CITATION: Fisher v. Haines; Fisher v. Michno, 2025 ONSC 3832
DIVISIONAL COURT FILE NOS.: 1554/24 and 1555/24
(Oshawa)
DATE: 20250627

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

D.L. Corbett, Shore and M. McArthur JJ.

BETWEEN:	)	
Andrew Fisher	)	*Jenna Khoury-Hanna*, for the Appellant
Appellant	)	
– **and** –	)	
Joanne Haines	)	*Spencer F. Toole*, for the Respondent
Respondent	)	*Anna Solomon and Olivia Filetti*, for the Landlord and Tenant Board
AND BETWEEN:	)	
Andrew Fisher	)	*Jenna Khoury-Hanna*, for the Appellant
Appellant	)	
– **and** –	)	
Wendy Michno	)	*Spencer F. Toole*, for the Respondent
Respondent	)	*Anna Solomon and Olivia Filetti*, for the Landlord and Tenant Board
	)	**HEARD at Oshawa:** June 24, 2025

REASONS FOR DECISION

D.L. Corbett J.

[1] The Appellant appeals the amended review decisions of Member Lin of the Landlord and Tenant Board ("LTB") dated May 6, 2024 [both cited as 2025 ON LTB 29958], setting aside the

two unreported hearing determinations of Member Mosaheb of the LTB, both dated March 27, 2023, and remitting the cases of Ms Haines and Ms Michno back for fresh LTB hearings on the merits. The impugned order respecting Ms Michno also concerned Jason Schmidt, who is no longer a party to these proceedings.

[2] The decisions of Member Mosaheb terminated the tenancies of the respondents Haines and Michno. The review decisions of Member Lin:

(1) Granted the requests by Haines and Michno to review the orders of Member Mosaheb;

(2) Quashed the orders of Member Mosaheb; and

(3) Directed that the Appellant's applications to terminate the tenancies of Haines and Michno "be heard *de novo* on a date to be set by the Board."

[3] The issue of this court's jurisdiction to hear an appeal from the impugned review orders was raised during case management, and that issue was directed to be heard during the appeal. At the outset of oral argument, we directed the parties to address this jurisdictional issue first, before we heard argument on the main appeal. Following submissions from the Appellant we dismissed the appeals for lack of jurisdiction, with these reasons to follow.

Summary and Disposition

[4] The impugned orders are, on their face, interlocutory. This court has no jurisdiction to hear appeals from interlocutory orders of the LTB. This court would have jurisdiction to hear applications for judicial review from the impugned review decisions, but these were not brought on the sensible basis they would be dismissed for prematurity.

Jurisdiction

[5] Before the case management judge, the Appellant relied upon *Leduc* v. *Glen Echo Park Inc.*, 2011 ONSC 2573, para. 11, for the proposition that a review decision setting aside a final decision from an LTB hearing, and directing a fresh hearing, is a final order that may be appealed to this court. This argument was buttressed by an initial statement in the LTB review orders that the review orders were "final" (statements corrected in amended review decisions). The case management judge directed a hearing before a panel of three judges of this court on the basis that the jurisdictional issue may be arguable.

[6] The jurisdictional issue has already been decided by a panel of this court authoritatively. It appears that this authority was not brought to the attention of the case management judge.

[7] After a thorough review of the law, Swinton J., writing for a panel of this court, found as follows in *Penney* v. *The Co-operators General Insurance Company*, 2022 ONSC 3874, paras. 26-27:

> Given the language of s. 11(1) and (6) of the [*License Appeal Tribunal Act*], read in the context of the entire statute and the objective of preventing fragmentation of and delay in administrative proceedings, I conclude that this Court has no jurisdiction to hear an appeal from an interlocutory decision of the LAT. In my view, this conclusion is consistent with the instruction from the Supreme Court of Canada in *Vavilov v. Canada (Minister of Citizenship and Immigration)*, 2019 SCC 65 that the courts should respect the Legislature's decisions with respect to institutional design (at paras. 24, 36). Here, the Legislature chose not to confer a right to appeal interlocutory decisions of the LAT to the Divisional Court.
>
> I note, before closing, that a party may have the option of seeking judicial review of an interlocutory decision in an appropriate case, as the judges in *Blew* and *Sazant*, above, discussed. The applicant will likely have to meet an argument of prematurity and show exceptional circumstances if it wishes to be heard. However, in this case, there was no request to turn this appeal into an application for judicial review.

[8] *Penney* did not make new law. It restated long-established law. And the principles stated in *Penney* apply to appeals from the LTB (*Delic* v. *Enrietti-Zoppo*, 2022 ONSC 1627, para. 11 [authorities footnoted in original]):

