

CITATION: Racco v. Slimmon-Weber, 2026 ONSC 2157
DIVISIONAL COURT FILE NO.: 736/24
DATE: 20260417

**SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT**

RE: VINCENZO RACCO, Appellant

AND:

ELOISA SLIMMON-WEBER, Respondent

BEFORE: Matheson J.

COUNSEL: *N. Joan Kasozi and Joshua Ginter*, for the Appellant

Marwan Hani Osseiran, for the Respondent

HEARD at Toronto: April 14, 2026, by video-conference

ENDORSEMENT

[1] The appellant Vincenzo Racco appeals from the decision of Deputy Judge Ferguson of the Small Claims Court dated October 7, 2024 (the Decision) and the related costs decision of December 17, 2024 (the Costs Decision).

[2] The appellant and the respondent Eloisa Slimmon-Weber had a dispute about the respondent's lease for a premises in which she operated a yoga and wellness business. The issues included the validity of the appellant's purported termination of the lease, being locked out and the failure to do repairs.

[3] Those issues were determined in a decision not under appeal. In a Superior Court decision (2021 ONSC 3108), the disputed lease was found to be a valid and binding commercial lease. The Court found that the appellant had engaged in a policy of harassment to attempt force the respondent to vacate. He deliberately attempted to undermine the valid lease and substantially interfered with the respondent's normal and lawful use of the premises (the right to quiet enjoyment) and her right to safe access to the premises.

[4] The appellant was declared to have unlawfully and invalidly terminated the lease, was required to complete repairs and was precluded from interfering with the respondent's business,

among other non-monetary relief. A trial of an issue was directed regarding damages and transferred to the Small Claims Court.

[5] The damages claims were then determined in the Small Claims Court trial, giving rise to the Decisions now under appeal. At the damages trial, both sides were represented by paralegals. Only the respondent testified. The appellant did not do so but his representative did cross-examine the respondent.

[6] As set out in the Decision, the respondent was awarded damages that totaled more than the limit permitted for the Small Claims Court, \$35,000, and the damages were therefore reduced to that amount. Pre-judgment interest was awarded from February 1, 2015. In the Costs Decision, costs were awarded on an increased scale totaling \$15,680.62.

[7] The Deputy Judge found that the respondent had operated her business commencing February 1, 2015, had a ten-year lease, and noted that the respondent had testified that the first few years of her tenancy were uneventful. Briefly, the Deputy Judge found as follows regarding the later time period:

1. Problems began in July 2017 regarding needed repairs. The appellant refused to arrange for and pay for the repairs. The respondent had to do so. Further issues followed. Then, in August 2018, the appellant attempted to evict the respondent under the *Residential Tenancies Act, 2006*, resulting in an order of the Landlord and Tenant Board declining jurisdiction because it was a commercial tenancy. Repair issues continued and the appellant refused to address them. As a result, the respondent took steps herself and incurred costs.
2. Problems continued. Then, in August 2019, in the middle of the night, the appellant changed the locks and those events, including derogatory comments made by the appellant, were caught on surveillance. The respondent was locked out for a week, retained counsel and incurred further expenses, and took remarkable steps to mitigate her damages. However, she was unable to organize the retreats that she would normally run in Mexico due to the difficulties with the appellant, for which she also lost profits.
3. The respondent provided an expert report and also testified about business losses, resulting in an award of \$35,000, discussed below.
4. The respondent experienced a loss of what the Deputy Judge called reasonable enjoyment including emotional distress due to the appellant's numerous breaches of the obligations under the lease and the steps the respondent had to take as a result, quantified at \$5,000.
5. The Deputy Judge awarded special damages of \$8,295.18 and punitive damages of \$5,000.

[8] At trial, the respondent's forensic accountant's expert report was accepted into evidence under r. 18.02 of the Small Claims Court rules, which permits accepting a document without the witness present. This was permitted because the appellant had notice of the report and the opportunity to summons the witness and did not do so. The Deputy Judge allowed the report to be introduced as evidence, subject to weight. The expert opined that the business loss was between \$32,000 and \$48,000 (wrongly noted in the reasons as \$38,000).

[9] The respondent gave additional evidence about damages that the Deputy Judge described as compelling and ruled that the oral testimony would be given greater weight than the expert report. Among other things, the respondent testified that the business losses from the Mexico retreats fluctuated between \$10,000 and \$15,000, where the expert used \$15,000. The Deputy Judge ultimately used the lower figure.

[10] On punitive damages, the Deputy Judge found that the appellant's conduct was malicious, oppressive and high-handed (described at length in the Decision). She noted that he was in a position of power and took every advantage of that position to attempt to force her to leave without any justification or colour of right.

[11] The overall award totaled about \$53,000 and was then reduced to the maximum amount of \$35,000.

[12] As set out in the Costs Decision, only the respondent made costs submissions, which included an offer to settle. The Deputy Judge applied r. 14 and awarded 30% of the claimed amount based on the offer to settle plus disbursements.

Issues and Standard of Review

[13] The appellant raises these issues on appeal:

- (i) whether the Deputy Judge misapprehended the parameters of the trial or otherwise exceeded her jurisdiction;
- (ii) with respect to damages, whether the Deputy Judge erred in making both legal and factual errors, as discussed below;
- (iii) whether the Deputy Judge breached the duty of procedural fairness when asking questions of the respondent; and,
- (iv) whether the Deputy Judge erred with respect to pre-judgment interest.

