

ONTARIO  
SUPERIOR COURT OF JUSTICE  
DIVISIONAL COURT

Marrocco A.C.J., Spence, and C. Horkins JJ.

**BETWEEN:** )  
 )  
CHIN YONG AHN )  
Appellant (Tenant) ) Chin Yong Ahn, acting in person  
 )  
– and – )  
 )  
4900 BATHURST STREET LTD )  
 ) *Lauren Rakowski*, for the Respondent  
Respondent (Landlord) )  
 )  
 ) **HEARD at Toronto:** December 5, 2014

**C. HORKINS J.**

[1] This is an appeal from the Order of the Landlord and Tenant Board ("the Board") dated June 5, 2014 ("June 5 Order"), and the Review Order of the Board ("Review Order") dated June 16, 2014.

[2] The appellant Chin Yong Ahn is a tenant that occupied a rental unit located at 4900 Bathurst Street in Toronto ("the Unit"). The respondent is the landlord.

[3] In the June 5 Order, the Board granted the respondent's application under the *Residential Tenancies Act, 2006*, S.O. 2006 c. 17 ("*RTA*") for an order terminating the tenancy and evicting the appellant and an order requiring the appellant to compensate the respondent for damage caused to the unit that the appellant occupied.

[4] In the Review Order, the Board denied the appellant's request for a review under s. 21.2 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c.S. 22 ("*SPPA*") and confirmed the June 5 Order.

[5] The appellant seeks an order setting aside the June 5 Order and directing that the tenancy continue.

**BACKGROUND:**

[6] At the initial hearing the Board made the following determinations.

[7] Pursuant to the Residential Tenancy Agreement, the respondent agreed to rent the Unit to the appellant as of August 1, 2000.

[8] The superintendent received a maintenance request from the appellant on October 7, 2013. The appellant requested, among other things, that the landlord address the "harmful electronic signal" coming from the electrical panel in the Unit. The superintendent went to the Unit on October 8, 2013 and could not find anything wrong with the electrical system.

[9] On January 5, 2014, the appellant contacted the building superintendent with another maintenance request. He said that he did not have electricity. The superintendent inspected the Unit and observed that the cover on the electrical panel in the Unit had been removed and several wires had been pulled from the panel. The superintendent concluded that the exposed live wires presented a safety risk. He immediately disconnected the hydro supply to the Unit and contacted an electrician. The electrician attended the next day.

[10] The electrician confirmed the superintendent's observations and determined that the panel was damaged beyond repair. The electrician invoiced the respondent \$678.23 for the materials and labour required to replace the electrical panel.

[11] On May 1, 2014, the first day of a two-day hearing, the appellant confirmed that he had pulled a wire from the electrical panel. The appellant testified that he did this because he believed the panel to be defective and the respondent had not addressed his concerns about the harmful electrical signal. He said that the signal prevented him from sleeping well at night and caused problems with his household appliances.

[12] The appellant acknowledged in a letter dated January 21, 2014 that he had "tampered with the electrical panel in an attempt to replace a burnt fuse". The Board rejected this explanation because the electrical panel in the unit had been upgraded to a circuit breaker two years earlier.

[13] The appellant was unable to complete his testimony on May 1, 2014. The hearing was adjourned to June 3, 2014. The appellant did not attend the June 3, 2014 hearing date and as a result he did not conclude his testimony.

[14] The appellant states in an affidavit that he did not attend the June 3, 2014 hearing date because he mistakenly believed the matter was scheduled for June 4, 2014. It is uncontested that he had attended both prior dates (March 25, 2014, the date for which the application was initially scheduled, but adjourned on consent as neither party was prepared to proceed, and May 1, 2014, the first day of the hearing).

[15] The Board proceeded with the hearing on June 3, 2014 in the appellant's absence. The Board decided to proceed on the basis that "the record shows that the Board mailed the notice of this hearing to the Tenant on May 12, 2014. Furthermore, the record shows that the Tenant had attended at the Board on May 20, 2014 and May 22, 2014 to view the application file, which also contained a copy of the notice of this hearing."

