

2011 CarswellOnt 2749
Ontario Superior Court of Justice (Divisional Court)

Whittaker v. Elsbury

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Terrence Whittaker, Appellant and Brenda Elsbury, Respondent

Price J.

Judgment: April 26, 2011

Docket: DC-11-003-00

Counsel: Douglas H. Levitt appears for the Respondent, moving party
No one has appeared for Mr. Whittaker

Subject: Civil Practice and Procedure; Property

Related Abridgment Classifications

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

Civil practice and procedure

XXI Practice on appeal

XXI.3 Notice of appeal

XXI.3.d Time for filing and service

Headnote

Civil practice and procedure --- Practice on appeal — Notice of appeal — Time for filing and service

Table of Authorities

Rules considered:

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

R. 61.05(5) — referred to

R. 61.09(1) — referred to

R. 61.13(1) — referred to

R. 61.13(3) — referred to

Price J.:

1 Mr. Whittaker has not appeared, although he was duly served, as appears from the affidavit of Natasha Baksh, sworn April 7, 2011, which indicates that the Motion Record, Factum + Brief of Authorities were sent to Mr. Whittaker by letter mail on that date at his last known address. Mr. Levitt has provided a letter dated April 20, 2011, from Mr. Whittaker, indicating that he has received the motion material, although he disputes the timeline of service. He has not appeared today, however, to raise the issue. The motion material was also served on the Landlord and Tenant Board, as appears from Ms. Baksh's Affidavit of Service sworn April 8, 2011.

2 Mr. Whittaker commenced the present appeal on January 25, 2011. He appeals from the decision of the Landlord and Tenant Board dated January 7, 2011 in which the Board, on reviewing the decision of the Member dated Nov. 26, 2010, found that the Member had given Mr. Whittaker every opportunity to raise the issue of his disability and to call evidence concerning it. The decision of the Member was that Mr. Whittaker had not paid rent from Nov. 1 to Dec. 31, 2010, as required, of \$1,150.00 per month + terminated Mr. Whittaker's tenancy and required him to move out by Dec. 10, 2010 and to pay 37.81/day from Nov. 30, 2010 plus \$170 in costs. He has failed to move out or to pay the amount owing, now amounting to approx. \$7,070.00.

3 Mr. Whittaker was required by Rule 61.05(5) to order a transcript within 30 days of filing his appeal. He has failed to do this. He has also failed to perfect his appeal within 60 days of filing it, as required by Rule 61.09(1).

4 Mr. Whittaker raised in his Notice of Appeal the argument that the Tribunal made errors under The Ontario Human Rights Charter regarding his rights as a disabled person, saying he was not allowed to give evidence concerning his disability before the Tribunal, yet he made no submission before the Tribunal regarding his disability.

5 Based on the material before me, I find that the Notice of Appeal discloses that the appeal has no merit and Mr. Whittaker has not complied with the procedural requirements upon him in relation to the appeal. Accordingly, an Order issue pursuant to Rule 61.13(1) and (3) quashing the appeal and lifting the stay of the eviction of Mr. Whitakker from 668 Francis Road, Burlington.

6 Mr. Whittaker shall pay the Respondent's costs of the Appeal, including the motion, on a substantial indemnity basis fixed at \$5,000.00, having regard to the fact that the Motion was not opposed.