CITATION: Linton v. Daley, 2025 ONSC 5169
DIVISIONAL COURT FILE NO.: 264/25
DATE: 20250910

SUPERIOR COURT OF JUSTICE - ONTARIO
DIVISIONAL COURT

RE: FERNANDO LINTON, Appellant (Tenant)

AND

GIAN DALEY and BALDISH DALEY, Respondents (Landlords)

BEFORE: M.D. FAIETA J.

COUNSEL: Self-represented Appellant
Delaram M. Jafari, for the Respondent

HEARD: September 9, 2025

FAIETA J.

ENDORSEMENT

[1] Fernando Linton (the "Tenant") appeals from an Order of the Landlord and Tenant Board (the "Board") dated September 16, 2024, that evicted him from his basement apartment on the grounds that the rental unit is required by the Landlords for their daughter and her husband. The Tenant's request for review of the Order was denied by Review Order dated March 10, 2025. Although his Amended Notice of Appeal states that he appeals from both the Order and Review Order, during his submissions on this appeal the Tenant indicated that he was only appealing the Order, and not the Review Order.

[2] I adopt the following principles expressed by Shore J. in *Jedadiah Drummond v. Ridgeford Charitable Foundation*, 2024 ONSC 4658, at paras. 12-16:

> 12 An appeal from an order of the Board lies to this court only on a question of law. This court does not have jurisdiction to hear an appeal on a question of fact, or of mixed fact and law.
>
> 13 The Supreme Court of Canada clarified the difference between questions of law, fact, and mixed fact and law, in *Canada (Director of Investigation and Research) v. Southam Inc*, [1997] 1 S.C.R. 748, at para. 35: "Briefly stated, questions of law are questions about what the correct legal test is; questions of fact are questions about what actually took place between the parties; and questions of mixed law and fact are questions about whether the facts satisfy the legal tests."

14 The applicable standard of review on questions of law is correctness.

15 No assessment of the standard of review is necessary where the requirements of natural justice and procedural fairness are at issue. The court is required to evaluate whether the rules of procedural fairness or the duty of fairness have been adhered to, by assessing the specific circumstances giving rise to the allegation and by determining what procedures and safeguards were required in those circumstances in order to comply with the duty to act fairly.

16 In hearing the appeal, the court must consider that the Board is a specialized tribunal, and the legislature has deliberately limited appeals from its decisions to, inter alia, ensure a process that is streamlined, timely and cost-efficient. [Citations omitted]

[3] On this appeal the Tenant submits that:

(a) The Board Member denied him procedural fairness by dismissing his request to adjourn the hearing, thereby denying him legal representation after his lawyer sought and was granted an order to be removed from the record.

(b) The Board Member erred in failing to find that the Notice of Termination is a "bad faith" eviction.

(c) The Board Member erred in failing to find that the eviction should not be granted on the grounds that the Landlords had harassed, obstructed, coerced, threatened and interfered with him contrary to s. 23 of the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 (the "*RTA*").

[4] The Tenant also brings a motion for leave to adduce fresh evidence.

[5] The Landlords are an elderly couple. They reside on the main and upper floors of their four-bedroom home. The Tenant resides in the basement of their home. Following the death of their oldest daughter, SKP, in March 2023, the Landlords have assumed the task of raising the youngest of SKP's grandchildren as the Landlords' son-in-law did not wish to do so.

[6] On November 23, 2023, the Landlord served the Tenant a Form N12 notice of termination with a termination date of January 31, 2024. The Landlords claim that, under s. 48 of the RTA, they in good faith require vacant possession of the rental unit for the purpose of residential occupation by the Landlords' other daughter, JD, and her spouse for a minimum of one year. JD has been assisting her parents with raising SKP's children. To facilitate this assistance, avoid daily commutes to their home, and provide them with some privacy, the Landlords wish to provide JD and her spouse with their own living space in the basement.

[7] The Board heard the Tenant's challenge to the N12 by videoconference on January 22, 2024, May 23, 2024, and July 25, 2024.

