CITATION: Stewart v. Emerald Limited Partnership, 2025 ONSC 5369
DIVISIONAL COURT FILE NO.: 456/24
DATE: 20250922

SUPERIOR COURT OF JUSTICE - ONTARIO
DIVISIONAL COURT

RE: STEPHAN STEWART, Appellant (Tenant)

AND

EMERALD LIMITED PARTNERSHIP, Respondent (Landlord)

BEFORE: M.D. FAIETA J.

COUNSEL: Self-represented Appellant
Douglas H. Levitt & Anthony Spadafora, for the Respondent

HEARD: March 17, 2025

FAIETA J.

ENDORSEMENT

[1] The Tenant, Stephan Stewart, appeals both an Eviction Order and a Review Order from the Landlord and Tenant Board upholding her eviction for non-payment of rent and dismissing her request for compensation resulting from the Landlord's alleged failure to respond to a noise problem in her rental unit in a timely and reasonable manner.

Background

[2] The Tenant resides in a property owned by the Landlord, Emerald Limited Partnership. In February 2024, the HVAC system in the unit began to make a noise which disrupted Ms. Stewart's use of the apartment. Because of this, she refused to pay rent until the issue was fixed.

[3] Emerald applied to the Landlord and Tenant Board to evict the Tenant. At the hearing, The Tenant raised there was an unbearable "ticking" noise in the rental unit that was "torture and created an unbearable living situation". She sought a rent abatement in the amount of $3,000.15 and sought relief from eviction due to the noise issues. Her claim was dismissed and the Board ordered that the tenancy be terminated unless the Tenant paid the arrears of rent before the eviction became enforceable. A request to review the Order was denied.

Eviction Order

[4] The eviction hearing was held by videoconference on January 31, 2024.

[5] In advancing a claim for the abatement of rent due to noise and for relief from eviction, the Tenant relied on ss. 20, 82 and 83 of the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 ("*RTA*"). The material parts of those provisions are as follows:

> 20 (1) A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards. …
>
> 82 (1) At a hearing of an application by a landlord under section 69 for an order terminating a tenancy and evicting a tenant based on a notice of termination under section 59, the Board shall permit the tenant to raise any issue that could be the subject of an application made by the tenant under this Act …
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> (3) If a tenant raises an issue under subsection (1), the Board may make any order in respect of the issue that it could have made had the tenant made an application under this Act. …
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> 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.
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> (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,
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> > (a) the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement;
> >
> > (b) the reason for the application being brought is that the tenant has complained to a governmental authority of the landlord's violation of a law dealing with health, safety, housing or maintenance standards;
> >
> > (c) the reason for the application being brought is that the tenant has attempted to secure or enforce his or her legal rights;
> >
> > (d) the reason for the application being brought is that the tenant is a member of a tenants' association or is attempting to organize such an association; or
> >
> > (e) the reason for the application being brought is that the rental unit is occupied by children and the occupation by the children does not constitute overcrowding. …

[6] The Hearing Member found:

(a) On February 28, 2022, the Tenant reported the noise issue to the Landlord.

(b) The Landlord acted reasonably and promptly and immediately contacted an HVAC company that attended the rental unit on March 2, 2022 and replaced the cartridge which stopped the noise.

(c) The Landlord sent the HVAC company back on March 7, 2022 and March 11, 2022 to ensure that the noise had not reoccurred.

(d) The Landlord continued to monitor the noise by sending another company on several occasions to check the system.

(e) The Landlord replaced an electrical element as a precautionary measure.

(f) The amount of time between the Landlord being notified of the issue on February 25, 2022 and the cartridge being replaced on March 2, 2022 was "very reasonable".

(g) The last inspection of the rental unit was done on May 11, 2022 as a precautionary measure to ensure that the noise had not reoccurred.

[7] In finding that she was not satisfied that the Landlord had breached s. 20 of the *RTA*, the Hearing Member relied on *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, 132 O.R. (3d) 295, for the principle that "a breach [of s. 20(1) of the *RTA*] will not be found if the landlord's response to a maintenance issue was reasonable in the circumstances". The appellant does not assert that the Hearing Member applied the wrong test. In any event, this test is consistent with the principles outlined by Conway J. in *Barta v. Rudolph*, 2018 ONSC 6208, at para. 15. The Hearing Member also dismissed the Tenant's claim under s. 82 of the *RTA*.

[8] Ms. Stewart stated that she could pay the arrears of rent within one month. The Hearing Member also found that it would not be unfair to postpone the eviction until February 29, 2024, pursuant to s. 83(1)(b) of the *RTA*.

Review Order

[9] On February 26, 2024, the Tenant filed a request for review of the Eviction Order.

[10] On April 16, 2024, the request for review was heard by videoconference. The Tenant submitted that the Eviction Order contained a serious error of fact, namely, that the Hearing Member had found that: (1) the noise was corrected on March 2, 2022 while the Landlord's evidence states that the cause of the noise was discovered on April 1, 2022; (2) the source of the noise was the HVAC cartridge, which was replaced on March 2, 2022, not the electrical element that was replaced in April 2022. The Tenant relied on a letter from the Landlord which stated that the electric element needed to be replaced because it was the cause of the noise. All other evidence presented by the Landlord indicated that the noise issue was resolved by replacing the HVAC cartridge on March 2, 2022 and that the electrical component was replaced as a precautionary

measure. The Review Member found that she was not satisfied that the member made an error in her findings that would have changed the Hearing Member's determination that the Landlord had acted reasonably and promptly in addressing the Tenant's noise complainants. Even if the noise issue had not been resolved until April 12, 2022, it would not have changed the result of the application.

