

Court File No.: 107/22

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

B E T W E E N:

MEDALLION CORPORATION

Landlord/Respondent

- and -

ISAAC BON HILLIER and MARITZA ORTIZ

Tenants/Appellants

FACTUM OF THE RESPONDENT

June 5, 2023

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PART I – OVERVIEW

1. In this appeal, the Appellants/Tenants, Issac Bon Hillier and Maritza Ortiz (the “Tenants”), challenge an Order of the Landlord and Tenant Board (the “Board”) made by Board Member Aulbrook in Board file number TSL-21777-21 and issued on February 9, 2022 (the “Order”).
2. In the Order, Member Aulbrook terminated the Tenants’ tenancy for the Rental Unit due to the conduct of Mr. Bon Hillier in the residential complex.
3. A request to review the LTB Order was filed by the Tenants on February 14, 2022 and was dismissed without a hearing (the “Review Order”). The Reviewing Member concluded, based on the submissions in the request, that there was no serious error in the Order as the Tenants had alleged. The Review Order was issued February 17, 2022 by Member Wilkins.
4. The Tenants, in this appeal, make vague assertions that Member Aulbrook “erred substantially in Law by violating numerous Charter Rights (Section 2, Freedom of Conscience and Expression), The Ontario Human Rights Code, and even violating the inbuilt limitations and restrictions of the Reopening Ontario Act.” The Tenants have not perfected the appeal and there has been no elaboration of why it was a wrong decision or how Member Aulbrook “erred substantially in Law”.
5. The Landlord is asking that the appeal be dismissed.

PART II: FACTS

6. The Tenants occupy the apartment located at 565 Sherbourne Street, Unit 2709, Toronto, ON M4X 1W7 (the “Rental Unit”).

Respondent's Compendium, Lease Agreement, Tab 1, pp. 4-5

7. On December 11, 2020, the Landlord served the Tenants with a Form N5 Notice to End your Tenancy (the "First N5"), along with a covering letter from the Landlord's lawyer. The basis of the First N5 was that the Landlord alleged that the conduct of Mr. Bon Hillier on several occasions in the months leading up to service of the First N5 substantially interfered with the Landlord's reasonable enjoyment of the residential complex for all usual purposes, and substantially interfered with the Landlord's lawful rights, privileges, or interests. The First N5 was voidable if the Tenants were to cease the conduct described in the First N5 within seven days.

Respondent's Compendium, First N5 Notice to Terminate, Tab 2, pp. 6-11

8. On April 30, 2021, the Landlord served the Tenants with another Form N5, dated April 30, 2021 (the "Second N5"). The basis of the Second N5 was that the Landlord alleged the conduct of Mr. Bon Hillier on several occasions in the preceding months had substantially interfered with the Landlord's reasonable enjoyment of the residential complex for all usual purposes; substantially interfered with another tenant's reasonable enjoyment of the residential complex for all usual purposes; and substantially interfered with the Landlord's lawful rights, privileges, and interests. Because this was the second Form N5 served on the Tenants within a six-month period, it was not voidable. The Landlord filed a Form L2 Application to End a Tenancy and Evict a Tenant with the Landlord and Tenant Board (the "LTB"), based on the First N5 and the Second N5, on May 4, 2021 (the "L2 Application").

Respondent's Compendium, Second Notice to Terminate, Tab 3, pp. 12-17

Respondent's Compendium, L2 Application, Tab 4, pp. 18-28

9. On or about July 3, 2021, the LTB issued a Notice of Hearing to the parties for a hearing of the L2 Application to be held on July 27, 2021, via video conference (the “First NOH”). This hearing date was cancelled and rescheduled at the Tenants’ request. On or about August 3, 2021, the LTB issued a new Notice of Hearing to the parties for a hearing of the L2 Application to be held on October 12, 2021, via video conference (the “Second NOH”).

Respondent’s Compendium, *First Notice of Hearing*, Tab 5, pp. 29-32

Respondent’s Compendium, *Endorsement of Member Henry*, Tab 6, pp. 33-34

Respondent’s Compendium, *Second Notice of Hearing*, Tab 7, pp. 35-37

10. The hearing of the L2 Application proceeded on October 12, 2021. In advance of the October 12, 2021 hearing, the Landlord’s lawyer served on the Tenants and filed with the LTB a Document Brief containing documentary evidence and case law relative to the L2 Application (the “Document Brief”), as well as a clip of security camera footage from the lobby outside the Residential Complex’s elevators and an audio clip of an interview with another tenant. Despite being properly served with the Second NOH by the LTB, the Tenants did not attend the hearing.

