CITATION: McAvany v. Kingston Home Base Non-Profit Housing, 2025 ONSC 1164
COURT FILE NO.: 2905/24
DATE: 20250228

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

RSJ Edwards, O'Brien and L. Bale J.J.

B E T W E E N :	)	
	)	
RYAN MCAVANY	)	John Ross Done, for the Appellant
	)	
Appellant	)	
	)	
- and -	)	
	)	
	)	
KINGSTON HOME BASE NON-PROFIT HOUSING	)	Nicola Diak, for the Respondent
	)	
	)	
Respondent	)	
	)	
	)	**HEARD:** by videoconference at Ottawa:
	)	February 6, 2025

L. BALE J.

REASONS FOR JUDGMENT

Overview

[1] The Appellant, Ryan McAvany, appeals the Eviction Order of Member S. Priest of the Landlord and Tenant Board, dated May 22, 2024, and the Review Order of Member C. Tancioco, dated July 3, 2024, under the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17.

Background

[2] The Respondent is a non-profit company which provides housing for vulnerable members of the community, including persons experiencing chronic housing and mental health issues.

[3] The Appellant resides in the subject residential unit operated by the Respondent. The residential unit is a five-bedroom home with common areas intended to be shared with four other tenants.

[4] On around May 19, 2022, the Respondent gave the Appellant formal notice of an intention to end his tenancy effective June 30, 2022. In particular, the notices were as follows:

1. N6: Notice to End your Tenancy for Illegal Acts or Misrepresenting Income in a Rent-Geared-to-Income Rental Unit or Residential complex; and

2. N7: Notice to End your Tenancy for Causing Serious Problems in the Rental Unit or Residential Complex.

[5] The Landlord and Tenant Board hearing was heard over the course of four days, spanning November 2022 to February 2024. Both parties had legal representation.

[6] Multiple witnesses were called on behalf of the Respondent, including a Kingston Police officer, the Appellant's supportive housing case worker, additional case managers, and the program supervisor. The Appellant did not call evidence, although he challenged the evidence of the Respondent's witnesses through cross-examination.

[7] Ultimately, in a written decision dated May 22, 2024, Member Priest concluded that the Respondent had proven, on a balance of probabilities, that the Appellant had committed or permitted others to carry out illegal acts in the residential complex, including possession or trafficking of illegal drugs, and that the Appellant had seriously impaired the safety of other persons in the residential complex. The Appellant's tenancy was terminated, effective June 2, 2024, and arrears of rent and daily compensation were ordered pending compliance with the eviction order.

[8] The Appellant requested a review of the Eviction Order. The Appellant's request for review was denied by Member C. Tancioco, with reasons dated July 3, 2024. Many of the same issues raised before Member Tancioco on review were argued again, with minor modification, on this appeal.

Issues

[9] The issues raised in the Appellant's Notice of Appeal are articulated under 15 headings of relief in his Notice of Appeal, and eight headings of relief in his Factum. Distilled to the essential, the Appellant's position is that the adjudicator committed errors in law by:

1. Making findings of fact on material points where the findings were based on "no evidence" and unsupported inferences; and

2. Failing to provide adequate reasons for the conclusions she reached.

[10] In his Notice of Appeal and Factum the Appellant argues additional errors of law, including *inter alia* that the adjudicator erred in drawing an adverse inference from the

Appellant's failure to testify, improperly relied on hearsay evidence, and demonstrated a reasonable apprehension of bias. These issues were only peripherally advanced in oral argument and are addressed summarily in the reasons that follow. The parties made no submissions relating to the Review Order of Member Tancioco.

Law and Analysis

[11] Section 210 of the *Residential Tenancies Act*, governs this appeal:

> **Appeal rights**
>
> **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.

[12] The appeal of an administrative decision on a question of law is subject to review on a standard of correctness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 2019 4. S.C.R. 653, at para. 37; *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 at para. 8.

"No Evidence" and Unsupported Inferences

[13] At all levels of this case, the Appellant has argued that there was "no proof" (a) of an illegal act; (b) that the tenant committed an illegal act; or (c) that the tenant permitted another person to commit an illegal act. A generous reading of the Appellant's grounds of appeal suggests an assertion that the factual findings made, and inferences drawn by Member Priest were so baseless that they fall into an extremely narrow circumstance wherein findings of fact may give rise to an error of law alone for purposes of an appeal. Specifically, that the findings were (a) based on no evidence; (b) made on the basis of irrelevant evidence or in disregard of relevant evidence; or (c) based on an irrational inference of fact: see *Johannson v. Saskatchewan Government Insurance*, 2019 SKCA 52 (CanLII) at para. 25. I do not accept this argument. The Appellant's position broadly alleges errors of fact and mixed fact and law. The adjudicator's treatment of the evidence in this case does not rise to an error of law.