> Jurisprudence in this court with respect to similar provisions for statutory appeals from other tribunals has consistently held that in the absence of an explicit right of appeal from an interlocutory decision, only a final order of a tribunal can be appealed. *Roosma* v. *Ford Motor Co. of Canada Ltd.* (1988), 1988 CanLII 5633 (ON SCDC), 66 OR (2d) 18 (Div. Ct.); *Sazant* v. *R.M. and C.I.C.B.*, 2010 ONSC 4273 (Div. Ct.), *Stockfish* v. *Ontario (Motor Vehicle Dealers Act, Registrar)*, [2008] O.J. No. 2052 (Div. Ct.), *Canadian Union of Public Employees (CUPE)* v. *Ontario Hospital Assn.*, 1991 CarswellOnt 914 (Div. Ct.), *McCann* v. *Ontario (Police Services Act Board of Inquiry)*, 1994 CarswellOnt 894 (Div. Ct.), *Butterworth* v. *College of Veterinarians of Ontario*, [2001] O.J. No. 5265 (Div. Ct.), *Rudinskas* v. *College of Physicians and Surgeons of Ontario*, 2011 ONSC 4819 (Div. Ct.), *Ibrahim* v. *Ontario College of Pharmacists*, 2010 ONSC 5293, rev'd on other grounds 2011 ONSC 99 at para. 4 (Div. Ct.), *Blew* v. *Ontario College of Teachers*, 2016 ONSC 8053 at paras. 6-11 (Div. Ct.), *Free* v. *County of Norfolk and Dietrich Engineering Limited*, 2017 ONSC 909 at para. 3 (Div. Ct.), *Coughlin* v. *Director, Ontario Disability Support Program*, 2021 ONSC 1236 (Div. Ct.).

[9] The Appellant argues that the impugned order is a final order because it finally sets aside a final order of the LTB. There is no merit to this argument. The effect of the impugned order is to leave the substantive issues between the parties unresolved, to be determined in a fresh hearing. As held in *Delic*, at para. 7, an order is final if it finally disposes of a claim. See also *1476335 Ontario Inc.* v. *Frezza*, 2021 ONCA 822, para. 7. Where the effect of an order is to continue the

inquiry in respect to a claim, the order is interlocutory. As stated by the Court of Appeal in *Heegsma* v. *Hamilton (City)*, 2024 ONCA 865, para. 12:

> At its core, an interlocutory order is one that does not determine the "real matter in dispute between the parties—the very subject matter of the litigation—or any substantive right": *Drywall Acoustic Lathing Insulation Local 675 Pension Fund v. SNC-Lavalin Group Inc.*, 2020 ONCA 375, at para. 1; *Paulpillai Estate v. Yusuf*, 2020 ONCA 655, at para. 16. Although an order will undoubtedly answer the question raised by the relevant motion, it remains interlocutory in nature if the substantive matters lying at the heart of the subject matter of the litigation remain undecided: *Drywall Acoustic*, at para. 16, citing *Hendrickson v. Kallio*, 1932 CanLII 123 (ON CA), [1932] O.R. 675 (C.A.), at p. 678 and *Ball v. Donais* (1993), 1993 CanLII 8613 (ON CA), 13 O.R. (3d) 322 (C.A.).

[10] Two recent decisions of this court have found that a review decision of the LTB setting aside a hearing determination, and remitting the case for a fresh hearing, is interlocutory, and is therefore not subject to appeal to this court. These decisions were made pursuant to r. 2.1 and resulted in dismissal of the appeals as being "the clearest of cases" and therefore frivolous, vexatious and abuses of process: *Elsimali* v. *Pinedale Properties*, 2024 ONSC 5730 (Div. Ct.); *Ainsley* v. *Proulx*, 2023 ONSC 6308 (Div. Ct.).

[11] *Leduc* v. *Glen Echo Park Inc.*, 2011 ONSC 2573, was a decision of a single motions judge of the Divisional Court. In it, the parties were contesting whether the *Residential Tenancies Act* applied to the relationship between them. At the first LTB hearing, the LTB found that the *Act* did apply. The "landlord" sought review of that decision. The LTB granted the review and directed that a fresh hearing be held. The LTB conducted that fresh hearing and found that the *Act* did not apply to the relationship between the parties. The "tenants" then commenced an appeal of both the second substantive decision (that the Act did not apply) and the prior review decision setting aside the first determination. The motions judge dismissed the appeal from the review decision directing a new hearing on the basis that the appeal was out of time and an extension should not be granted. It appears that no one raised with the motions judge the issue of jurisdiction over an appeal from the review decision to hold a fresh hearing. The motions judge did permit the appeal to proceed on the merits in respect to the LTB's final determination that the Act did not apply to the relationship between the parties.

[12] The court in *Leduc* did not consider or make express findings about the jurisdictional issue. It dismissed the appeal from the LTB's interlocutory ruling on other grounds (the appeal was out of time and an extension should not be granted). To the extent that *Leduc* implicitly finds that this court would have jurisdiction over a timely appeal from a decision to direct a fresh hearing, *Leduc* was decided *per incuriam*, is wrongly decided, and should not be followed on this point.

Disposition

[13] *Penney*, *Delic*, *Elsimali* and *Ainsley* decisively eliminate any lingering uncertainty there could be on this issue: this court has no jurisdiction to entertain appeals from interlocutory

decisions of the LTB. As noted in *Penney*, applications for judicial review are available from interlocutory decisions, but such applications will be dismissed unless the applicant shows "exceptional circumstances". As counsel for the Appellant acknowledged during oral argument, applications for judicial review of the impugned review decisions would almost certainly have been dismissed for prematurity had they been brought in these cases.

[14] The appeal is dismissed, with costs payable by the Appellant to the responding parties fixed at $8,300, inclusive, in the aggregate for both appeals, payable within thirty days.

"D.L. Corbett J."

I agree: "Shore J."

I agree: "M. McArthur J."

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Appellant

– **and** –

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AND BETWEEN:

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Wendy Michno

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