

**CITATION:** Bourgoin v. Schneider, 2025 ONSC 6735  
**COURT FILE NO.:** DC-25-74 (from LTB-L-096135-24)  
**DATE:** 2025 11 28

**SUPERIOR COURT OF JUSTICE - ONTARIO  
DIVISIONAL COURT**

**RE:** Edyta Bourgoin, Respondent to Motion, Appellant (Tenant)

**AND:**

Walter Schneider, Moving Party, Respondent on Appeal (Landlord)

**BEFORE:** M.T. Doi J.

**COUNSEL:** Ian P. Katchin, for the Moving Respondent/Landlord

Marek Tufman, for the Appellant/Tenant

**HEARD:** October 28, 2025

**ENDORSEMENT**

**Overview**

[1] On this motion, the landlord seeks to quash the tenant’s appeal from the order of the Landlord and Tenant Board (“LTB”) dated May 21, 2025 (the “Order”) that required the tenant to vacate the subject condominium unit on Upper Middle Rd. West in Oakville (the “Premises”). The landlord submits that the appeal is devoid of merit and should be quashed under ss. 134(3) of the *Courts of Justice Act*, RSO 1990, c. C.43.

[2] For the reasons that follow, the motion is granted and the appeal is quashed.

**Background**

[3] The facts giving rise to the motion are undisputed.

[4] Waltmar Capital Inc. (“Waltmar”) is an Ontario corporation. It is the registered owner of the Premises. Walter Schneider is the principal of Waltmar. Due to inadvertence, the Application to End a Tenancy and Evict a Tenant (Form L.2) dated November 22, 2024 incorrectly identified the landlord as Mr. Schneider when it correctly should have identified Waltmar as the landlord.

The LTB was advised of this error but did not address the issue in the Order. It is undisputed that Waltmar is the actual landlord of the Premises.

[5] On July 31, 2021, the tenant and Waltmar, as landlord, entered into a written residential lease agreement for the Premises (the “Lease Agreement”) for a 1-year term from August 1, 2021 to July 31, 2022. The Lease Agreement was renewed from August 1, 2022 for a further 1-year period to July 31, 2023. Thereafter, the Lease Agreement continued on a month-to-month basis.

[6] On October 9, 2024, Waltmar, as vendor, and Agnes Mewes, as purchaser, entered into an agreement of purchase and sale for the Premises (the “APS”) with a March 1, 2025 closing.

[7] On October 22, 2024, and again on November 8, 2024, Waltmar delivered a N12 Notice of Termination to the tenant. The notice advised the tenant of the termination of her tenancy as of January 31, 2025 on account of the APS. The tenant refused to vacate the Premises.

[8] On November 22, 2024, Waltmar applied to the LTB for an order to terminate the tenancy and evict the tenant from the Premises (the “Application”). On November 25, 2024, the purchaser gave a declaration that she intended to occupy the Premises personally after the transaction closed.

[9] On January 8, 2025, the LTB issued a notice of hearing for the Application by mail.

[10] On February 24 and 25, 2025, Waltmar’s counsel wrote to advise the LTB that the Application incorrectly listed Mr. Schneider as the landlord instead of Waltmar. The error arose from a clerical error or misnomer but was not addressed in the Order by the LBT.

[11] On April 10, 2025, the LTB heard the Application. At the outset of the hearing, the tenant sought an adjournment on the basis that her lawyer, Marek Tufman, was unavailable that day. In oral reasons, the LTB denied the adjournment request and proceeded to hear the Application.

[12] On May 21, 2025, the LTB released the Order with reasons that, among other things, gave reasons to deny the tenant’s adjournment request and to grant the application on terms as follows:

- a. the termination of the tenancy between the tenant and the landlord;
- b. the tenant to vacate the Premises by June 30, 2025; and

- c. the eviction of the tenant may be enforced by the Sheriff.