[14] At the outset, it is important to highlight that the Landlord and Tenant Board is not a quasi-criminal tribunal. The burden of proof in a landlord and tenant proceeding is the civil balance of probabilities. Even where an adjudicator in a Landlord and Tenant Board hearing is asked to consider the eviction of a tenant for an alleged illegal act, the onus does not rise to proof beyond a reasonable doubt.

[15] In this case, there was a fulsome body of evidence before the adjudicator which permitted her to reasonably infer that the substances observed in or seized from the residential complex were, in fact, illegal drugs. Although the adjudicator did not craft an itemized and exhaustive list of facts which she relied upon in drawing this conclusion, she was not required to do so. Member Priest's review of the evidence specifically included the testimony of a police officer with the Kingston Police, who stated that on May 10, 2022, he attended at the residential complex, gained lawful entry to the unit, and discovered 11 grams of heroin, 25 grams of crystal

methamphetamine, scales, dime bags, and a replica handgun. As a result of these findings, charges were laid by police against a third party, Mr. Lapointe, including charges of possession of an illegal substance for the purposes of trafficking, possession of a weapon, and possession of stolen property. Criminal prosecution of Mr. Lapointe ensued. Photographs of the items seized, and other drug paraphernalia located throughout the home, were tendered at the Landlord and Tenant Board hearing. The reasons of Member Priest also recount evidence heard from the Appellant's caseworker and a program manager who testified to their direct observation of use of drugs and drug paraphernalia in the residential complex at other times.

[16] It is a commonsense inference that drugs and drug paraphernalia are frequent counterparts. The adjudicator accepted that there were illegal substances, drug paraphernalia and weapons in the residential complex. This finding of fact was easily available to the adjudicator on the evidence before her and there is no basis on which it could constitute an error of law.

[17] The adjudicator was entitled to rely on oral evidence, including lay opinion evidence, as to the observation of drugs in coming to the conclusion that the substance was an illegal drug. There was no error of law in reaching this conclusion without requiring that expert evidence be called, that a Certificate of Analysis be produced, or that a criminal conviction be secured.

[18] Member Priest did not conclusively state that the Appellant directly engaged in illegal acts. Rather, she made a finding that the Appellant was associated with and permitted Mr. Lapointe to commit illegal acts at the residential complex. Again, the adjudicator did not craft an itemized and exhaustive list of facts she relied upon in drawing this conclusion, nor was she required to do so. Her summary of the evidence included (a) reference to the testimony of the police officer who testified to his previous dealings at the residential complex and his pre-existing belief in an association between the Appellant and Mr. Lapointe due to his involvement in prior investigations, (b) employee observations of the frequency and nature of the tenant's guests in the home, and (c) the observed absence of problematic visitors to the home during a period of the Appellant's incarceration.

[19] Although not specifically referenced in her reasons, the transcript of proceedings reflects that information from several sources connecting Mr. Lapointe to the Appellant led the police to the home of the Appellant on May 10, 2022, where Mr. Lapointe was, in fact, located and apprehended for criminal acts. The police officer testified that there were no known connections between Mr. Lapointe and the other tenants. Further, the Appellant's caseworker also testified that he directly observed Mr. Lapointe and the Appellant together at the residential complex prior to May 10, 2022, specifically in the Appellant's private bedroom. The caseworker's observation of Mr. Lapointe on May 10, 2022, was that Mr. Lapointe looked like he had been there for some time, had unpacked his bags, and was comfortable in the residence. This evidence was before Member Priest. She was not called upon to resolve any conflicting evidence regarding their association, because no contrary evidence was presented at the hearing.

[20] No witness testified to a direct observation of the Appellant granting permission for Mr. Lapointe to enter the residential complex on May 10, 2022, and to engage in the illegal acts for which he was ultimately prosecuted. The Respondent's case was based on circumstantial evidence of the Appellant's knowledge and condonation of illegal acts or willful blindness in

relation to. But circumstantial evidence should not be equated with "no evidence" as is suggested by the Appellant. Again, this hearing was not a quasi-criminal proceeding. Member Priest was not required to rule out all other possible alternative explanations nor make findings beyond a reasonable doubt. It was open to the adjudicator to draw the interference that the Appellant knew about and allowed these acts to occur in the residence from the evidence that was presented at the hearing.

[21] Member Priest's factual findings were not based on "no evidence". To the contrary, they were supported by an ample evidentiary record. The inferences she drew from that evidence were sound. The Appellant has not established an error of law. This ground of appeal must fail.

Sufficiency of reasons

[22] The Appellant argues that Member Priest's reasons for decision fail to articulate how she reached her decision. I do not agree.

[23] A failure to give sufficient reasons is an error of law: *R. v. Sheppard*, 2002 SCC 26, [2002] 1 S.C.R. 869; *R. v. Gagnon*, 2006 SCC 17, [2006] 1 S.C.R. 621.

