

CITATION: Gordon-Kay v. Sharpe 2025 ONSC 6856
COURT FILE NO.: DC-24-00000107-0000
DATE: 2025/12/09

SUPERIOR COURT OF JUSTICE – ONTARIO (DIVISIONAL COURT)

RE: ANNE GORDON-KAY in her capacity as Estate Trustee for ANNA BAZALA
(Deceased), Appellant

AND:

TAMMY SHARPE, Respondent

BEFORE: Justice I.F. Leach

COUNSEL: Gurman S. Bhatti, for the Appellant

Craig Allen, for the Respondent

HEARD: October 28, 2025

ENDORSEMENT

[1] Before me, in my capacity as a single judge of the Divisional Court, is an appeal by the landlord of a specified rental unit from an order made by the Landlord Tenant Board (the “LTB” or “the Board”), on or about September 5, 2024, dismissing an application by the landlord, (in LTB file number LTB-L-017685-23), to terminate the tenancy of the respondent tenant to demolish the rental unit.

[2] For the reasons outlined below, I find that appeal must be dismissed, with costs of the appeal being awarded to the respondent as per the joint submission of the parties in that regard.

Further background

[3] I have regard to all of the material properly filed by the parties in relation to the appeal, and the broad overview or summary of underlying matters that follows should not suggest otherwise.

[4] However, focusing initially on underlying matters that generally seemed non-contentious, as well as procedural developments giving rise to this appeal, further background to this appeal may be summarized broadly as follows:

- a. The relevant rental unit at the heart of this dispute is situated on a rural property with a specified address on County Road 11, (Rural Road 4), in the municipality of Harrow, Ontario. It seems the property in question originally was a farm property

approximately 14.5 acres in size, the buildings on which included a fully detached house; i.e., a single-family residence building. Much of the house was not built in its current location, but was instead built approximately 100 years ago and transferred onto its current foundation approximately 50 years ago.

- b. Approximately 14 years ago, the property was owned by Anna Bazala, who leased the residence on the property to Tammy Sharpe; i.e., the respondent to this proceeding. Ms Sharpe has lived in the residence as a tenant since then; i.e., moving into the rental unit on or about October 31, 2011.
- c. Ms Bazala died in or around June of 2021, leaving four surviving children; i.e., the heirs to Ms Bazala's estate. The estate is now formally represented by Anne Gordon-Kaye, the appellant herein, and one of Ms Bazala's children who was formally appointed as estate trustee in relation to her mother's estate.
- d. It seems undisputed that measures taken to administer the estate included unsuccessful efforts to sell the original 14.5 acre property intact, (i.e., as a "hobby farm"), before steps then were taken to sever and sell approximately 10 acres of the property to an adjoining landowner, leaving the estate with a 3.5 acre property still including the residence occupied by Ms Sharpe as a tenant.
- e. For many years now, relations between the landlord and its tenant Ms Sharpe clearly have been showing signs of conflict and strain, including the delivery of multiple notices *inter se* pursuant to the *Residential Tenancies Act, 2006*, S.O. 2006, c.17; i.e., "the RTA". At the risk of over-simplification, the tenant Ms Sharpe has claimed that the estate landlord had failed in various ways to meet maintenance and repair obligations owed in relation to the relevant rental unit, while harassing Ms Sharpe and interfering with her reasonable enjoyment of the rental unit, while the estate landlord repeatedly has indicated its desire to formally terminate Ms Sharpe's tenancy for alternative reasons. The latter indications have included:
 - i. the estate landlord serving Ms Sharpe with multiple "N12" notices, indicating that the landlord was terminating the tenancy pursuant to s.48(1) of the RTA, because the landlord required possession of the relevant rental unit for the purpose of residential occupation for a period of at least one year by the landlord or other related individuals listed in s.48(1) of the RTA; and
 - ii. the estate landlord serving Ms Sharpe with an "N13" notice, indicating that the landlord was terminating the tenancy because it required possession of the relevant rental unit, pursuant to s.50(1)(a) of the RTA, in order to demolish it.
- f. Delivery of the aforesaid notices resulted in five formal applications which proceeded to a combined hearing before the LTB, (and its Vice-Chair Harry Cho in particular), that extended over the course of six non-consecutive days, over a

very prolonged period; i.e., with the first hearing date occurring on May 21, 2021, and the sixth and final hearing date occurring on May 15, 2024.