[14] The respondent submits that the Deputy Judge did not err and also notes that the amounts in dispute are ultimately irrelevant given the reduction in the damages award to \$35,000.

[15] The appellate standard of review applies to this appeal. As set out in *Housen v. Nikolaisen*, 2002 SCC 33, the standard of review is correctness for questions of law, palpable and overriding error for questions of fact and palpable and overriding error for questions of mixed fact and law

except that extricable questions of law are reviewed for correctness. For procedural fairness, the requisite level of fairness must be provided.

Analysis

[16] Several of the appellant's arguments are a challenge, directly or indirectly, to the sufficiency of the reasons for the Decisions. The appellant questions the level of detail, some of the terminology, and notes what appears to be some typos. As the appellant correctly notes, the question is whether the reasons for decision permit effective appellate review and I find that they do. Reasons for decision must be read in context and as a whole, in light of the live issues on the appeal, and need not refer to everything in detail. Typos should have been raised with the Deputy Judge and can be addressed in context. Further, the context includes the nature of the adjudication, which is a Small Claims Court trial in which the appellant called no evidence.

[17] The scope of the trial was determined in the Superior Court application, which has not been appealed. The scope included damages for unlawful termination of the lease, interference with the respondent's quiet enjoyment, the failure to repair and maintain the premises, and punitive, exemplary and/or aggravated damages, and the quantification of those damages.

[18] The appellant submits that the total of the damages awards, around \$53,000, exceeds the amount claimed of \$48,000 in the amended claim and is therefore outside the scope of the trial. However, the amount actually awarded did not exceed the amount claimed.

[19] The appellant also relies on differing wording used to describe one of the damages claims, resulting in an award of \$5,000. The referral order properly referred to damages for quiet enjoyment. The appellant submits that the Deputy Judge erred because the Decision does not say "quiet enjoyment" but does refer to "loss of reasonable enjoyment", a phrase more commonly used for residential tenancies, and also refers to "emotional distress".

[20] A fair reading of the reasons for the Decision shows that although the above terminology was used, it a fair description of some of the evidence and there are ample findings that fall within the correctly named head of damages regarding quiet enjoyment. A commercial landlord "must not substantially interfere with its tenant's enjoyment of the premises. To be actionable, a landlord's interference must be grave and permanent such that it renders the premises substantially less fit for the purposes for which it was leased": *London Prestige Ltd. v. Wellington Harlech Centre Inc.*, 2019 ONSC 2364, at para. 31. The damages were not awarded for the tort of emotional distress nor under the *Residential Tenancies Act, 2006*.

[21] The appellant further submits that the Deputy Judge erred in failing to consider the order of specific performance already made in the Superior Court application, yet s. 99 of the *Courts of Justice Act* expressly provides that a court may award damages in addition to specific performance. If the appellant had any issue with doing both in this case that should have been raised in a challenge to the Superior Court decision. Further, the damages that were awarded relate to losses that were not remedied by the order of specific performance.

[22] The appellant then challenges the admission of the expert report and related hearsay. However, admission of the document, without the witness, was expressly permitted in the applicable rules. This also falls within the general principles that Small Claims Court trials should be conducted efficiently having regard for its monetary jurisdiction. The appellant had the report well before the trial, could have summonsed the expert, and had the opportunity to cross-examine the respondent who testified extensively about her damages. The Deputy Judge exercised her gatekeeper function, including when weighing the expert evidence along with the other evidence before her. Further, no appealable error had been shown regarding causation and remoteness of the business losses based on the evidence.

[23] On the punitive damages, there is ample basis in both the application decision and the trial Decision to support the award of punitive damages. Nor has the appellant shown an appealable error on special damages. There was supporting evidence without palpable and overriding error, and no error in principle.

[24] Although not emphasized in argument, costs on the increased scale were also challenged without showing an appealable error. The appellant has not shown any error in principle in the Deputy Judge's Costs Decision, which sets out the applicable principles. Under r. 14, the Deputy Judge was permitted to award 30% of the amount claimed, rather than 15%, because of an offer to settle. The appellant has not shown a palpable and overriding error in the finding that there was such an offer.

[25] On procedural fairness, the appellant submits that when the Deputy Judge asked the respondent, then the witness, questions, those questions gave rise to a reasonable apprehension of bias. Having reviewed the transcript, I disagree. The Deputy Judge was permitted to ask questions to clarify the evidence, after which the appellant had the right of cross-examination. The Deputy Judge did not wrongly "enter the arena".

[26] On prejudgment interest, it is apparent that there is a legal error regarding the start date. The Deputy Judge used the beginning of the lease despite the respondent's own evidence that there were no issues in the beginning. The start date ought to have been July 2017 at the earliest, subject to the court's discretion to depart from that date. There is nothing in the reasons for decision to suggest that the Deputy Judge either considered the applicable legal principles regarding interest or exercised her discretion to depart from them.

[27] This appeal is therefore dismissed except with respect to prejudgment interest, for which the start date shall now be July 31, 2017. As noted by the respondent, this error has a very small monetary value. I have taken that into account in the exercise of my discretion, along the other relevant factors regarding costs of this appeal and award the respondent costs fixed at \$12,500.

Matheson J.

Date: April 17, 2026