CITATION: Vanderhoof v. Sakhawat, 2025 ONSC 6825
DIVISIONAL COURT FILE NO.: DC-25-00000335-0000
DATE: 20251208

ONTARIO

SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

BETWEEN:

EVELYN VANDERHOOF Appellant	)	*Timothy M. Duggan,* Counsel for the Appellant
– **and** –	)	
KAZI JAVED SAKHAWAT Respondent	)	*Delaram M. Jafari,* Counsel for the Respondent
	)	**HEARD via videoconference**: November 25, 2025

O'BRIEN J.

REASONS FOR DECISION

Overview

[1] The landlord appeals two orders of the Landlord and Tenant Board: an initial order dated November 22, 2024 and a review order dated March 28, 2025. The landlord submits the Board erred in refusing to terminate the tenancy between the parties because the relevant provision of the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 (Act or RTA), s. 51(1), did not apply to the tenancy. Subsection 51(1) prevents a landlord of a residential complex that is converted to a condominium building from giving notice that they require the unit for their own use.

[2] In the landlord's submission, the tenancy was originally entered into when the residential building was a "life lease" building, before the building's conversion to a condominium building. The landlord submits a life lease is a form of ownership interest that falls outside the authority of the RTA. In her submission, the conversion to a condominium building does not convert the previous tenancy to a tenancy of a type that would protect the tenant under s. 51(1) of the RTA,

[3] Before it became a condominium building, the building in which the unit is found was owned by Rose of Sharon (Ontario) Retirement Community (ROS). The tenant, Mr. Sakhawat, had a lease agreement in that building with Leon Hui (who I am advised was incorrectly referred to in the Board orders as Ken Tsui). Mr. Hui had what the Board in its November 22 order called an "interest in the property as a life-lease holder." The Board did not explain what a "life-lease holder" meant nor did the Board have before it any details of the terms of Mr. Hui's holding in the building. The tenant leased the unit from Mr. Hui through a rental agreement beginning on April 1, 2011. The original rental agreement was for a one-year term and continued uninterrupted thereafter.

[4] Because of financial difficulties, ROS was placed into receivership. The receiver caused the condominium corporation to be registered on May 18, 2022. Individual units in the building, including the unit at issue here, were sold to individual purchasers, one of whom was the current landlord Ms. Vanderhoof. The sales occurred pursuant to an approval and vesting order issued by the Superior Court of Justice on July 27, 2022.

[5] The landlord brought an application before the Board seeking a termination of the tenancy because she "in good faith required possession of the rental unit for the purpose of residential occupation for at least one year." In its November 22 order, the Board found the tenancy was not exempt from the RTA. The Board started by finding there was incomplete evidence regarding the effect of the receivership and whether the life lease impacted the tenancy in the condominium conversion. It went on to conclude that: (1) s. 51(1) of the RTA prevented the termination of the tenancy on conversion to a condominium building and (2) the parties met the definition of landlord and tenant. In the Board's view, there was no exemption that would remove the tenancy from the RTA. The Board also relied on *Bory v. Bory*, 2016 ONSC 526 to find a life lease did not render a tenancy exempt from the Act.

[6] The Board denied the landlord's request for review. In that decision, the Board stated that there were no binding court decisions providing that life leases are not governed by the Act. The Board was satisfied that the member's conclusion that there was no provision exempting the tenancy from the Act was a viable interpretation of the Act.

[7] In this court, the landlord submits the Board erred in the threshold determination of the applicability of the RTA. In her submission, life leases are a form of ownership interest that are unregulated, including by the RTA. She states the Board erred in failing to consider this threshold issue and by imposing on the landlord the burden of proving an exemption in the RTA. The landlord also submits the Board erred in conflating "life leases" with "leases for life" as discussed in *Bory v. Bory*.

[8] For the following reasons, the appeal is dismissed.

What is the standard of review?

[9] The jurisdiction of the court on an appeal from the Board is limited to reviewing errors of law: RTA, s. 210. The standard of review is correctness. The parties disagree on whether the appeal raises an issue of law. The landlord submits the Board erred in law by failing to consider the

threshold issue. The tenant submits the questions on the appeal are questions of mixed fact and law and therefore outside the court's jurisdiction. From my analysis below, it will become clear that I agree with the tenant and therefore do not have a basis to interfere with the Board's findings.

Did the Board err by finding the Act applied to protect the tenancy on conversion to a condominium building?

[10] In the landlord's submission, life lease buildings are unregulated. She therefore submits s. 51(1) of the Act, which addresses the conversion of a residential complex to a condominium building, cannot apply because the building was not a residential complex covered by the Act in the first place.

[11] Subsection 51(1) prevents a landlord from giving a tenant notice under s. 48 of the Act if the tenant was a tenant of a rental unit when the building was converted to a condominium building. Section 48 permits the landlord to give notice of termination of the tenancy if they in good faith require the unit for their own use, which is what happened here. Subsection 51(1) provides:

> **51(1)** If a part or all of a residential complex becomes subject to a registered declaration and description under the Condominium Act, 1998 or a predecessor of that Act on or after June 17, 1998, a landlord may not give a notice under section 48 or 49 to a person who was a tenant of a rental unit when it became subject to the registered declaration and description.