- g. Evidence and submissions regarding the estate landlord's application to terminate tenancy of the rental unit for the purpose of demolishing it, pursuant to its "N13" notice and s.50(1)(a) of the RTA, apparently was confined to the sixth and final day of hearing before the LTB, (i.e., May 15, 2024), in respect of which the appellant tendered a transcript as part of the material filed in support of its appeal. I have reviewed and considered that transcript in its entirety, and the overview summary that follows should not suggest otherwise. However:
- i. The LTB was presented with testimony from four witnesses in relation to the estate landlord's N13 notice and corresponding application pursuant to s.50(1)(a) of the RTA; i.e., testimony from Horst Schmidt, (called by counsel for the estate landlord as its representative), from Matthew Laliberte, (a non-party called by counsel for the tenant), from Debra Peters, (another non-party called by counsel for the tenant), and from Tammy Sharpe, the respondent.
 - ii. Testimony provided by Mr Schmidt included but was not limited to the following:
 1. Mr Schmidt described how the estate landlord had tried and failed to sell the original 14.5 acre property, (including the rental unit house thereon), as an undivided whole, (or "hobby farm type of thing"), without receiving any offers in that regard. Steps then were taken, as noted above, to sever and sell approximately 10 acres of the property to an adjoining landowner, leaving the estate landlord with the remaining 3.5 acre property including the rental unit.
 2. According to Mr Schmidt, the estate landlord then tried to sell the remaining 3.5 acre parcel of property, including the rental unit thereon, but received what it considered to be "no reasonable offers" in that regard. (In cross-examination, Mr Schmidt further described such offers as being "no bona fide offers that we could accept".) Mr Schmidt provided no further details in that regard.
 3. According to Mr Schmidt, the estate landlord nevertheless also received what he described as "a number of interests (sic), if the house was removed", so that it could be offered as a "building lot"; a process supported by the estate's realtor, whereby the estate landlord then "could get somebody to purchase it". In that regard, Mr Schmidt testified that "there were buyers available for that", and that "everybody" who had viewed the house had relied upon noted deficiencies in the house, (some of which were described by Mr Schmidt), "to try to beat down the price of the property", such that

what such potential buyers were “offering for the house and land is less than what [the estate landlord] can get for the land alone”. Once again, however, no details were provided in relation to such matters.

4. Mr Schmidt emphasized that administration of the landlord estate was approaching its third anniversary, with an expectation that it would be “wound up” by that point. The estate trustee, with the support of all of the estate beneficiaries, (i.e., the estate trustee herself and her three siblings), therefore was attempting to get the “best possible value” from the property for the estate. In that regard:
 - a. The estate trustee and beneficiaries had all agreed that the best course of action was demolition of the house on the property, so as to acquire or realize a “better value” from the property for the estate. The estate accordingly had applied for and received a permit to demolish the house, in addition to serving its N13 notice on the tenant, Ms Sharpe.
 - b. During his examination-in-chief, Mr Schmidt nevertheless added that, while the “end goal” of the estate trustee and beneficiaries was to sell the property “as a vacant lot”, and that was their “plan”, they “of course” would sell it to someone who came in and offered a “better price” for the property in its current state; i.e., with the land and the house still on it.
 - c. When the Board noted an apparent inconsistency between Mr Schmidt’s indication that the estate had decided to demolish the house on the property, and its still being receptive to offers to purchase the property with the house on it intact, Mr Schmidt initially responded to further questioning in that regard by saying the estate was “committed to demolishing”, such that it would be unable to accept a “decent price for the property with the house”.
 - d. In response to further questioning during his examination-in-chief, Mr Schmidt nevertheless acknowledged having received an inquiry from Mr Laliberte, within the previous three months, expressing a desire to make an offer to purchase the property “with the house on it and everything else”. As noted and emphasized by the Board during the course of Mr Schmidt’s testimony, Mr Schmidt’s response to that inquiry was not “No, it’s got to be sold as a vacant land”, but an indication that Mr Laliberte needed to “deal through” the estate’s real estate agent, coupled with indications that, “right now”, (i.e., at the time of Mr

Lalibert's inquiry), the estate was "on a plan", with a "direction to go with a vacant land".

iii. Testimony provided by Mr Laliberte included but was not limited to the following:

1. He did not know anyone connected with the property's estate landlord or tenant, but had stopped by the property with a view to purchasing a "four-wheeler" vehicle there, and was advised by the tenant, Ms Sharpe, that the property was for sale.
2. In that regard, Mr Laliberte testified that he "worked around the corner" from the property, and had seen an earlier sign indicating that the property was for sale, for \$499,000, but he was busy with his employment as a long-haul truck driver, and had not previously thought about making a purchase offer. However, when attending at the property, he thought the house there was nice and the property was "big". He therefore sought further information about whom he should contact to see about buying the property, and recalled then being provided with an email address for "some lady", whom he understood to be the property's owner. He then sent an email to the address, providing his contact details and other information.
3. Mr Laliberte testified that, in response to sending that email, he then received a telephone call from Mr Schmidt, (approximately three weeks prior to Mr Laliberte testifying on May 15, 2024), indicating that the property was "going for \$600,000"; a price that would include the land with the existing building/house on it, on the understanding that Mr Laliberte "had to get rid of the tenants".
4. In cross-examination, Mr Laliberte was asked further questions about what price he was willing and able to pay for the property; e.g., with Mr Laliberte indicating that he had intended to offer \$500,000 for the property, including the house, and was confident that his bank would extend such purchase financing to him, (i.e., via arrangements akin to pre-approved financing up to that amount), although he had not yet spoken to his bank about the specific contemplated purchase. However, Mr Schmidt had indicated that the purchase price for the property including the house would be \$600,000, and while Mr Laliberte thought that would still be a "good deal", he did not think the bank would give him the additional financing needed in that regard. During such questioning, the Board noted its view that the purchase price of the property nevertheless was "entirely irrelevant to whether or not the landlord intends to demolish this property"; i.e., the rental unit in question. That view

was repeated by the Board later during the hearing, at the outset of receiving submissions from counsel.