### **The Appeal**

[13] On June 20, 2025, the tenant delivered a notice of appeal from the Order granted by the LTB. The notice of appeal raised three (3) grounds of appeal:

- a. “The Landlord and Tenant Board erred in law by reviewing the application by a non-party to the tenancy agreement and in making an award in favour of such non-party”;
- b. “The Landlord and Tenant Board erred in law in breaching procedural fairness in the hearing process by refusing an adjournment to the appellant in the circumstances”; and
- c. “The Landlord and Tenant Board erred in law in breaching procedural fairness by holding that ‘the tenant did not have an absolute right to legal representation.’”

[14] As a result of the tenant’s refusal to vacate the Premises and delivery of the notice of appeal that stayed the eviction under the Order, the closing of the sale of the Premises under the APS was frustrated. The tenant knew that purchaser, who is 85 years of age, was unwilling to indefinitely delay her purchase of the Premises. After the tenant refused to vacate and brought the appeal, the purchaser and the vendor agreed to terminate the APS and exchanged mutual releases.

[15] On August 27, 2025, the tenant delivered an amended notice of appeal to add a fourth ground of appeal as follows:

- a. “The agreement upon which the application was brought expired by its terms, and counsel for the respondent Schneider admitted on the 24<sup>th</sup> day of July, 2025 before Trimble, J., that there is no agreement in force, that the purchaser refuse (*sic*) to proceed with the agreement, and that she no longer intends to occupy the unit.

[16] The additional ground of appeal is based on new facts that arose *after* the LTB hearing on April 10, 2025 and the release of the Order dated May 21, 2025.

### **Legal Principles on a Motion to Quash an Appeal**

[17] The court to which an appeal is brought may quash the appeal for being manifestly devoid of merit: ss. 134(4) of the *Court of Justice Act*; *Schmidt v. Toronto Dominion Bank* (1995), 24 OR (3d) 1 (CA) at para 6. The power to quash an appeal is exercised sparingly as it is very difficult,

in most cases, to find that an appeal is devoid of merit without hearing the entire appeal: *Schmidt* at para 6; *Zhou v. Rama*, 2021 ONSC 4659 (Div Ct) at para 17; *Renée v. 10887609 Canada Inc.*, 2024 ONSC 917 (Div Ct) at para 37.

[18] An appeal from an order of the LTB to the Divisional Court is available only on a question of law: ss. 210(1) of the *Residential Tenancies Act, 2006*, SO 2006, c 17 (“RTA”). Generally, the bar is high for quashing an appeal for being devoid of merit, but it is appropriate to quash an appeal from an LTB order if the appeal does not raise a question of law: *Zhou* at para 18, citing *Solomon v. Levy*, 2015 ONSC 2556 (Div Ct) at paras 33-34, and *Mahdieh v. Chen*, 2019 ONSC 4218 (Div Ct) at para 8; *Maynard v. Kerr*, 2022 ONSC 4259 at para 16. Questions of law ask what the correct legal test is: *Canada (Director of Investigation & Research) v. Southam Inc.*, [1997] 1 SCR 748 at para 35; *Zhou* at para 19.

[19] The Divisional Court lacks jurisdiction to deal with findings of fact or mixed fact and law: *Oz v. Shearer*, 2020 ONSC 6685 (Div Ct) at para 22. Questions of facts are questions about what actually took place between the parties, and questions of mixed fact and law are questions about whether the facts satisfy the legal tests: *Southam Inc.* at para 35; *Maynard* at para 17.

## **Analysis**

[20] I am satisfied that the four (4) grounds of appeal in the notice of appeal, as amended, do not raise a question of law. Accordingly, I find that the appeal is manifestly devoid of merit.

### **a. First Ground of Appeal**

[21] The tenant’s first ground of appeal is that the LTB erred in law by making an order in favour of a non-party to the tenancy agreement as follows:

*“The Landlord and Tenant Board erred in law by reviewing the application by a non-party to the tenancy agreement and in making an award in favour of such non-party.”*

[22] Respectfully, I am not persuaded that this ground of appeal has any merit.

