

2016 ONSC 4351
Ontario Superior Court of Justice (Divisional Court)

Regan v. Latimer

2016 CarswellOnt 10494, 2016 ONSC 4351, 268 A.C.W.S. (3d) 203

**James Francis Regan, Tenant/Moving Party and Donna Latimer,
Landlord/Responding Party**

Then J., H. Sachs J., Lococo J.

Heard: June 29, 2016
Judgment: June 30, 2016
Docket: Toronto 231/16

Counsel: James Francis Regan, for himself
Spencer **Toole**, for Responding Party

Subject: Civil Practice and Procedure; Property

Related Abridgment Classifications

For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Real property

V Landlord and tenant

V.20 Residential tenancies

V.20.k Termination of tenancy

V.20.k.vii Practice and procedure

V.20.k.vii.B Appeal or review

Headnote

Real property --- Landlord and tenant — Residential tenancies — Termination of tenancy — Practice and procedure — Appeal or review

On June 21, 2016, order was made dismissing tenant's appeal as devoid of merit and vacating stay of eviction order — Tenant brought motion to vary or set aside — Motion dismissed — It was not error for judge to fail to consider evidence that was never sought to be introduced — Tenant was represented by experienced counsel who did not attempt to present evidence as to why tenant did not comply with interim consent order made by Landlord and Tenant Board (board) — It was correctly found that once tenant failed to comply with interim consent order, board had authority not to allow tenant to present evidence regarding deficiencies.

Table of Authorities

Cases considered by *Then J., H. Sachs J., Lococo J.*:

Marsden v. Ontario (Minister of Community Safety and Correctional Services) (2012), 2012 ONSC 6118, 2012 CarswellOnt 13455 (Ont. Div. Ct.) — followed

MOTION by tenant to set aside order dismissing tenant's appeal as devoid for merit and vacating stay of eviction.

Then J., H. Sachs J., Lococo J.:

- 1 This is a motion to vary or set aside the order of Pattillo J., dated June 21, 2016, dismissing the Tenant's appeal as devoid of merit and vacating the stay of the eviction order. At the conclusion of the motion, we dismissed the motion with reasons to follow. These are our reasons.
- 2 The test to be applied on such as a motion is set out in *Marsden v. Ontario (Minister of Community Safety and Correctional Services)*, 2012 ONSC 6118 (Ont. Div. Ct.) — a panel should only intervene to vary or set aside the order of a single judge if the single judge made an error of law or a palpable and overriding error of fact.
- 3 On this motion, the Tenant argued that the motion judge erred in failing to consider evidence concerning why he did not comply with the interim consent order made by the Board in February of 2016. On the motion before Pattillo J., the Tenant was represented by experienced counsel who did not attempt to present any such evidence. It is not an error for a judge to fail to consider evidence that was never sought to be introduced before him.
- 4 The Tenant also submitted that the motion judge erred in finding that there was no merit to his appeal since the Board did not allow him to present his evidence regarding deficiencies in the premises. In this regard, the motion judge correctly found that once the Tenant failed to comply with the interim consent order, the Board had the authority, which it exercised, not to allow the Tenant to present any evidence regarding deficiencies.
- 5 We are satisfied that the motion judge made no error of law or palpable and overriding error of fact. For these reasons, the motion to vary was dismissed. Failing agreement, the parties may make submissions in writing on the question of costs. These submissions shall not exceed 2 pages in length. The Landlord shall make her submissions within 10 days of the date of the release of this endorsement and the Tenant shall have 10 days to reply.

Motion dismissed.