iv. Testimony provided by Ms Peters included but was not limited to the following:

1. She indicated that she knew the respondent Ms Sharpe through a mutual friend named “Andy”, who lives with Ms Peters and provides her with assistance in relation to care of her husband and other tasks.
2. Ms Peters nevertheless apparently was called as a witness primarily for the purpose of testifying that the aforesaid “Andy” was the nephew of John Bazala, (i.e., one of the landlord estate’s four beneficiaries), and had indicated to Ms Peters, (on an occasion when she and Andy had met at a “No Frills” store), that his uncle John Bazala had told him, (i.e., Andy), that the house on the property “was being torn down to get Tammy [Sharpe] out of the house”, as that was “the only way they could get her out of the house”.
3. In cross-examination, Ms Peters confirmed that she knew the respondent on a first name basis, but denied being friends who did anything together. She also confirmed that she previously had been interested in the possibility of purchasing the unsevered land, (with a view to renting it and using the rental income to assist with covering the carrying charges), but thought the \$700,000 purchase price then being sought for the unsevered property was too high.

v. Testimony provided by Ms Sharpe included but was not limited to the following:

1. She confirmed the date on which she had moved into the relevant rental unit, and her occupation of the unit since then.
2. She indicated her belief that the landlord was not going to demolish the building on the property and was “just trying to get [her] out” of the residence, because she was no longer wanted as a tenant and the landlord also did not wish to deal with any more maintenance costs in that regard. She was aware of the fact that the landlord also had been trying to sell the house, and believed that also was being done with a view to evicting her from the residence.
3. Ms Sharpe then went on to address what she perceived to be past and ongoing maintenance issues relating to the residence.
4. To address the possibility of the enforcement of any granted eviction order being postponed for a period of time pursuant to s.83(1)(b) of

the RTA, (i.e., to allow Ms Sharpe an opportunity to seek alternative accommodation), Ms Sharpe then provided testimony regarding her health conditions, disability, and limited sources of income via government assistance programs.

- vi. I will not attempt to summarize all of the submissions made by counsel before the Board in relation to the “N13” notice and application by the estate landlord to terminate the tenancy for the stated purpose of demolishing the relevant rental unit. However, because the later decision of the Board specifically refers to the closing submissions made on behalf of the estate landlord in that regard, I note the following:
1. The Board specifically asked counsel for the landlord to address concerns it had regarding the credibility of Mr Schmidt in terms of “the explanation given for wanting to demolish the property”, noting what the Board perceived to be reasons that “shifted variably” during the course of Mr Schmidt’s testimony. In that regard, the Board noted that it was particularly troubled by Mr Schmidt’s indication that the house must be demolished, now that a demolition permit has been retained, when considered together with:
 - a. the evidence of recent conversations discussing the possibility of the property being sold with the house intact; and
 - b. Mr Schmidt’s own testimony essentially indicating that the estate still would be glad to sell the property without demolishing the residence on it, if the estate can get a good price for the property with the house on it.
 2. In that regard, the Board asked counsel for the estate landlord to address, in particular, what it described as an “overarching concern” that the landlord’s intention to demolish the residence actually may not have “crystalized” at the time the relevant “N13” notice was given, and/or actually may not “ever” have “crystalized”, given the possible inferences to be drawn from Mr Schmidt’s testimony. The Board expressly clarified its concern in that regard as one focused on a need to determine whether the landlord “intended” to demolish the rental unit when it issued its “N13” notice, and whether the landlord still “intends” to demolish the rental unit.
 3. In response, counsel for the estate indicated and/or acknowledged that the landlord was absolutely willing, able and prepared to tear down the residence on the property, but admittedly also was still willing to sell the property with the house on it “if that can be done appropriately”. In that regard:

