CITATION: Casiechitty v. Imran, 2024 ONSC 6751
DIVISIONAL COURT FILE NO.: 133/24
DATE: 20241204

ONTARIO
SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

BETWEEN:	)	
	)	
LANGSFORD CASIECHITTY	)	*M. Reinhart*, Counsel for the Appellant
Appellant	)	
- and -	)	
ANILA IMRAN, ABEER IMRAN AND NABEEL IMRAN	)	*A. Imran, A. Imran, and N. Imran* Self-Represented
Respondents	)	
	)	*N. Mulima*, Counsel for the Landlord and Tenant Board
	)	
	)	**HEARD via videoconference in Toronto**
	)	**on December 2, 2024**

REASONS FOR DECISION

O'BRIEN J.

Overview

[1] Following the hearing of four combined applications brought by both the landlord and the tenants, the Landlord and Tenant Board found the landlord was in breach of his maintenance obligations and substantially interfered with the tenants' reasonable enjoyment of the unit.

[2] The Board made its order after hearing evidence from four witnesses over a three-day hearing. The landlord's agent, who is his son, also informally provided evidence throughout the proceedings. The Board concluded that although both parties had harassed the other in breach of the *Residential Tenancies Act*, 2006, S.O. 2006, c. 17 (the Act), the landlord had failed to meet his maintenance obligations and was responsible for the deterioration in the property, such as damage to the floors, leaking faucets, and mould in the unit. This substantially interfered with the tenants' reasonable enjoyment of the property.

[3] The Board ordered a $10,000 rent abatement for the tenants, which meant, after accounting for arrears of rent, the landlord had to pay the tenants $926.50. The landlord was also required to hire professional contractors to address and repair various maintenance issues. If the landlord did not do so by January 31, 2024, the tenants were entitled to withhold $1,000 of rent per month until the work was completed. The Board also ordered the landlord to pay costs of $500.

[4] The landlord's request for a review of the order was dismissed.

[5] The landlord appeals the Board's orders. His primary submission is that the Board member breached procedural fairness. He also submits the Board erred in admitting hearsay evidence and in accepting the tenant Ms. Imran's evidence despite it lacking credibility and reliability. The landlord also submits the Board failed to consider two provisions of the Act: s. 30(2) which requires the tenant to advise the landlord of alleged breaches of the Act and s. 16, which requires the tenant to take reasonable steps to minimize their losses. The landlord finally submits the Board erred in permitting the tenant's applications to proceed given their lack of detail and in issuing the remedy it ordered.

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

Analysis

Procedural Fairness

[7] The landlord's allegation that the hearing before the Board violated procedural fairness is without merit. Requirements of procedural fairness must be determined in the particular context in which they arise. Tribunals have authority to control their own process and courts will accord deference to those choices, as long as they are not procedurally unfair.

[8] The Board is a high-volume expert tribunal. It is required by statute to adopt the most expeditious method of determining questions arising in a proceeding that affords all parties directly affected by the proceeding and adequate opportunity to know the issues and be heard on the matter: Act, s. 183. The Board's rules permit the Board member to define and narrow the issues, question a party or witness, and limit the evidence or submissions on an issue.

[9] In this case, the landlord's two applications were heard over two days and the tenant's interrelated applications were heard over a day. By the third day, it was reasonable for the Board member to insist on moving the matter along given the resources that had already been devoted to the matter and because it had not proceeded efficiently. The Board found the landlord's representative to have caused extensive delay and disruption to the point that costs were ordered against the landlord.

[10] Although the Board member did not expressly offer the landlord an opportunity to cross-examine the tenant, the landlord by that time had been given ample opportunity to present his case. The landlord's representative did not formally ask to cross-examine, although did say he had a question for the tenant. But the Board member was extensively involved in questioning the tenant. The landlord's representative also interjected during that process and provided evidence where he disagreed. He was the primary source of evidence for the landlord, as he had been main person dealing with the tenant. The Board is entitled to control its process in this manner.