[23] From the record, it is clear that Waltmar was always the landlord under the lease agreement with the tenant, and always the vendor under the APS with the purchaser. None of this is disputed. The landlord’s eviction application inadvertently named Mr. Schneider (i.e., who is the principal

of Waltmar) as the landlord instead of Waltmar due to clerical error as the landlord's counsel explained in correspondence to the LTB sent on February 24 and 25, 2025 that raised and explained this inadvertence. I am satisfied that the error was due to clerical inadvertence that resulted in a mere irregularity or misnomer that the LTB did not correct in granting the Order even after being alerted to the error by the landlord.

[24] There is no real dispute that the misnomer should be corrected to properly identify the landlord in this case. Jurisprudence amply supports the principle that an amendment to correct a misdescription or misnomer in naming a party is warranted where the party knows that it was the intended party: *Ormerod v. Strathroy Middlesex General Hospital*, 2009 ONCA 697 at para 21; *Lloyd v. Clark*, 2008 ONCA 343 at para 4.

[25] Given the coincident intention to name Waltmar as the landlord in the eviction application and the knowledge of both parties that Waltmar always was the landlord, I am satisfied that the doctrine of misnomer applies to support an amendment of the pleadings to correctly name Waltmar as the landlord in this matter: r. 5.04(2). In turn, I am not persuaded that the tenant has a viable ground of appeal that raises a question of law based on this simple misnomer due to clerical inadvertence. Accordingly, I am satisfied that the tenant's first ground of appeal is devoid of merit.

**b. The Second and Third Grounds of Appeal**

[26] The tenant's second and third grounds of appeal are interrelated by asserting that the LTB erred in law by exercising its discretion to refuse the tenant's request to adjourn the hearing of the application for her to be represented by her counsel of choice. These grounds state the following:

*"The Landlord and Tenant Board erred in law in breaching procedural fairness in the hearing process by refusing an adjournment to the appellant in the circumstances, where she had attained legal counsel early in the process, but such counsel was unfortunately for urgent medical reasons subject to a surgery on the date of the hearing, the Landlord and Tenant Board was advised thereof in advance, and there would have been no prejudice to any party to the hearing had an adjournment been granted."*

*"The Landlord and Tenant Board erred in law in breaching procedural fairness by holding that 'the tenant did not have an absolute right to legal representation'."*

[27] In my view, these grounds of appeal do not raise a question of law.

[28] A request to adjourn a hearing does not raise a question of law but instead raises a question of mixed fact and law that involves the exercise of discretion: *Oz* at para 35, citing *BA International Inc. v. Ontario (Labour Relations Board)*, 2005 CanLII 45405 (ONSCDC) at paras 10-11 and 14; *Henye v. Minto Apartment Limited Partnership on behalf of the Registered Owners*, 2025 ONSC 2219 (Div Ct) at para 23; *Kalin v. Ontario College of Teachers*, 2005 CanLII 18286 (ONSDC) at paras 30-31. It follows that the LTB's decision to not grant the tenant's request to adjourn the eviction hearing cannot ground an appeal to Divisional Court: *Ibid*; ss. 210(1) of the *RTA*.

[29] In any event, I would see no basis for the tenant's claim that the LTB erred in not granting the adjournment request. A denial of procedural fairness, if proven, qualifies as an error of law: *O'Shanter Development Company Ltd. v. Barbara Augustin*, 2021 ONSC 1720 (Div Ct) at para 4. However, the denial of an adjournment request on a proper exercise of discretion is not a denial of procedural fairness and an appellate court will defer to a tribunal's discretionary adjournment decisions absent an error in principle or a failure to account for relevant considerations: *Anca International Holding Group Inc. v. Zhao*, 2024 ONSC 3397 (Div Ct) at paras 4, 14-15.

[30] In this case, I see no basis for the tenant's claim that the LTB erred by not adjourning the April 10, 2025 hearing. The tenant asked to adjourn the hearing shortly before the return of the LTB hearing as her counsel purportedly required an urgent and unexpected surgical procedure. Importantly, by letter to the LTB dated March 31, 2025, tenant's counsel wrote that he would also be unable to attend the April 10, 2025 hearing as he had a trial scheduled in the Ontario Court of Justice for April 10 and 11, 2025. In effect, tenant's counsel was *already* double-booked with both a provincial court trial and the LTB hearing on April 10, 2025 making him unable to attend the LTB hearing in any event, regardless of the surgical procedure. It was unclear when the provincial court trial had been scheduled.