- a. It was emphasized that the application process to terminate Ms Sharpe’s tenancy had been outstanding for approximately five years, and that the administration of the estate was approaching the three-year mark, such that the estate soon would be facing monetary penalties if its administration was not concluded in the near future. In the result, it was said, there had been “a lot of time for plans to change”, and a “shift in purposes”.
 - b. It also was submitted that the estate’s admitted ongoing willingness to consider either of those options, (i.e., demolition of the residence on the property, or sale of the property with the house still intact on the property), while initiating and/or pursuing its application to terminate the respondent’s tenancy for the stated purpose of demolition, should not be viewed as “duplicitous” or a lack of good faith, but simply a reflection of the estate trustee’s willingness to do her “absolute best” to discharge her duties to the estate and its beneficiaries. That included a willingness “to accept either of these options”, (i.e., to demolish the residence on the property or sell the property with the house on it), as long as it got it “done”.
4. In relation to such matters, counsel for the tenant emphasized the landlord had a demonstrated history of trying to evict Ms Sharpe, had provided absolutely no evidence to support any suggestion that demolition of the rental unit was the landlord’s last recourse in securing a sale of the property, and the testimony of the landlord’s representative Mr Schmidt had clearly “changed and progressed into different variations of what they’re trying to do here”.
- h. The LTB released its decision in relation to all of the various applications on September 5, 2024. I have reviewed and considered the decision in its entirety, and nothing herein should suggest otherwise. However, for present purposes, (and I will have more to say about the decision in the course of my analysis), I note the following by way of initial comments and very broad summary in that regard:
 - i. The decision addressed all of the applications before the LTB that had been brought by the respective parties; i.e., with the Board indicating all of its required determinations in that regard.
 - ii. The Board found that the landlord had not proved, on a balance of probabilities that possession was required for the purpose of demolition, and/or the landlord’s “stated purpose for demolishing the rental house”. To the contrary, the Board found that there was sufficient evidence to make a reliable finding that a decision to demolish the relevant rental unit

“had not crystallized” when the landlord’s Form N13 notice of termination was served, that the landlord “continued to have no defined plan to demolish the property”, and that the landlord “was in fact indifferent to demolishing the rental house”. Considerations relied upon by the Board in reaching such findings were said to have included:

1. the testimony of Mr Schmidt, including his acknowledgment of having discussed sale of the property to Mr Laliberte with the house intact following service of the landlord’s N13 notice of termination;
 2. the undisputed testimony of Mr Laliberte, (whom the Board regarded as a credible and reliable witness), that Mr Schmidt had engaged in discussion, following service of the landlord’s N13 notice of termination, regarding a sale of the underlying property with the rental unit intact; and
 3. the closing submissions by counsel for the landlord, including indications “that it remained unclear as of the hearing date whether the property would be sold with or without the residential unit intact”.
- iii. In that regard, the Board emphasized its view that s.50(1)(a) of the RTA was subject to an implied condition imposing a general duty of good faith, similar to that applicable to s.48(1) of the RTA, in relation to such transactions and activities involving residential tenancies; i.e., that the Legislature did not intend to permit landlords to use or rely upon s.50(1)(a) of the RTA without having a genuine intent to demolish a rental unit, as doing so would offend the purposes of the Act, including its remedial focus on tenant-protection and the prevention of illegal evictions. In this particular case, the Board found that “simply thinking of potentially demolishing the house to promote the sale of the property [was] inadequate to terminate a tenancy under subsection 50(1)(a) of the Act”.
- iv. The Board expressly and specifically denied being influenced or guided in any way by the testimony of Ms Peters in reaching its decisions; i.e., noting that her testimony was largely hearsay evidence of a conversation Ms Peters did not personally witness, and which therefore was of little probative value.
- i. The appeal herein, commenced by way of a notice of appeal delivered by the appellant landlord on or about September 12, 2024, was limited to the LTB’s decision and dismissal order made in relation to file number LTB-L-017685-23; i.e., the application made by the estate landlord, (pursuant to its “N13” notice), to terminate the tenancy of the respondent Ms Sharpe in order to demolish the relevant residential unit. In that regard:

- i. I have reviewed and considered the appellant’s notice of appeal in its entirety, and the notice speaks for itself.
- ii. Broadly summarized, however, the grounds of appeal identified in the appellant’s notice of appeal, (apart from broad unspecified references to the Board acting unreasonably and/or on the basis of improper principles which were not particularized in any way), included the following:
 - 1. the LTB was said to have erred in law in its interpretation of s.50(1)(a) of the RTA;
 - 2. the LTB’s findings that the landlord did not have a genuine intention to demolish the relevant rental unit and/or did not act in good faith in serving an N13 notice of intention in that regard were said to constitute further errors of law; and
 - 3. the LTB was said to have erred in law by failing to address itself to the question of possible application of s.57(1)(c) of the RTA to remedy any concerns about the landlord possibly trying to terminate the respondent’s tenancy without having a genuine intention to demolish the relevant rental unit and/or without acting in good faith in that regard.
- iii. In the factum filed by counsel for the appellant, references were made to additional complaints that the Board had demonstrated a reasonable apprehension of bias in various ways. However, no such concerns were raised in the notice of appeal delivered by the appellant, (in the stated grounds of appeal or otherwise), no efforts were made to amend the appellant’s notice of appeal in that regard, and such matters therefore understandably were not addressed in the responding material filed by counsel for the respondent. In the result, I indicated during the hearing before me that the appellant would be confined to the possible grounds of appeal identified with particularity in the appellant’s notice of appeal.