[8] That hearing was adjourned three times (on January 22, 2024, March 13, 2024 and May 23, 2024) at the Tenant's request:

- In early December 2023, the Tenant approached the Rexdale Community Legal Clinic for legal representation. On January 17, 2024, Rexdale's Legal Director asked the Board to reschedule the January 22, 2024 hearing stating that Rexdale was unable to be retained.

- On March 6, 2024, Downsview Community Legal Services received a referral from Rexdale. A Downsview lawyer met with the Tenant and wrote to the Board asking to reschedule the March 13, 2024, hearing date.

- On May 22, 2024, one day before the scheduled hearing, Downsview advised the Board that it would no longer provide service and suggested that the Tenant needed representation.

[9] On July 19, 2024, the Canadian Centre for Housing Rights advised the Tenant that they could not provide legal advice or representation.

[10] The Tenant was approved for legal aid but was unable to retain a lawyer in the private bar to assist him.

[11] The Tenant filed what appears to be about 18 pages of a transcript of the hearing before the Board on July 25, 2024. The entire transcript is at least 58 pages in length. The transcript excerpt shows that the Tenant's lawyer, Kyle Warwick of Downsview Community Legal Services, requested that he be permitted to withdraw his services on the basis that he had been instructed by the Tenant to do something contrary to the Law Society of Ontario's *Rules of Professional Conduct*. The withdrawal was granted. As noted in *R. v. Cunningham,* 2010 SCC 10, [2010] 1 S.C.R. 331, at para. 49, a court must grant a lawyer's request for withdrawal when it is sought for an ethical reason.

Did the Dismissal of the Request for an Adjournment Amount to a Denial of Procedural Fairness?

[12] The Board dismissed the Tenant's request for adjournment to obtain legal assistance with preparing and presenting his case. The Board balanced the competing interests. The Board noted that there had been multiple adjournments and multiple opportunities provided to retain counsel. The Board also noted that the hearing had returned to the Board on an urgent basis and that the delay in holding the hearing had generated enormous stress on the family. Finally, the Board noted that the Tenant should not have assumed that a further adjournment would be granted and should have come prepared to defend his position.

[13] The Tenant filed a request to review the Board Member's decision. The Review Member dismissed the request on the grounds that the Board Member's exercise of discretion to refuse a further adjournment was reasonable.

[14] As noted by Shore J. in *Jedadiah Drummond,* at para. 17:

> 17 The Board is entitled to control its own process and its procedural choices are entitled to deference. This is because administrative tribunals, including the Board, have experience and

expertise balancing the need to ensure fair participation by all parties with the need to ensure that the issues are dealt with in a timely and efficient way. [Citation omitted]

[15] In *Solomon v. Levy*, 2015 ONSC 2556, the Divisional Court stated, at paras. 39 and 40:

> 39 While the granting of adjournments is in the discretion of the Board member hearing an application, the general approach of the Board is informed by section 183 of the [*RTA*], which directs the Board to "adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and to be heard on the matter".
>
> 40 Accordingly, the Board member must take into account the public interest in resolving a case as soon as possible. The key question becomes how to balance the rights of the parties to ensure that matters are resolved quickly while not adversely affecting their respective rights to a fair hearing. [Footnotes omitted]

[16] Having regard to all the circumstances, I find that the Board did not err in denying the Tenant's request for a further adjournment. Similarly, I find that the Review Member did not err in finding that the Tenant was not denied procedural fairness as a result of the dismissal of his request for an adjournment.

Did the Board Member Err in Finding that the Eviction was a "Good Faith" Request?

[17] Subsection 48(1) of the *RTA* states:

> A landlord may, by notice, terminate a tenancy <u>if the landlord in good faith requires possession of the rental unit</u> for the purpose of residential occupation for a period of at least one year by,
>
> (a) the landlord;
>
> (b) the landlord's spouse
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> (c) a child or parent of the landlord or the landlord's spouse; or
>
> (d) a person who provides or will provide care services to the landlord, the landlord's spouse, or a child or parent of the landlord or the landlord's spouse, if the person receiving the care services resides or will reside in the building, related group of buildings, mobile home park or land lease community in which the rental unit is located. [Emphasis added]

[18] The Tenant submits that the Board Member erred in finding that the Landlords' application was made in good faith. He submits that JD does not require the rental unit as there is lots of living space available on the first and second floor of the house. These allegations do not raise a question of law and, as such, this ground of appeal is dismissed. Further, there is nothing to suggest that the Board Member did not apply the correct legal test for eviction under s. 48 of the RTA.