[11] When asked in this court what additional evidence the landlord wanted to elicit on cross-examination, counsel for the landlord said the landlord wanted to show the tenant had no documentary evidence of reporting maintenance issues at various times. This type of evidence was canvassed extensively in the hearing, with the Board member himself asking numerous questions

to elicit evidence about when and how the landlord was notified of various issues. The Board member also questioned the landlord's representative directly for his evidence on this point. The Board members reasons, at paras. 48 and 49, rely on the dates the landlord's representative admitted to being aware of the leaks and flooring issues. At the hearing, the landlord's reprsentative also expressly admitted to receiving the mould report after it was prepared in April 2023.

[12] *Riddell v. Huynh*, 2021 ONSC 4820 (Div. Ct.) is distinguishable. First, in that case, the party claiming a lack of procedural fairness was the tenant facing eviction. Here, the landlord faced a rent abatement, which resulted in being unable to collect arrears of rent of $10,000. Second, there, the breach of procedural fairness related to the denial of a critical document that was important to the tenant's case. Here, the landlord says he should have been able to cross-examine the tenant on various factual matters where the Board member had already probed her evidence with extensive questioning and at the same time asked the landlord's representative to provide his own responding evidence. There was no denial of procedural fairness in this case.

Challenge to Admission of Evidence

[13] Regarding the landlord's challenge to the evidence the Board received, s. 210 of the Act limits appeals to questions of law. The Board is entitled to assess credibility and weigh the evidence. Under the *Statutory Powers and Procedure Act*, R.S.O. 1990, c.S.22, it is also entitled to admit hearsay evidence. The landlord has not demonstrated any error of law in the admission of evidence in this case.

[14] With respect to the mould report in particular, the Board member offered the landlord the opportunity to question the author of the report on the second day of hearing. The mould inspector had been waiting to testify. The landlord's representative advised he did not want to question the inspector that day and acknowledged that if the inspector was not questioned, he may not appear at the next hearing date.

[15] At the next hearing date, the landlord's representative made submissions on why he said the report was not credible, which the Board member dismissed. He did not specifically object to the inspector not testifying, nor ask to cross-examine him. The landlord has not pointed to any issues he wanted to raise with the inspector that resulted in a denial of procedural fairness. This ground of appeal is dismissed.

Statutory Requirements

[16] With respect to the Board's alleged failure to consider s. 16 of the Act, this argument was not raised before the Board. It cannot be raised for the first time on appeal. In any event, it is clear from the Board's decision that it placed the blame on the landlord and not on the tenant for the failure to address the maintenance issues promptly.

[17] With respect to s. 30(2), as set out above, the Board member relied on the landlord's own evidence regarding when he became aware of each of the maintenance issues. This ground of appeal is without merit.

Particulars in Pleadings and Remedy

[18] The Board's decision not to dismiss the tenant's applications for lack of detail fell within its discretion. The Board did not err in principle by permitting the applications to proceed.

[19] Also, given its findings, it was within the Board's discretion to issue a remedy requiring a $10,000 rent abatement. Section 31 of the Act expressly authorizes the Board to order a rent abatement where it has found a landlord to have substantially interfered with the tenant's reasonable enjoyment of the premises, as it did here.

[20] Section 31 also allows the Board to make "any other order it considers appropriate." In this case, the Board ordered the landlord to take steps such as cleaning the ventilation in the unit. This was not inappropriate, as it related to the moisture issues in the unit, which were central to the maintenance complaints from the outset. The Board also ordered the landlord to inspect, repair or replace the appliances. The tenant requested that the appliances be repaired in her application. The property standards report, which was sent to the landlord in October 2023, also raised issues about the appliances. The landlord therefore had proper notice of these issues. The Bord did not err in ordering that the appliances be repaired or replaced.

Disposition

[21] The appeal is dismissed. To the extent the tenant seeks remedies beyond those the Board ordered because of ongoing conduct after the Board's orders, those issues must be brought before the Board. It is not the role of this court to determine new complaints regarding the landlord's conduct.

[22] The tenant does not claim costs, as she represented herself and obtained free advice from a legal clinic. Therefore, no costs are ordered.

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O'Brien, J

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