Appellate jurisdiction and general principles

- [5] I will have more to say about legislation and legal principles applicable to this particular appeal in the course of my analysis outlined below. However, I begin by noting matters in that regard generally relevant to appeals of this nature, and the standard of review to be applied in that regard.
- [6] Pursuant to s.209(1) of the RTA, an order of the Board is “final and binding”, except where the Act provides otherwise, and subject to s.21.2 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c.S.22. There was no suggestion that the latter had any relevance to this particular case.

[7] The ability to appeal from the Divisional Court from an order made by the LTB is both permitted and circumscribed by section 210 of the RTA, which reads in part as follows:

210. (1) Any person affected by an order of the Board may appeal the order to the Divisional Court within 30 days after being given the order, *but only on a question of law.* ...

(4) If an appeal is brought under this section, the Divisional Court shall hear and determine the appeal and may,

(a) affirm, rescind, amend or replace the decision or order; or

(b) remit the matter to the Board with the opinion of the Divisional Court.

(5) The Divisional court may also make any other order in relation to the matter that it considers proper and may make any order with respect to costs that it considers proper.

[Emphasis added.]

[8] Pursuant to s.18(3) of the Courts of Justice Act, R.S.O. 1990, c.C.43, as amended, every judge of the Superior Court of Justice is also a judge of the Divisional Court.

[9] Pursuant to s.21(1) of the CJA, a proceeding in the Divisional Court generally is to be heard and determined by a panel of three Divisional Court judges sitting together. However:

a. Subsection 21(2)(c) of the CJA provides that a proceeding in the Divisional Court may be heard and determined by one judge where the proceeding “is in a matter that the Chief Justice of the Superior Court of Justice or a judge designated by the Chief Justice is satisfied, from the nature of the issue involved and the necessity for expedition, can and ought to be heard and determined by one judge”.

b. On January 25, 2023, Associate Chief Justice McWatt, in her capacity as a judge designated by the Chief Justice of the Superior Court for the purposes of s.21(2)(c) of the CJA, issued a memorandum pursuant to that subsection of the CJA directing that all appeals from decisions of the LTB are to be heard and determined by a single judge of the Divisional Court because they meet the criteria in s.21(2)(c) of the CJA, and because having them heard by a single judge of the Divisional Court promotes access to justice.

[10] As noted above, pursuant to s.210(1) of the RTA, an appeal lies to this Court from an order of the LTB on questions of law alone. In that regard:

a. Implicit therein is a recognition that that the LTB is a specialized tribunal, with the Legislature clearly intending to limit appeals from the Board’s decisions to ensure

that the process of reaching final determinations in relation to disputes regarding the RTA is streamlined, timely and cost efficient.¹

- b. While the distinction between questions of law, questions of fact and mixed questions of law and fact can be difficult: 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.²
- c. In some cases, a serious misapprehension of evidence, (e.g., failure to consider evidence relevant to a material issue, a mistake as to the substance of the evidence, or a failure to give proper effect to the evidence), may amount to an error of law. However, most errors that constitute a misapprehension of evidence will not be regarded as involving a question of law, and appellate intervention in that regard is warranted only where a substantiated misapprehension of evidence is “palpable and overriding”; i.e., in the sense that it is plain to see or obvious, clearly wrong, unreasonable or unsupported by the evidence, and goes to the very core or outcome of the case.³
- d. As for the standard of review applicable to appeals from an order made by a specialized administrative tribunal such as the LTB:
 - i. On a pure question of law, the basic rule with respect to the review of findings below is that an appellate court is free to replace the opinion of the trier at first instance with its own. In other words, in relation to questions of law, the appellate standard of review generally is said to be that of correctness.⁴
 - ii. However, as noted in *New Brunswick (Board of Management) v. Dunsmuir*, [2008] 1 S.C.R. 190, at paragraphs 53-55 and 60, in the context of appeals from orders made by administrative tribunals, the appellate standard of review in relation to questions of law may depend upon the nature of the legal question in issue. In particular, where the question is one of true jurisdiction, or one of general or central importance to the legal system as a whole and outside the adjudicator’s specialized area of

¹ See *Zolynsky v. North Shore Farming Co.*, 2016 ONSC 2838 (S.C.J.), at paragraph 8.

² See *Canada (Director of Investigation and Research) v. Southam Inc.*, [1996] S.C.J. 116, at paragraph 35.

³ See *R. v. Morrissey*, [2005] O.J. No. 639 (C.A.), at paragraph 83; *Waxman v. Waxman*, [2004] O.J. No. 1765 (C.A.), at paragraphs 296-297, leave to appeal refused, [2004] S.C.C.A.; *Carmichael v. GlaxoSmithKline Inc.*, 2020 ONCA 447, at paragraph 125, leave to appeal refused, [2020] S.C.C.A. No. 409; and *Bayford v. Boes*, 2021 ONCA 442, at paragraph 28.