Did the Board Member Err in Failing to Find that the Landlords Breached their Duty under Section 23 of the *RTA* and in Failing to Refuse to Grant the Eviction under Section 83 of the *RTA*?

[19] Section 23 of the *RTA* states:

> A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.

[20] Section 83 of the *RTA* states in part:

> 83 (1) Upon an application for an order evicting a tenant, the Board may, despite any other provision of this Act or the tenancy agreement,
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> > (a) refuse to grant the application unless satisfied, having regard to all the circumstances, that it would be unfair to refuse; or
> >
> > (b) order that the enforcement of the eviction order be postponed for a period of time.
>
> (2) If a hearing is held, the Board shall not grant the application unless it has reviewed the circumstances and considered whether or not it should exercise its powers under subsection (1).
>
> (3) Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that,
>
> > (a) the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement; …

[21] At paragraphs 37-42 of the Order, the Board member considered whether relief from eviction under s. 83 of the *RTA* should be granted. The Board Member noted that the Tenant has been dealing with mental health issues since he was 11 years old and that he has limited income. She found that this was not a case in which the decision to evict the Tenant was due to conduct attributable to his disability or medical condition.

[22] The Tenant submits that the Board Member should have refused to grant the eviction on the basis that the Landlords had been harassing and coercing him for a number of years. The Board Member considered the Tenant's evidence and was unable to come to the conclusion that he had been coerced to vacate the rental unit. The Order, at paragraphs 28-31, states:

> 28 Four months after he obtained affordable housing in Windsor, "the torture began". He indicated that he has been hunted down for the past 10 years by the RCMP and their torture agents with "energy" weapons (EMP – electromagnetic pulse devices).
>
> 29 This has included being targeted for the past seven years that he has resided in the rental unit. He described the rental unit as a "torture chamber". That is because the Landlords have given approval to the RCMP "to install a team of several torture agents" in

the Landlords' unit to torture him "24 hrs a day". It is the RCMP's intent to have him evicted by the LTB, leaving him homeless and subject to more torture.

30 While I accept the Tenant's concerns are truthfully given and serious in nature, without adequate proof I am unable to reach the same conclusions as the Tenant. He led no evidence, other than his statements, that would establish the claim that he was being compelled to move out of the rental unit by either the RCMP or the Landlords' cover or overt actions.

31 The Tenant did not present any witnesses, such as a mental health caseworker, to supplement his evidence. It is clear he does not have access to such supports and resources.

[23] The alleged errors do not raise a question of law.

[24] The Tenant brought a motion to adduce fresh evidence to, amongst other things, "… contradict the landlords' claims that there are no RCMP proxy-agents living with the landlord and harassing me day and night with Energy Weapons". I dismiss this motion because it would serve no useful purpose given that this appeal is limited to questions of law and because the motion record had not been uploaded to Case Center by August 26, 2025, in accordance with Justice Matheson's directions.

Failure to File a Copy of the Transcript

[25] The Tenant did not file a complete copy of the transcript of the hearing held on July 25, 2024, before the Board Member. There was no cover page to the "transcript" filed nor was there a last page that shows it had been certified in accordance with s. 5(2) of the *Evidence Act***,** R.S.O. 1990, c. E.23. The Tenant states that he has a copy of that transcript but did not provide a complete copy in order to avoid filing a lengthy document with the Court. Directions issued on July 15, 2025, by Justice Nakatsuru indicate that the Tenant had not ordered a complete transcript and that this failure may be a factor on this appeal.

[26] In these circumstances, it would have been appropriate to dismiss this appeal for this reason alone.

Conclusion

[27] This appeal is dismissed.

[28] The Landlords seek their costs of $3,000.00 all inclusive. The Tenant expressed disbelief that he might be liable for costs. Further, he is impecunious. I find that it is fair and reasonable for the Tenant to pay costs of $1,500.00 to the Landlords in respect of this appeal within 90 days.

M.D. Faieta J.

RELEASED: September 10, 2025