11. On February 9, 2022, LTB Member Randy Aulbrook issued an order terminating the Tenants’ tenancy (the “Order”). On February 14, 2022, the Tenants filed a Request to Review the Order with the LTB. On February 17, 2022, the LTB issued an order denying the Request to Review (the “Review Order”).

Respondent’s Compendium, *LTB Order TSL-21777-21*, Tab 8, pp. 38-40

Respondent’s Compendium, *LTB Review Order TSL-21777-21-RV*, Tab 9, pp. 41-48

12. On or about February 18, 2022, the Tenants commenced the within appeal.

Respondent's Compendium, Notice of Appeal, Tab 10, p. 49

13. The Tenants filed the within appeal on or about February 18, 2022. The commencement of the appeal resulted in an automatic stay of the eviction.

Respondent's Compendium, Certificate of Stay, Tab 11, p. 50

14. A Case Conference was held before Matheson J. on June 3, 2022, following which, the below directions were issued to the parties:

- (a) The appellants have obtained the LTB audio recording and have an informal transcript. The respondent Landlord agrees to accept the informal transcript rather than insisting on a formal transcript.
- (b) The appellants still wish to amend their notice of appeal. They are permitted to do so provided that amended notice of appeal is served and filed with the court by June 24, 2022.
- (c) The schedule for the exchange of appeal materials is as follows:
 - (i) Appellant's materials – August 8, 2022
 - (ii) Respondent's materials – September 7, 2022
 - (iii) LTB materials (if any) – September 21, 2022
- (d) The Toronto Registrar of the Divisional Court is asked to provide the parties with a hearing date for this appeal before a panel of three judges of the Divisional Court for an estimated 2 hours on a date no earlier than September 30, 2022 and to advise the parties of the date by July 29, 2022.

- (e) The appellants still wish to bring a motion permitting them to be referred to by pseudonyms. The parties agree that the motion be heard in writing with the following schedule:
- (i) Moving parties' materials (except factum) – June 24, 2022
 - (ii) Responding Landlord's materials (except factum) – July 8, 2022
 - (iii) Moving parties' factum – July 22, 2022
 - (iv) Responding Landlord's factum – July 27, 2022
 - (v) LTB factum (if any) – July 29, 2022
- (f) The motion will be heard the week of August 8th, 2022.

Respondent's Compendium, *Endorsement of Justice Matheson*, Tab 12, pp. 51-52

15. The Tenants' motion to use pseudonyms in the within appeal was dismissed by endorsement of O'Brien, J. on October 24, 2022.

Respondent's Compendium, *Endorsement of Justice O'Brien dated October 24, 2022*, Tab 13, pp. 53-56

16. The within appeal was scheduled to be heard February 22, 2023. As the Tenants had failed to perfect the appeal in accordance with earlier directions of the Court in respect of same, counsel for the Landlord requested a Case Management Conference.

17. A Case Conference was held before O'Brien J. on January 27, 2023. Justice O'Brien vacated the February 22, 2023 appeal date and made the following directions to the parties:

- (a) By February 21, 2023, the appellants shall file their materials on the appeal.
- (b) By March 14, 2023, the respondent shall file its responding material.
- (c) By March 28, 2023, the LTB shall file its material, if any.

Justice O'Brien also directed that "if the appellants fail to perfect their appeal by February 21, 2023 as directed, the respondent may bring a motion in writing on notice to the appellants seeking to lift the stay pending appeal".

Respondent's Compendium, Endorsement of Justice O'Brien dated February 1, 2023, Tab 14, pp. 57-58

18. The Tenants did not perfect their appeal by February 21, 2023 as directed and remain in default of O'Brien J.'s direction identified in paragraph 13(a) above.

Respondent's Compendium, Endorsement of Justice O'Brien dated February 1, 2023, Tab 14, pp. 57-58

19. The Landlord filed a motion in writing with the Court on March 1, 2023 requesting that the stay on the eviction be lifted pending the appeal. By Endorsement of O'Brien J. issued May 29, 2023, the motion to lift the stay (and a subsequent request to quash the appeal on the basis that the Tenants had not perfected the appeal) were adjourned to the panel scheduled to hear the appeal on June 14, 2023.

Respondent's Compendium, Endorsement of Justice O'Brien dated May 29, 2023, Tab 15, pp. 59-60

PART III: ISSUES AND THE LAW

20. The following issues are understood to be before the Court on this Appeal:

- (a) What is the applicable standard of review to decisions of the LTB?
- (b) Were the Tenants denied procedural fairness when the hearing proceeded in their absence?
- (c) Is the appeal devoid of merit?