⁴ See *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235, at paragraph 8.

expertise, a standard of correctness will apply. However, where a specialized tribunal is interpreting its “own statute” or statutes closely connected with its function, with which it will have particular familiarity, deference usually will be afforded through application of an appellate standard of review of reasonableness. Such deference also may be warranted where an administrative tribunal has developed particular expertise in the application of a general common law or civil law rule in relation to a specific statutory context. Such deference also applies to questions of fact, discretion or policy, and where the legal and factual issues are intertwined and cannot be readily separated.⁵

- iii. While “reasonableness” in the sense required by the deferential standard of appellate review noted above is concerned mostly with the existence of justification, transparency and intelligibility, within the decision-making process, it is also concerned with whether a decision falls within a range of possible, acceptable outcomes in respect of the facts and law.⁶

[11] Bearing in mind the above general principles regarding the limited scope of appellate review permissible in this case, and the applicable standard of review in that regard, I turned to analysis of the particular issues raised on this appeal.

Analysis

[12] In relation to the appellant’s contention that the LTB erred in its interpretation of s.50(1)(a) of the RTA, I discern no such error. In that regard:

- a. In my view, that stated ground of appeal identifies a question of law, (i.e., concerning the “correct legal test” to be applied in determining whether the appellant landlord was entitled to relief based on that subsection of the RTA), in respect of which the applicable appellate standard of review is reasonableness. Without limiting the generality of the foregoing, the question does not involve a determination of general or central importance to the legal system, but the Board’s interpretation of its “own statute”, in respect of matters where it has recognized familiarity and special expertise.
- b. Insofar as the Board decided that s.50(1)(a) was subject to an implied condition of the subsection being used and relied upon by landlords in good faith, (thereby requiring an ongoing genuine intention on the part of landlords relying on the

⁵ See also *First Ontario Realty Corp. v. Deng*, 2011 ONCA at paragraph 17; and *Marineland of Canada Inc. v. Olsen*, 2011 ONSC 6522 (Div.Ct.), at paragraph 8, which have applied such a “reasonableness” standard of deference to decisions of the LTB, insofar as it is regarded as a specialized tribunal with a recognized area of expertise, required to interpret and apply its “home statute” and regulations in approaching and determining applications pursuant to the specialized adjudicative regime for resolving disputes established by its governing statute; i.e., the RTA.

⁶ See *New Brunswick (Board of Management) v. Dunsmuir*, *supra*, at paragraph 47, and *First Ontario Realty Corp. v. Deng*, *supra*, at paragraph 22.

subsection to terminate a tenancy for the purpose of demolishing the relevant rental unit), I find the Board’s interpretation to be entirely reasonable; i.e., in the sense that the Board not only offered a justification for its decision in an transparent and intelligible way, but its interpretation of s.50(1)(a) of the RTA also falls, in my view, “within a range of possible, acceptable outcomes in respect of the facts and the law”. Without limiting the generality of the foregoing:

- i. The “modern approach” to statutory interpretation, repeatedly preferred by the Supreme Court of Canada, requires that words of an Act are to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act, and the intention of the legislature.⁷
- ii. Subsection 50(1)(a) of the RTA provides that a “landlord may give notice of termination of a tenancy if the landlord requires possession of the rental unit in order to ... demolish it”. On its face, the subsection, viewed in isolation, includes no reference to any requirement that a landlord’s reliance on the subsection, or exercise of the right of tenancy termination granted therein, is subject to the landlord acting in good faith.⁸
- iii. However, s.50(1)(a) of the RTA obviously does not stand in splendid isolation, and instead must be interpreted having regard to the entire context of the statute as a whole. Other relevant provisions of the RTA, having a bearing on the proper interpretation and application of s.50(1)(a) of the legislation, include the following:
 1. Section 1, which emphasizes the remedial nature of the RTA and its tenant-protection focus,⁹ including an express indication that the purposes of the RTA include providing “protection to residential tenants ... from unlawful evictions”;
 2. Subsection 73(1)(a), which specifies that the Board “shall not make an order terminating a tenancy and evicting the tenant in an application under section 69 based on a notice of termination under section 50 unless it is satisfied that ... the landlord intends in good

⁷ See E.A. Driedger, *Construction of Statutes*, 2nd ed. (Toronto: Butterworths, 1983), at p.87, approved in, for example, *Rizzo v. Rizzo Shoes Ltd. (Re)*, [1988] 1 S.C.R. 27, at paragraph 21; and *Bell ExpressVu Ltd. Partnership v. Rex*, [2002] 2 S.C.R. 559, at paragraph 26.

⁸ Compare s.48(1) of the RTA, which does include an express internal reference to a landlord requiring possession of a rental unit “in good faith” for the purpose of residential occupation.