[31] In opposing the tenant's request to adjourn the LTB hearing, landlord's counsel noted that the case was not complicated as the tenant was not contesting the purchaser's good faith intention to buy the Premises and reside there, as the tenant conceded to the LTB at the hearing. The LTB also heard that any delay from adjourning the LTB hearing would cause the purchaser irreparable harm as she was homeless and paying expensive rent for interim accommodation after selling her former home to close the transaction to buy the Premises. After canvassing the issue of prejudice with the parties, the LTB took a recess to consider the merits of the tenant's request to adjourn

before deciding to not adjourn the hearing. In the circumstances, I find no procedural unfairness with the LTB's decision to decline the adjournment request. There is no absolute right to legal representation at a hearing before the LTB and the tribunal recognized the time-sensitive nature of the case given the tenant's refusal to vacate, the impending closing of the APS transaction, the tenant's acceptance of the purchaser's good faith intention to close the APS transaction and occupy the Premises, and the prejudice to the landlord and the purchaser by delaying the eviction application hearing. In declining the tenant's request to adjourn the hearing, the LTB gave a reasoned and balanced decision for declining the adjournment request: see paras 1 to 3 of the Order dated May 21, 2025. As Favreau J. (as she then was) noted in granting a motion to quash an appeal from an order of the LTB in *Mubarak v. Toronto Community Housing Corporation*, 2022 ONSC 382 (Div Ct) at para 35, the LTB has a high volume of proceedings, is entitled to control its own process to ensure that its cases are dealt with efficiently. The LTB exercises wide discretionary latitude in deciding whether to adjourn a scheduled hearing, with the scope for judicial intervention being correspondingly limited: *Sterling v. Guillame*, 2021 ONSC 1160 (Div Ct) at para 29, citing *Flamboro Downs Holdings Ltd. v. I.B. of T.C.W. & H. of A., Local 879*, 1979 CanLII 1669 (Div Ct); *Turner v. Dong*, 2024 ONSC 5081 (Div Ct) at paras 37-38.

[32] In *Solomon v. Levy*, 2015 ONSC 2556 (Div Ct) at paras 39-40, the Divisional Court stated:

[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 Act, 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.

[33] In denying the tenant's request to adjourn, the LTB considered her submissions for seeking the adjournment request and chose to not grant the request. Its decision was based on the prevailing facts and circumstances of the case and made after hearing the parties' submissions on the request to adjourn. The LTB found that an adjournment was not warranted given the competing interests and had proper grounds for refusing to delay the eviction hearing that fell within the range of acceptable outcomes. In my view, it cannot be said that the LTB erred in principle, failed to

consider relevant factors, conducted itself in arbitrary fashion, or denied natural justice by denying the tenant's request to adjourn the application hearing.

**c. The Fourth Ground of Appeal**

[34] The tenant's fourth ground of appeal seeks to rely on events that post-date the LTB's eviction order dated May 21, 2025 by which the purchaser and the landlord mutually agreed to terminate the APS transaction. This fourth ground of appeal is set out as follows:

*"The agreement upon which the application was brought expired by its terms, and counsel for the respondent Schneider admitted on the 24th day of July, 2025 before Trimble J. that there is no agreement in force, that the purchaser refuse (sic) to proceed with the agreement, and that she no longer intends to occupy the unit. The counsel advised the Court that the landlord intends to still seek repossession of the unit, just in case he obtains another tenant or chooses to sell the property. Such "grounds" do not entitle the Respondent to the relief awarded by the Tribunal or indeed to any relief under the Residential Tenancies Act, 2006, and the appeal must be ipso facto allowed, or the matter remitted to the Tribunal for it to be dismissed at that forum."*

