLY):**

1 The Appellant, Tenant, has not appeared. A friend of hers, Mr. Sherlock, has handed the court a note, dated August 24, 2016 from the North York General Hospital that reads: "Ms. Williams is currently at North York General Hospital for medical reasons. She will be unable to attend work for the next few days".

2 On this basis, Mr. Sherlock told the court that the Appellant, Ms. Williams, is requesting that her appeal be adjourned.

3 The landlord opposes the adjournment request.

4 The note that the Appellant has produced gives no detail as to her medical condition nor does it say that she is unable to attend court today. All that it tells us is that the Appellant was at a hospital yesterday and that she apparently is unable to attend work in the next few days.

5 In the face of the history of these proceedings, this simply is not sufficient. The Appellant first went into default on her rent in October 2013. On June 23, 2014 she entered into a mediated agreement to make certain rental payments, failing which, her tenancy would terminate. The Termination Order and Review Order that are the subject of this appeal are a direct result of the Appellant's failure to live up to the terms of the mediated agreement.

6 As of December 14, 2014, the Board found that the Appellant owed the Respondent $10,500.00, which she has not paid. We are advised that since that date, some 20 months, the Appellant has made no rental payments, resulting in further arrears of $42,000.00. Thus, the total arrears owing as of today's date is $52,500.00. As of September 1, 2016, another $2,100.00 will become owing.

7 Therefore, the delay in this matter has caused the landlord significant prejudice and any adjournment will add to that prejudice. For the Appellant, on the other hand, adjournments only benefit her, as she continues to be able to live in the premises rent free.

8 This is not the first time that this appeal has been scheduled for a hearing. On the first date, it was also adjourned at the request of the Appellant.

9 In our view, this is an appeal that on its face is devoid of merit. The issues raised in the Appellant's material can be summarized as follows:

(1) The Board had no jurisdiction to hear the eviction application and to issue the Termination Order. The basis for the Appellant's submission that the Board had no jurisdiction is that her relationship with the Respondent is that of buyer and seller, and not that of landlord and tenant. According to the Appellant, she had a rent to own agreement with the Respondent. First, the Appellant never made a submission to the Board that it had no jurisdiction. Second, the Board found that, while the parties may have been discussing a rent to own agreement, they had yet to enter into such an agreement. This is a factual finding that cannot be the subject of an appeal to this court. Third, by entering into the mediated agreement, the Appellant admitted that regardless of her relationship with the Respondent, she was obligated to pay him rent.

(2) The Termination Notice dated March 4, 2014 did not contain sufficient detail to allow the Appellant to know the case she had to meet at the November 13, 2014 Board hearing. Again, this submission cannot succeed. First, the Notice was issued before the mediated agreement was signed and the Appellant did not object to the sufficiency of the Notice prior to entering into that agreement and agreeing to pay the outstanding rent arrears indicated in the Notice. Second, the Board on the review found that the Termination Notice did comply with the Act. This is a finding of mixed fact and law that cannot be appealed to this court.

(3) The Respondent's eviction application was an abuse of process, being an attempt to re-litigate matters already settled at mediation. This argument was rejected by the Board on the basis that the mediated agreement specifically permitted the Respondent to file an eviction application under section 78 of the *Residential Tenancies Act* if the Appellant failed to comply with that agreement. Section 78 clearly allows a process in which a landlord can make an application to evict if a tenant breaches a mediated agreement. The Board's finding on this issue was clearly correct.

(4) The Appellant submits that the Board erred in calculating the amount of arrears outstanding in its order made in November 2014. The Board on the review hearing rejected this argument as the Appellant provided no evidence to support this contention. As well, the Board's decision in November 2014 related to the rent that was the subject of the mediated agreement. It correctly refused to revisit any issues concerning rent prior to the mediated agreement, as that agreement settled those issues. In any event, this issue is not a question of law; therefore, it cannot be the subject of an appeal before this court.

(5) The Board displayed a reasonable apprehension of bias. The reasons given for this arise from the fact that the Board refused to revisit the issue of the rent payments that were included in the mediated agreement and that the Board stated at a hearing in November 2014 that the Appellant's choices were to enter into a purchase and sale agreement or to pay the arrears or to move out. Neither of these allegations provide a basis for a finding of reasonable apprehension of bias. Furthermore, the Appellant did not raise an issue of bias when she requested a review of the Board's decision and, thus, the Board on the review hearing had no opportunity to consider and address the issue prior to issuing its review order on December 22, 2014. It is not appropriate for this issue to be raised for the first time on appeal.

(6) The Board failed to consider the Appellant's special circumstances, namely the fact that she has a child with special needs who will be adversely affected if she is forced to move. This argument cannot succeed because the Appellant did not raise it at any of the Board hearings prior to the eviction order. Again, this is not the kind of argument that should be raised for the first time on appeal. Further, it cannot constitute an error in law for the Board to fail to consider a matter that was never put before it. In any event, the Board delayed its eviction order and permitted the Appellant to remain in the premises and continue the tenancy by paying the amounts owing. The

Appellant chose not to do so and, instead, has continued to live rent free in the premises for another 20 months. Whatever indulgence might have been warranted because of her child's circumstances has been more than afforded to the Appellant.

10 For these reasons, we are denying the Appellant's request for an adjournment and order that the appeal be dismissed. Any stay of the Eviction Order is hereby lifted.

COSTS

11 I have endorsed the Appeal Book and Compendium as follows: "For reasons given orally this appeal is dismissed. Any stay of the eviction order is hereby lifted. The Landlord/Respondent is awarded his costs of this appeal, fixed in the amount of $5,000.00, all inclusive. The need for the Appellant to approve the order arising from our decision is hereby dispensed with."

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