⁹ See *Honsberger v. Grant Lake Forest Resources Ltd.*, 2019 ONCA 44, at paragraph 19; *Price v. Turnbull’s Grove Inc.*, 2007 ONCA 408, at paragraph 26; and *Elkins v. Van Wissen*, 2023 ONCA 789, at paragraph 42.

faith to carry out the activity on which the notice of termination was based”; and

3. subsection 202(1), which specifies that, in making findings on an application, the Board “shall ascertain the real substance of all transactions and activities relating to a ... rental unit and the good faith of the participants, and in doing so ... may disregard the outward form of a transaction ... and may have regard to the pattern of activities relating to ... the rental unit”.
- iv. Having regard to that entire context, in my view it was reasonable for the Board in this case to approach and interpret s.50(1) of the RTA on the basis that it implicitly required a landlord purporting to exercise the rights granted therein to do so in good faith in a manner analogous to that required in relation to s.48(1)(a) of the RTA. In particular, while the conduct and motives underlying a landlord requiring possession of a rental unit for the purpose of demolishing it are not relevant to a determination of the landlord acting in good faith, as required, the landlord seeking to exercise the rights afforded by s.50(1)(a) of the RTA must have a genuine intent to demolish the rental unit.¹⁰
 - v. Moreover, consistent with the remedial nature and stated purposes of the legislation, and its goal of protecting tenants from unlawful evictions in particular, I think it entirely reasonable for the Board, in determining whether such a genuine intent to demolish the rental unit existed as required, to consider not only evidence relating to the time at which a N13 notice of termination pursuant to s.50(1)(a) of the RTA was given, but also the surrounding circumstances and subsequent behaviour of the landlord prior to termination. Any other approach would upset the balance of interests which the Act aims to achieve, prevent the Board from fulfilling its responsibilities under ss.73(1)(a) and 202(1) of the legislation, and undermine the RTA’s stated purpose of providing tenants with protection from unlawful evictions.¹¹
 - vi. It was emphasized repeatedly by counsel for the appellant that estate trustees are charged with fiduciary responsibilities to act in the best interests of an estate and its beneficiaries. That emphasis was supplemented by further submissions, (echoing those made before the Board in this case), essentially arguing that estate trustee landlords relying on s.50(1)(a) of the RTA should not be required to demonstrate any

¹⁰ See *Salter v. Beljinac*, [2001] O.J. No. 2792 (Div.Ct.), at paragraphs 18-27; and *Fava v. Harrison*, 2014 ONSC 3352 (Div.Ct.), at paragraph 17.

¹¹ See *Elkins v. Van Wissen, supra*, at paragraphs 40-46.

ongoing genuine intent to demolish a rental unit as indicated in an N13 notice of termination, and should instead be permitted to keep the estate trustee landlord's options regarding possible demolition of such a rental unit open; i.e., enabling such an estate trustee landlord to abandon, at any point in time, any contemplated and/or stated purpose of demolition of a rental unit in order to accept an offer to purchase a property with the relevant rental unit intact, if doing so will maximize financial recovery for an estate.¹² In my view, such an approach must be rejected. Without limiting the generality of the foregoing:

1. While an estate trustee does indeed have a fiduciary obligation to act in the best interests of an estate and its beneficiaries, that obligation self-evidently must be subject to the estate trustee acting within the constraints of other applicable law. A certificate appointing someone as an estate trustee is not a licence to disregard statutory obligations owed to others.
2. Nothing in the RTA suggests that estate trustee landlords were to enjoy any privileged position or exemption not enjoyed by other landlords in relation to the exercise of rights conferred by s.50(1)(a) of the RTA, or that the interests of a landlord estate and its beneficiaries were to be prioritized over the interests of tenants. In my view, adopting either suggestion would disrupt the careful balance of landlord and tenant interests, rights and obligations the Legislature intended to implement through enactment of the RTA.
3. Moreover, adopting the approach suggested by counsel for the appellant also clearly would undermine the tenant-protective goals of the RTA. In particular:
 - a. Such an approach effectively would make the nature and strength of tenant protections extended by the RTA, in relation to s.50(1)(a) of the RTA and the additional "good faith" provisions outlined above, depend upon and vary with the inherently uncertain nature of a landlord's personal longevity; i.e., with one set of rules applying prior to a landlord individual's death, and another set of rules applying once that landlord individual is replaced after death by his or her estate trustee. Such an approach, inherently creating

¹² Such an approach was characterized in the appellant's factum as an "obvious" and "common sense" approach. In particular, no secret was made of the estate landlord in this case, despite service of an N13 notice requesting termination of the respondent's tenancy pursuant to s.50(1)(a) of the RTA, being ready and willing at all times to deviate from its stated purpose of requiring possession of the rental unit in order to demolish it if the right purchase offer came along. To quote again from the factum filed on behalf of the appellant: "Of course, the Estate would sell the Property without the headache of demolition if they (sic) received the right price".

uncertainty from a tenant's perspective, runs counter to the security of tenure the RTA was intended to promote.

