

**CITATION:** Samson v. BCIMC, 2025 ONSC 986  
**DIVISIONAL COURT FILE NO.:** DC-24-00000305-0000  
**DATE:** 20250213

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

**RE:** Paul Samson, Appellant

**AND:**

BCIMC Realty Corp., Respondent

**BEFORE:** Justice S. Nakatsuru

**COUNSEL:** *David S. Strashin*, for the Appellant

*Martin Zarnett*, for the Respondent

*Linda Naidoo*, for the Landlord Tenant Board

**HEARD:** In Toronto, February 12, 2025, by videoconference

**ENDORSEMENT**

[1] Paul Samson is a residential tenant of the respondent landlord. After some concerns were raised about Mr. Samson’s behaviour as a tenant, the two entered into a mediated agreement on November 4, 2016, under the *Residential Tenancies Act*, 2006, S.O. 2006, c. 17 (*RTA*). The respondent agreed not to proceed with its application for eviction at that time based on the mediated agreement. Years later, it came to pass that the respondent under s. 78 of the *RTA* applied to terminate the tenancy based upon a breach of the mediated agreement. On August 11, 2021, the Landlord Tenant Board (LTB) ordered the termination of the tenancy based on the breach. Mr. Samson filed a motion to set aside the August 11, 2021, order.

[2] A long and tortuous history before the LTB accompanied the efforts to have this motion completely heard. Some of the delay had to do with systemic issues. The appellant criticizes much of what took place during the proceeding and argues it should not have been this way. However, given the central issue on this appeal, a detailed examination of that history is unnecessary. Fundamentally, this appeal is about what took place on April 9, 2024, before Vice Chair Patchett.

At that time, Mr. Samson's counsel attended, asked for an adjournment of the hearing, and was denied it.<sup>1</sup>

[3] Then, Mr. Samson's motion to set aside was dismissed by the Vice Chair. Mr. Samson now appeals. These reasons explain the oral decision dismissing the appeal given at the hearing of the appeal.

### **A. THE STANDARD OF REVIEW**

[4] Appellate standards apply. The standard of review on questions of law is correctness: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235. The standard of review on questions of procedural fairness in the context of a statutory appeal is also correctness: *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, 470 D.L.R. (4th) 328, at paras. 27, 30.

### **B. ANALYSIS**

[5] The appellant submits that he was denied procedural fairness. Succinctly, he argues that he had wanted to be present for the hearing, but as he was out of the country, he was unable to. He relies on caselaw such as *King-Winton v. Doverhold Investments Ltd.*, 2008 CanLII 60708 (ONSC Div. Ct.).

[6] I do not agree with this characterization of what took place. The appellant was aware of the hearing date. His lawyer was present for the hearing. What he asked for was an adjournment of the hearing. That request was denied.

[7] Thus, fundamentally, this is an appeal of the Vice Chair's decision to refuse an adjournment. A discretionary decision that attracts deference: *Riddell v. Huynh*, 2019 ONSC 2620 (Div. Ct.) at paras. 43-44; *Turner v. Dong*, 2024 ONSC 5081 (Div. Ct.) at para. 37; *Sterling v. Guillame*, 2021 ONSC 1160 (Div. Ct.) at para. 29.

[8] In this instance, the Vice Chair's discretion was judicially exercised and reasonable. Vice-Chair Patchett referred to the LTB interpretative guidelines on rescheduling and adjournments. He considered the fact that no notice was given to the LTB or the respondent by the appellant for an adjournment although Mr. Samson was well aware in advance of the unsuitability of the scheduled date of April 9, 2024. He found there to be a lack of diligence by the appellant to properly seek an adjournment. The Vice-Chair took account of the appellant's failure to provide any documentation supporting his inability to attend, even virtually or by phone, contrary to the interpretative guidelines and *Wang v. Oloo*, 2023 ONSC 1028 (Div. Ct.) at paras. 3, 7. The Vice Chair correctly

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<sup>1</sup> Full written reasons were released by Vice Chair Patchett on April 17, 2024. On a preliminary assessment, a review of this decision was dismissed by Vice Chair Cho on May 17, 2024.

observed that the fact the appellant's counsel was under a temporary suspension by the Law Society of Ontario for part of that time did not relieve the appellant of his obligations.

[9] Noteworthy about the Vice Chair's careful assessment of the adjournment request is how he went so far as to momentarily stand down the hearing to allow appellant's counsel to call the appellant to invite his participation remotely. The only information received back from the appellant upon the return of his counsel to the virtual hearing, was that the appellant wanted to attend but was away, in transit, and incommunicado.

[10] In my opinion, in denying the adjournment request, the Vice Chair properly balanced the appropriate factors including any potential prejudice to the parties and the need for efficiency as well as fairness: *Sterling v. Guillame* at para. 30; *Solomon v. Levy*, 2015 ONSC 2556 (Div. Ct.) at paras. 39-40.

[11] I see no reversible error committed.

[12] In light of this justifiable decision to not grant an adjournment, despite the lengthy delay and complications over the course of a number of hearing dates in completing the hearing of the motion, there was nothing procedurally unfair in the overall proceeding that requires a remedy from this court.

### **C. DISPOSITION**

[13] For these reasons, the appeal is dismissed.

[14] As agreed, costs in the amount of \$3,000 all inclusive is awarded to the respondent.

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Justice S. Nakatsuru

**Released:** February 13, 2025.