[16] The Board found that on a balance of probabilities the "Tenant wilfully caused undue damage to the electrical panel in the rental unit." The Board also found that the "Tenant has continued to tamper with the electrical panel after it was replaced". For this reason the Board concluded that it would be unfair to grant relief from eviction pursuant to s. 83(1) of the *RTA*.

[17] As a result, the Board terminated the tenancy as of June 16, 2014 and ordered the appellant to move out of the unit by that date. As well, he was ordered to pay the respondent \$678.23 which "represents the reasonable cost of replacing the damaged property."

[18] On June 13, 2014, the appellant requested a review of the June 5 Order, as well as a stay of that order, pursuant to s. 21.2 of the *SPPA*. The Review was completed on June 16, 2014.

[19] On June 16, 2014 a Review Order was made by a member of the Board. This order sets out the Member's determinations that are summarized as follows.

[20] The appellant offered no explanation for why he was not reasonably able to participate in the hearing. A review of the record and the June 5 Order indicates that the appellant ought to have been aware of the hearing date. The Board member noted that "[a]lthough being reasonably able to participate must be interpreted broadly, it is not sufficient for a party to merely state that they were not able to participate in the hearing." A party must explain why they were unable to participate so that the Board assessing the request for review can determine whether or not the party was reasonably able to participate in the hearing. The appellant failed to provide an explanation.

[21] The appellant tried to use the review to raise new issues concerning "the service and content of forms" that could have been raised at the initial hearing and were not. This was rejected. The Board member states that the review is not "an opportunity to have a different Member rehear evidence or submissions which were presented or could have been presented at the original hearing in the hopes of obtaining a different result."

[22] Further, the Board member explained that "[f]indings of fact cannot be successfully challenged on review unless it is demonstrated that there is no evidence to support the findings" or that the Board "applied an improper principle or consideration in arriving at his or her findings of facts." Neither occurred in this case.

[23] Finally the Board member found that the review did not "support a conclusion that there might be a serious error in the order or that a serious error occurred in the proceedings".

[24] The request for review was denied. The order was confirmed and remained unchanged.

## **GROUND OF APPEAL**

[25] The appellant raises the following grounds of appeal:

- (1) The appellant did not attend the continuation of the hearing on June 3, 2014 because he “mistook June 3 for June 4”. As a result, he did not have an opportunity to present his position
- (2) The respondent did not raise a “bona fide question of law”.
- (3) The Tribunal “showed a bias in ordering the tenant to pay the cost of replacing the damaged property”. The appellant did not wilfully cause damage to the property.

## **ANALYSIS**

[26] In response to the appeal, the respondent filed an affidavit sworn October 5, 2014. This affidavit seeks to introduce evidence about the appellant’s actions since the hearing. The respondent did not serve a motion to file fresh evidence. This evidence is not properly before us and forms no part of this analysis and the decision that we have reached.

[27] An Order of the Board is final and binding, except where the *RTA* provides otherwise, and subject to s. 21.2 of the *SPPA*.

[28] Pursuant to s. 210 of the *RTA*, a party may appeal an order of the Board to the Divisional Court, but only on a question of law.

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,

affirm, rescind, amend or replace the decision or order; or

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.

[29] In *Decosse v. Isles of Innisfree Non Profit Homes*, 2012 ONSC 1413 (Div. Ct.) the court set out the applicable standard of review at paras. 6-8 as follows:

6 A Tribunal is required to comply with the requirements of natural justice. There is no standard of review. On appeals on questions of law, the standard of review to be applied is correctness.

7 Failure to meet the standards will result in a Tribunal's order being quashed.

8 Under the [RTA], there is a statutory right of appeal on questions of law alone, a factor suggesting a more rigorous standard of review. Further, the Court has wide powers on appeal, and may affirm, rescind, replace, or amend the decision below, remit the matter back with the opinion of the Court, and make any other order that it considers proper. It may substitute its own opinion for that of the Tribunal.

[30] For the reasons that follow the appellant's grounds of appeal fail.