- b. Such an approach also clearly would facilitate the eviction of tenants by permitting use of s.50(1)(a) of the RTA and N13 notices of termination by a landlord who has no initial and/or sustained genuine intention to demolish a rental unit but simply wishes to be rid of an unwanted tenant; i.e., a landlord who raises the mere possibility of demolition, (possible in almost every situation), as a pretext to secure the tenant's eviction. Such an outcome seems entirely inconsistent with the general approach of the Legislature to such matters; i.e., limiting a landlord's eviction rights to specified situations involving a justification for termination the Legislature has identified, considered and accepted as legitimate.

[13] I am not persuaded that the LTB's findings that the landlord in this case did not have a genuine intention to demolish the relevant rental unit and/or did not act in good faith in serving an N13 notice of intention in that regard constituted errors of law, falling within this Court's relevant appellate jurisdiction. Without limiting the generality of the foregoing, in my view, nothing in relation to the Board's findings in that regard involved any serious misapprehension of evidence, let alone any such misapprehension warranting appellate intervention in the required sense of being "palpable and overriding"; i.e., obvious, clearly wrong, unreasonable and/or unsupported by the evidence, and going to the very core or outcome of the case. To the contrary, in my view, the Board's findings in relation to such matters were clearly open and available to the Board, based on the evidence that had been presented.

[14] As noted above, the grounds of appeal set forth in the appellant's notice of appeal included an assertion that the LTB erred by failing to address the question of possible application of s.57(1)(c) of the RTA to remedy any concerns about the landlord using s.50(1)(a) to terminate the respondent's tenancy, without having a genuine intention to demolish the rental unit and/or without acting in good faith in that regard. However, the assertion was not pursued in the written and/or oral submissions tendered on behalf of the appellant. In any event, I independently agree with the submissions advanced by counsel for the respondent in that regard, emphasizing that the LTB cannot be faulted for failing to consider or address provisions of the RTA that had no application to the situation before the Board. Without limiting the generality of the foregoing:

- a. Subsection 57(1)(c) permits the Board to make an order pursuant to s.57(3) of the RTA in circumstances where:
 - i. a landlord gave a notice of termination under section 50 of the Act in bad faith;

- ii. the “former tenant *vacated the rental unit* as a result of the notice or as a result of the notice or as a result of an application to or order made by the Board based on the notice”;
- iii. the “landlord did not demolish ... the rental unit within a reasonable time *after the former tenant vacated the rental unit*”; and
- iv. the Board is presented with an “*application by [the] former tenant* of [the] rental unit” seeking relief pursuant to s.57(1)(a) of the RTA.

[Emphasis added.]

- b. In this case, the respondent Ms Sharpe was still in possession of the relevant rental unit at the time of the underlying proceedings before the Board, and remained so at the time of the hearing before me. She accordingly had not “vacated the rental unit”, was not a “former tenant” of the rental unit in question, had no entitlement to bring an application pursuant to s.57(1)(a) of the RTA in that regard, and had not done so.
- c. In my view, the Board was not obliged to consider a potential application that was not before the Board, and it would have been improper for the Board to have done so.
- d. More generally, any suggestion that the Board effectively should have ignored applicable requirements for the landlord’s exercise of rights pursuant to s.50(1)(a) of the RTA, on the basis that the tenant eventually might receive a measure of compensation for the unlawful termination of her tenancy at some point in the future, pays scant regard to the tenant-protection goals of the RTA. In my view, the scheme set forth in the RTA makes it clear that the Board is obliged to enforce those protections and *prevent* such unlawful tenancy terminations from occurring where possible. It is not permitted to allow such terminations to occur without hindrance, simply because some form of remedial action for an unlawful eviction may be possible at some later date. Such an approach would seriously undermine the protections and security of tenure the Legislature intended tenants to enjoy pursuant to the RTA.

[15] For the reasons outlined above, the appeal herein must therefore be dismissed.

Costs

[16] During the course of the hearing before me, counsel advised that the parties commendably had discussed the matter of costs related to the appeal, prior to its hearing, and had agreed that an appropriate cost disposition would be quantification of costs of the appeal in the all-inclusive amount of \$5,000.00, to be payable “in the cause” of the appeal; i.e., with the unsuccessful party on the appeal being ordered to pay the successful party on the appeal the amount of \$5,000.00.

[17] I accept what was essentially a joint submission by the parties in that regard. As the respondent succeeded in having the appellant's appeal dismissed, the appellant shall be ordered to pay the respondent her costs of the appeal, fixed in the all-inclusive amount of \$5,000.00, payable forthwith.

Conclusion

[18] For the reasons outlined above, an order shall go whereby:

- a. the appeal herein is dismissed; and
- b. the appellant shall pay the respondent costs of the appeal, fixed in the all-inclusive amount of \$5,000.00, payable forthwith.

Justice I.F. Leach

Date: December 9, 2025