[24] In *Canada Forgings Inc. v. Atomic Energy of Canada Ltd.*, 2024 ONCA 677, the Court of Appeal for Ontario recently commented upon the principles that apply to appeals on grounds of sufficiency of reasons in a civil context [citations omitted]:

1. There are two key points to assessing the sufficiency of reasons:

    a. First, the overarching question is whether the reasons functionally permit meaningful appellate review. Even if the reasons are deficient, this ground of appeal will fail if despite the shortcomings a meaningful review can be conducted.

    b. Second, in determining whether the reasons are sufficient, they must be considered contextually. Relevant context includes the issues raised, the evidence adduced, and the arguments made at trial: at para. 22.

2. The duty to provide reasons has four objects:

    a. To justify and explain the result;

    b. To explain to the unsuccessful party why they were unsuccessful;

    c. To provide for informed consideration of the grounds of appeal; and

    d. To satisfy the public that justice has been done: at para. 23.

3. A judge is under no obligation to refer to every piece of evidence in their reasons; they are only required to refer to evidence and to resolve conflicts in evidence that are material to the issues to be determined. An appellate court cannot disturb a trial

judge's findings simply because they failed to refer to some of the evidence, nor should they second-guess how the evidence was weighed: at para. 26.

[25] Appellate courts considering the sufficiency of reasons should read the reasons as a whole. The object is not to show *how* the judge arrived at his or her conclusion, in a "watch me think" fashion. Rather, it is to show *why* the judge made that decision: *R. v. R.E.M.*, 2008 SCC 51, [2008] 3 S.C.R. 2, at paras. 15-17.

[26] As reflected in the section above, Member Priest summarized and applied the evidence called at the hearing. She was not called upon to assess conflicting evidence. Member Priest correctly cited and applied the applicable sections of the *Residential Tenancies Act* relating to illegal acts and the impairment of safety. Her written reasons adequately explain her reasoning and justify her conclusion - that the Appellant permitted illegal acts in the residential complex and impaired the safety of others.

[27] While it may have been preferable for Member Priest to specifically explain whether she was relying upon a finding of direct knowledge and permission, or on recklessness or willful blindness of illegal acts in connecting the Appellant's association with Mr. Lapointe, reasons are not held to a standard of perfection. Member Priest was not required to refer to each and every piece of evidence which led to the inferences she drew, and then to catalogue how each fact and inference factored into her conclusions.

[28] The reasons offered adequately explain how Member Priest arrived at her conclusion, coherently and rationally explain to the Appellant why he was unsuccessful, and provide a sufficient basis for meaningful appellate review. This ground of appeal must fail.

Miscellaneous Issues

[29] Although not pursued in oral submissions, we find no merit to the argument that Member Priest improperly relied on hearsay evidence in reaching her decision. The Board is entitled to admit hearsay evidence and, absent specific circumstances that give rise to a breach of procedural fairness, there is no error of law in doing so. In any event, the reasons for the decision and transcript of proceedings both demonstrate that Member Priest was alert to the dangers of relying on hearsay evidence, and she took pains in her decision to avoid doing so.

[30] Likewise, there was no error of law in Member Priest drawing an adverse inference from the Appellant's decision not to call evidence. It was open to the Appellant to testify and counter the allegations of his association with Mr. Lapointe and his criminal activities. He chose not to. It was within the discretion of the adjudicator to draw an adverse inference in the circumstances: see *Gourgy v. Gourgy*, 2018 ONCA 166.

[31] At times, Member Priest used the word "uncontested" to describe the evidence of the Respondent. The appellant's focus on this wording constitutes a parsing of the member's reasons. There is no basis on which her wording would constitute an error of law. It is clear from the reasons as a whole that the adjudicator understood that the Appellant disputed the evidence of the Respondent through questions posed to the landlord's witnesses in cross-examination; he simply did not bring forward any evidence which contradicted it. This choice of wording

certainly does not support the suggestion that Member priest "ignored" evidence elicited in cross-examination or was biased in her assessment of the evidence before her.

[32] There is no merit to the claim of reasonable apprehension of bias. The adjudicator's procedural directions were appropriate and in keeping with the expediency of procedure principles contained in s. 183 of the *Residential Tenancies Act*. There is a strong presumption of impartiality. The Appellant's allegations of bias, assessed realistically and practically, simply do not rise to the objective standard required to rebut this presumption.

Disposition

[33] The appeal is therefore dismissed and any interim orders for a stay of the Appellant's eviction are spent. In accordance with the agreement of the parties, costs are awarded to the Respondent in the amount of $4,000.00, all-inclusive.

_____
L. Bale J.

I agree _____
R.S.J. Edwards

I agree _____
O'Brien J.

Released: February 28, 2025

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