Issue 1: The Applicable Standard of Review is Correctness

21. In the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, the framework for determining the appropriate standard of review when an administrative decision is challenged was revised. The starting point is that "a presumption that reasonableness is the applicable standard whenever a court reviews administrative decisions".

[*Canada \(Minister of Citizenship and Immigration\) v. Vavilov*](#), 2019 SCC 65, [para 16](#) ("*Vavilov*")

22. The presumption of reasonableness is rebuttable. In *Vavilov*, the Court specifically articulated that the presumption of reasonableness will be rebutted "where the legislature has indicated that it intends a different standard or set of standards to apply". Such intent is apparent "where the legislature has provided a statutory appeal mechanism from an administrative decision to a court, thereby signaling the legislature's intent that appellate standards apply when a court reviews the decision".

[*Vavilov*](#), paras [17](#), [33](#), [36-37](#)

23. Section 210 of the RTA provides a statutory right to appeal a decision of the Board, but only on a question of law. This statutory appeal mechanism rebuts the presumption of reasonableness, and the applicable standard of review is to be determined pursuant the

jurisprudence on appellate standards of review. Because Board decisions can only be appealed on questions of law, the appropriate standard of review is correctness.

Residential Tenancies Act, 2006, S.O. 2006, c. 17, [s. 210](#) (“[Appeal rights](#)”) [RTA]

[Vavilov](#), para [37](#)

[Housen v. Nikolaisen](#), 2002 SCC 33, [para 8](#)

24. A majority of the Supreme Court of Canada recently affirmed in *Law Society of Saskatchewan v. Abrametz* that, on a statutory appeal, appellate standards apply to questions of procedural fairness. It is well established that procedural fairness is a question of law; therefore, the standard of review for questions of procedural fairness on appeal is correctness.

[Law Society of Saskatchewan v. Abrametz](#), 2022 SCC 29 at paras. [27, 30](#)

25. *Abrametz*, however, did not change the well-established principle that tribunals have the authority to control their own process and that courts accord deference to a tribunal’s procedural choices. The correctness standard on procedural fairness has long accommodated the reality that, due to their experience and expertise, tribunals are best placed to select among available procedural options based on their balancing of the competing interests of expedition, cost-effectiveness, and full participation.

[Baker v. Canada \(Minister of Citizenship and Immigration\)](#), [1999] 2 SCR 817 at [para. 27](#)

[Wei v. Liu](#), 2022 ONSC 3887 (Div. Ct.) at [para. 9](#)

Issue 2: The Tenants were Not Denied Procedural Fairness

26. While the Tenants have failed to perfect their appeal or take any meaningful steps in advancing their appeal, it appears from the Tenants' various submissions uploaded to Caselines that they believe they were denied procedural fairness and a right to be heard before the Board.

27. As noted in the recitation of facts, above, the matter before the Board was first scheduled to be heard on July 27, 2021. The Tenants requested that the matter be rescheduled due to a death in the family and because they required time to prepare for the hearing. The Tenants asked that the matter not be scheduled to be heard before September 20, 2021, as they required the additional time to properly prepare. The Tenants also requested an in-person hearing (as opposed to a virtual hearing).

Respondent's Compendium, *Endorsement of S. Henry*, Tab 6,
pp. 33-34

28. The Tenants' request to reschedule was granted on the basis that a death in the family constituted "exceptional circumstances" sufficient to warrant a rescheduling but denied the Tenants request for an in-person hearing, finding that the submissions made in respect of same did not sufficiently address how they would be significantly prejudiced by an electronic hearing.

Respondent's Compendium, *Endorsement of S. Henry*, Tab 6,
pp. 33-34

29. Notably, the Tenants were invited to file a "fresh request, with reasons, should circumstances arise that would result in an electronic hearing causing them significant prejudice or should they experience accommodation needs that cannot be met by an electronic hearing." Further, the Tenants were advised by Member Henry to bring forward any concerns to the

presiding adjudicator with respect to the management of the hearing at the start of the hearing or when they arise during the hearing.

Respondent's Compendium, *Endorsement of Henry*, Tab 6,
para. 7, p. 34

30. On July 26, 2021, the Tenant, Mr. Bon Hillier using his pseudonym "Chad", wrote to the Board. The Reviewing Member, Member Wilkins, noted of the response that it was not a second request to reschedule, and the Tenant incorrectly asserted that the Board had denied the earlier request to reschedule. Member Wilkins also observed that the Tenant's response did not provide any additional explanation for why an electronic hearing is likely to cause significant prejudice or why the Tenants' accommodation needs cannot be met by an electronic hearing.