***1. The Appellant's Opportunity to Participate***

[31] The appellant requested a review of the Order on the grounds that he was not reasonably able to participate, but offered no explanation for his position. This ground of appeal engages ss. 209 (1) and (2) of the *RTA* that provide as follows:

209. (1) Except where this Act provides otherwise, and subject to section 21.2 of the *Statutory Powers Procedure Act*, an order of the Board is final and binding.

(2) Without limiting the generality of section 21.2 of the *Statutory Powers Procedure Act*, the Board's power to review a decision or order under that section may be exercised if a party to a proceeding was not reasonably able to participate in the proceeding.

[Emphasis added.]

[32] In the Notice of Appeal, the appellant states that he did not attend the hearing on June 3, 2014, because he mistook June 3 for June 4. There is no evidence that the appellant attended court on June 4. If he thought the hearing was continuing on the 4<sup>th</sup> I expect that he would have attended on the 4<sup>th</sup> and he does not say that he did. More importantly, it is obvious from his evidence, that he received the notice of the continuation of the hearing, since in effect he says that he misread the date.

[33] Under s. 7(1) of the *SPPA*, "Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding."

[34] The appellant did not attend on June 3, 2014, despite the fact that the notice of hearing was mailed to him on May 12, 2014. He did attend at the Board on May 20, 2014 and May 22, 2014 to view the application file, which included a notice of the hearing.

[35] Accordingly, under s. 7(1) of the *SPPA*, the Board was entitled to proceed in his absence. In these circumstances, the appellant was reasonably able to participate in the hearing.

## 2. *Bona Fide Question of Law*

[36] The respondent's application to the *RTA* raised *bona fide* legal questions concerning the applicability of s. 62(1), 66(1), and 89(1) of the *RTA*. The Board considered these legal questions in determining that the appellant negligently or wilfully caused undue damage to the unit, posed a safety risk, and was required to be evicted and pay reasonable costs of repair.

## 3. *The Issue of Bias*

[37] There is simply no basis for accepting that either the initial Board or the Review Board was biased in making their orders. There was ample evidence to support the orders.

[38] The Board's decision was based on the evidence of the superintendent and a qualified electrician who observed that the cover on the electrical panel in the rental unit had been removed and several wires had been disconnected. There was damage caused from live wires that had come in contact with the electrical panel.

[39] The Board relied on the expertise of a qualified electrician, with 18 years of experience, who determined that the panel was damaged beyond repair and that needed to replace the entire electrical panel, at a cost of \$678.23. This amount was found to represent the "reasonable cost of repair".

[40] The Board stated that "[b]oth of the Landlord's witnesses provided credible testimony of what they observed, which was not discredited in any way during cross examination."

[41] In fact, in a letter dated January 21, 2014, the appellant admitted tampering with the electrical panel, in an attempt to replace a burnt fuse. At the hearing on May 1, 2014, the appellant presented a photo that he took of the electrical panel in March, 2014, which showed the panel cover removed.

[42] The Board noted the lack of evidence from the appellant to support his claim that the damages were unreasonable or excessive. As well, the Board was not optimistic that the appellant would refrain from tampering with the electrical panel.

[43] Therefore, on a balance of probabilities, the Board reasonably concluded that the appellant willfully caused undue damages to the electrical panel in the rental unit.

## CONCLUSION

[44] For the reasons set out above, the appeal is dismissed.

[45] We order the appellant to pay the respondent its costs of this appeal fixed at \$500 all inclusive.

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C. Horkins J.

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Marrocco A.C.J.

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Spence J.

**Released:** December 19, 2014

**CITATION:** Chin Yong Ahn v. 4900 Bathurst Street Ltd, 2014 ONSC 7325  
**DIVISIONAL COURT FILE NO.:** 294/14  
**DATE:** 20141219

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
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Marrocco A.C.J., Spence, and C. Horkins JJ.

**BETWEEN:**

CHIN YONG AHN

Applicant (Tenant)

– and –

4900 BATHURST STREET LTD

Respondent (Landlord)

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**REASONS FOR JUDGMENT**

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C. Horkins J.

**Released:** December 19, 2014