[35] By asserting that the subject APS had expired, the tenant's fourth ground of appeal does not raise a question of law. Instead, this ground of appeal invites the Divisional Court to reassess the evidence and the LTB's findings that is not a proper function of the Court on appeal: *Kushner v. Turtledove Management Corp.*, [2009] OJ No 1064 (Div Ct) at para 3; *Oz* at paras 31 and 34; *Henye v. Minto Apartment Limited Partnership on behalf of the Registered Owners*, 2025 ONSC 2219 (Div Ct) at para 23. The decision of the LTB is well-reasoned and involved an exercise of discretion on a question of mixed fact and law that is not subject to appeal: *Oz* at para 35; *Henye* at para 23. Notably, the tenant did not contest the LTB's factual findings that the landlord entered into an APS with the purchaser who in good faith intended to occupy the Premises. The findings clearly supported the LTB's decision to order the eviction that is fatal to the tenant's appeal: *Zhou* at para 24.

[36] In any event, the tenant is responding to the landlord's motion by relying on fresh evidence to show that she refused to vacate the Premises and delivered a notice of appeal that automatically stayed the Order of the LTB that required her eviction: r. 63.01(3) of the *Rules of Civil Procedure*, RRO 1990, Reg 194. By doing this, the tenant effectively frustrated the ability of the landlord and the purchaser to close the APS transaction. During the LTB hearing, the purchaser testified that

she wanted to move into the Premises as soon as possible as she was paying to stay at a retirement home and store her belongings that was causing her financial hardship. In light of this, the purchaser testified that she was unwilling to indefinitely suspend the APS transaction and intended to terminate the APS if the tenant did not vacate the Premises: LBT Order at para 18. The tenant was well-aware that the purchaser would not wait indefinitely to close the APS transaction and take possession of the Premises. As it turned out, the tenant's steadfast refusal to vacate caused the purchaser and the landlord to terminate the APS and exchange mutual releases.

[37] In my view, the tenant should not be allowed to rely on her refusal to vacate (i.e., that effectively frustrated the APS and led to the termination of the sale transaction) to overturn the Order for her eviction. The tenant's conduct shows a pattern of gaming the system by, a) refusing to vacate the Premises, b) waiting over 2 ½ months and just 11 days before the return of the eviction application on April 10, 2025 to seek to adjourn the LTB hearing as her counsel was unavailable ostensibly due to a medical procedure even though her counsel was already double-booked with a provincial court case on the same day as the LTB hearing despite being retained in or around February 11, 2025 to attend the LTB hearing, c) not complying with the May 21, 2025 Order that required her to vacate the Premises by June 30, 2025, and d) bringing this appeal to obtain an automatic stay of the LTB's eviction order while clearly knowing of the tenant's stated-intention to terminate the APS if the tenant refused to vacate. Taking everything into account, I accept that the tenant brought this appeal solely or in part to game the system and gain an improper advantage by bringing the appeal to obtain a stay of eviction and await a termination of the APS transaction. In light of this, I am satisfied that the appeal is an abuse of process and should not proceed: *Leysork Holdings Ltd. v. Munden Acres Ltd.* (1976) OR (2d) 430 (CA) at para 18; *Solomon* at para 34; *Regan v. Ennis*, 2016 ONSC 7143 (Div Ct) at paras 23, 24 and 26; *Oladunjoye v. Jonker*, 2021 ONSC 1199 (Div Ct) at para 17; *Capreit v. Veiga*, 2022 ONSC 958 (Div Ct) at paras 26 and 53.

### **Outcome**

[38] Based on the foregoing, I find that the tenant's appeal should be quashed, the stay of the LBT's Order dated May 21, 2025 under r. 63.01(3) should immediately be vacated, and the Sheriff should be directed to enforce the Order.

[39] If the parties are unable to resolve the issue of costs for the motion, the landlord may deliver written costs submissions of up to 3 pages (excluding any costs outline or offer to settle) within 15 days, and the tenant may deliver responding costs submissions on the same terms within a further 15 days. Reply submissions shall not be delivered without leave.

**Date:** December 2, 2025

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M.T. Doi J.

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**ENDORSEMENT**

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M.T. Doi J.

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