Issues on Appeal

[11] The Tenant appeals both the Eviction Order and the Review Order on the following grounds that:

1) The Board erred in determining that the noise issue was resolved on March 2, 2022.

2) The Board erred in ruling that the Landlord acted in a timely and reasonable fashion in addressing the Tenant's complaints about noise.

3) The Board erred in ignoring the evidence that was presented to obtain a review of the order.

Standard of Review

[12] In *Jedadiah Drummond v. Ridgeford Charitable Foundation*, 2024 ONSC 4658, at paras. 12-17, Shore J. stated:

> 12 An appeal from an order of the Board lies to this court only on a question of law: [*RTA*], s. 210(1). This court does not have jurisdiction to hear an appeal on a question of fact, or of mixed fact and law.
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> 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."
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> 14 The applicable standard of review on questions of law is correctness.
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> 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.
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> 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.

> 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. [Citations omitted]

[13] A finding of fact may give rise to a question of law in certain limited circumstances. In *Yatar v. TD Insurance Meloche Monnex,* 2021 ONSC 2507, 157 O.R (3d) 337, at paras. 28-29, aff'd 2022 ONCA 446, 25 C.C.L.I (6th) 1, rev'd on other grounds, 2024 SCC 8, 489 D.L.R. (4th) 191, Swinton J. stated:

> 28 On a statutory appeal limited to questions of law alone, the court considers whether the decision-maker correctly identified and interpreted the governing law or legal standard relevant to the facts found by the decision-maker. There are limited circumstances in which findings of fact, or the administrative decision-maker's assessment of evidence, may give rise to an error of law alone for the purposes of appeal. If the adjudicator ignored items of evidence that the law required him or her to consider in making the decision, then the adjudicator erred in law. Challenges to the sufficiency or weight of evidence supporting a finding of fact do not give rise to a question of law. An error in law or legal principle made during the fact-finding exercise, however, can give rise to an extricable question of law. A "misapprehension" of the evidence does not constitute an error of law unless the failure is based on a wrong legal principle. It is an error of law to make a finding of fact on a material point where the factual finding is based solely on (a) no evidence, (b) irrelevant evidence, or (c) an irrational inference.
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> 29 If the adjudicator considered all the mandatory or relevant evidence, but reached the wrong conclusion, then the error is one of mixed law and fact. If the adjudicator erred in applying the law (the correct legal standard) to the facts, that is a matter of mixed law and fact. [Citations omitted] [Emphasis added]

Issue #1: Did the Board err in determining that the noise issue was resolved on March 2, 2022?

[14] The Tenant submits that the Hearing Member should not have found that the Landlord corrected the noise issue on March 2, 2022. She asks that the Divisional Court allow the appeal and award her $8,154.23 in rent abatement

[15] There was evidence before the Hearing Member that the noise issue was corrected on March 2, 2022. The Tenant's submission is that the Hearing Member reached the wrong conclusion in finding that the noise issue was corrected on March 2, 2022 given the other evidence at the hearing. This is a question of mixed fact and law. The Hearing Member was alive to the inconsistent evidence on this point and concluded the noise issue was corrected on March 2, 2025. Accordingly, this ground of appeal is outside the right of appeal afforded by s. 210 of the *RTA*.

[16] The Tenant further submits that the Review Member erred in determining that the noise issue was resolved on March 2, 2022. No such finding was made by the Review Member. Instead, the Review Member found that the Hearing Member had not made "an error in her findings of fact which would change the result of the application".

Issue #2: Did the Board err in ruling that the Landlord acted in a timely and reasonable fashion in addressing the Tenant's complaints about noise?

[17] The Tenant submits that regardless of whether the noise issue was repaired on March 2, 2022 or in April 2022, the Landlord took too long to fix the noise issue and breached its duties under section 20 of the *RTA*.

[18] As noted, the Tenant does not submit that the Hearing Member applied the wrong test to determine whether the Landlord breached s. 20 of the *RTA* but rather challenges the findings made by the Hearing Member and the Review Member that the Landlord acted in a timely and reasonable fashion in responding to the noise complaint. This ground of appeal raises a question of mixed fact and law which is not appealable under s. 210 of the *RTA*.

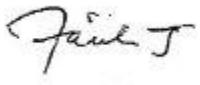
Issue #3: Did the Review Member err in refusing to admit new evidence?

[19] At the Review Hearing, the Tenant sought to admit new evidence an email dated March 9, 2022 from the Landlord as well as an email dated May 19, 2024 that the Tenant had sent the Landlord. The Review Member refused to admit these documents as they were not before the Hearing Member. I agree. Further, these documents would not likely have changed the outcome of the Tenant's claim under s. 20 of the *RTA*. The Review Member did not err in refusing to admit the new evidence.

Conclusion

[20] This appeal is dismissed.

[21] The Landlord seeks its partial indemnity costs of $7,116.59. I find that it is fair and reasonable to order that the Tenant pay costs of $3,500.00, including disbursements and HST, within 60 days.



M.D. Faieta J.

RELEASED: September 22, 2025