[12] I disagree that the Board erred in applying this provision to the circumstances before it. The starting point was that the Act applied. The landlord brought a s. 48 application, which is an application under the Act that a "landlord" may, by notice, terminate a "tenancy." The terms "landlord," "tenant," and "tenancy agreement" are defined in s. 2 of the Act. The landlord agrees that these terms applied. This is why she brought her application before the Board.

[13] I am not persuaded by the landlord's submission the Board erred in accepting the building was a "residential complex" for the purpose of s. 51(1). The Act is remedial legislation that must be interpreted with a tenant protection focus: *Elkins v. Van Wissen*, 2023 ONCA 789, at para. 42. Subsection 3(1) of the Act provides that, subject to exceptions not applicable here, the Act "applies to all rental units in residential complexes, despite any other Act and despite any agreement or waiver to the contrary." Subsection 3(4) emphasizes that the Act prevails over other legislation, stating: "If a provision of this Act conflicts with a provision of another Act, other than the Human Rights Code, the provision of this Act applies."

[14] The Board reasoned that the Act applies to all rental units in all residential complexes unless specifically exempted: Act, s. 3. "Residential complex" is defined in s. 2 of the Act to mean, in part: "a building or related group of buildings in which one or more rental units is located." The landlord agrees the current arrangement between the landlord and tenant is a rental unit. At a minimum, it is beyond dispute that the building was a residential complex at the time of the application before the Board.

[15] Given the application of the Act to the tenancy, and considering the landlord had brought the application, it was the landlord's burden to prove the arrangement between the parties was not covered by s. 51(1).

[16] I would not interfere in the Board's determination that the landlord did not meet that burden. Although the question of whether life leases generally are covered by the RTA may be a question of law, that was not the question before the Board in the circumstances of this case.

[17] The Board was not satisfied it had sufficient evidence or information to displace the starting point that it was dealing with a rental unit in what was at that point a residential complex. First, the terms of the interest between Mr. Hui and ROS were not in evidence. There was a general reference to the building being a "life lease building," but no specific information on what that meant. The Board had only the rental agreement between the tenant and Mr. Hui, which was a standard residential tenancy agreement.

[18] Second, the evidence before the Board included notices from the receiver to the tenant, regarding the landlord's "assumption of the Tenant's month to month lease," together with directions to make monthly rent payments to the landlord after the closing date. The directions did not suggest there was a new type of arrangement or tenancy being created.

[19] Third, despite its requests, the Board was not provided with detailed information about the Superior Court proceedings and how a prior life lease impacted the tenancy in a condominium conversion. The landlord originally had submitted to the Board that the vesting order explicitly ended the existing tenancy. The Board asked the parties to seek clarification from the court regarding the vesting order and title order, because the Board was of the view this information was necessary to determine the application.

[20] The landlord subsequently advised she was no longer relying on the vesting order. However, that put the Board in the position of not having evidence regarding the impact of the court proceedings on the tenancy. Ultimately, the Board was unable to determine how a prior life lease may have impacted what appeared to be an existing tenancy. The Board stated at para. 11 of its reasons:

> I find that there was incomplete evidence before me regarding the effect of that receivership and whether a prior life lease impacted the tenancy in the condominium conversion. This determination should not be made in a vacuum, to act as if there was not a prior proceeding in the Superior Court that dealt specifically with this tenancy and based on extensive supporting documentation that the Receiver would have received and considered. To withdraw the Vesting Order and seek not to rely on the determinations of the higher court, which the Landlord previously stated were applicable in this case, leaves me with incomplete information on the Court's final ruling in this tenancy - and in a position a contradictory order may be made by this Board.

[21] Overall, the Board relied on the evidence before it to conclude the tenancy between the landlord and tenant fell within the scope of the Act. I agree with the tenant that, given the nature

of the reasoning, which was not that life leases generally are governed by the Act, but that the evidence before it did not displace the Act, this was a question of mixed fact and law that falls outside the jurisdiction of the court.

[22] Because the Board did not err in finding the Act applied, there also was no error in its conclusion that, to avoid the protections of the Act, the landlord would have been required to demonstrate an exemption under s. 5.

[23] For related reasons, there was no error in the Board's reliance on *Bory v. Bory*. That case involved an agreement by which the tenant had the right to occupy the premises for a lifetime. The court found s. 48 did not apply because it could only authorize the landlord to regain possession of the unit at the end of the term of the tenancy, which would mean only on the tenant's death. The Board relied on the case to say a lifetime tenancy was not exempt from the Act. Because the Board had no specific information about the nature of the interest between the parties prior to conversion, but knew it was being referred to as a "life lease," the court's treatment of a lifetime tenancy was not irrelevant. In any event, the reference to this case does not affect the Board's conclusion that the landlord had failed to establish the tenancy fell within an exemption in the Act.

Disposition

[24] The appeal is dismissed. As agreed by the parties, the appellant shall pay costs to the respondent of $3,500 including HST plus the disbursements claimed in the respondent's costs outline.

O'Brien, J.

Released: December 8, 2025

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