Respondent's Compendium, *LTB Review Order*, Tab 9 para 6,
p. 43

31. The Board rescheduled the hearing for October 12, 2021 being nearly one month after the Tenant's original rescheduling request (that it not be scheduled before September 20, 2021).

32. The Tenants submitted two (2) further requests to reschedule and in the first asked that the hearing be scheduled "no earlier than February 12".

Respondent's Compendium, *LTB Review Order*, Tab 9,
paras. 8-10, pp. 43-44

33. On October 12, 2021, the day of the scheduled hearing, the Tenant provided submissions to the Board at 3:00 a.m. and 3:29 a.m. via e-mail. In addition to raising alleged issues of disclosure, the Tenants indicated they were unable to attend the scheduled hearing but offered no further particulars. They asked the Board to arrange for Duty Counsel to speak to the matter and "put it over fot [sic] a month or so...".

34. As the Reviewing Member concluded in respect of the Tenants' Review Request, the Tenants' suggestion that they were denied procedural fairness appears to be rooted in an argument that the Member who denied the Tenants' second request to reschedule unreasonably exercised her discretion. There is not merit to this argument.

35. The authority to adjourn hearings is found in Rule 21 of the Board's Rules of Procedure, which, in turn, is authorized by section 21 of the *Statutory Powers Procedure Act*, which provides that:

A hearing may be adjourned from time to time by a tribunal of its own motion or where it is shown to the satisfaction of the tribunal that the adjournment is required to permit an adequate hearing to be held.

Statutory Powers Procedure Act, R.S.O. 1990, C. 22, [s. 21 \("Adjournments"\)](#)
[SPPA]

Respondent's Compendium, *LTB Rules of Procedure, Rule 21*,
Tab 16, pp. 61-62

36. The SPPA also provides for proceedings in the absence of a party, in section 7:

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.

SPPA, [s. 7 \("Effect of non-attendance at hearing after due notice"\)](#)

37. As noted by Penny J. in *Sterling v. Guillame*, an administrative tribunal such as the LTB enjoys a wide latitude in deciding whether to grant or refuse an adjournment of a scheduled hearing. The decision is discretionary and the scope for judicial intervention is correspondingly limited.

[Sterling v. Guillame, 2021 ONSC 1160](#) at para. [29](#)

38. As outlined above and as reviewed in the Review Order, there was ample basis in the record to support Member Lang’s decision to deny the Tenant’s adjournment request and for Member Aulbrook to proceed with the hearing on October 21, 2021 in the absence of the Tenants. There was no denial of procedural fairness.

SPPA, s. 7 (“Effect of non-attendance at hearing after due notice”)

Respondent’s Compendium, LTB Interpretation Guideline 1,
Adjourning and Rescheduling Hearings, Tab 17, pp. 63-67

39. Moreover, the reasons for why the Tenants were not prepared for the hearing or required an adjournment of the hearing are questions of fact or mixed fact and law and could have been raised before Member Aulbrook at the outset of the hearing October 21, 2021. The Tenants declined to do so by failing to attend the hearing altogether.

Issue 3: The Appeal is Devoid of Merit

40. There is no error of law arising out of the way the Board addressed the Tenants’ numerous rescheduling requests and ultimately proceeded with hearing the Landlord’s L2 Application on an uncontested basis. In the absence of an error of law, this Honourable Court has no jurisdiction, and the ground of appeal is, therefore, manifestly devoid of merit.

[Maynard v. Kerr, 2022 ONSC 4259 \(CanLII\) at para. 16](#)

41. Further, aside from the Tenants’ request to set aside the eviction Order, this Honourable Court does not have jurisdiction to grant the other relief sought by the Tenants, namely, to issue a judgment that the “Landlord is ordered to comply with all governing legislation” and “pay restitution to any tenants served Eviction Notice(s) in Bad Faith.”

Respondent’s Compendium, *Notice of Appeal*, Tab 10, p. 49

42. The Tenants have taken no meaningful steps to advance the appeal before this Court; indeed, even the notice of appeal does not meet the basic requirements in identifying the matters in issue. Numerous extensions of time have been granted to the Tenants and they have still missed every deadline imposed by the *Rules of Civil Procedure* and the Court in respect of this proceeding.

43. The deficiencies with respect to the Notice of Appeal are compounded by the Tenants' failure to perfect the appeal, putting the Respondents in the position of mining potential legal issues from numerous and repetitious submissions filed in Caselines (none of which were filed in respect of the appeal itself).

44. As held by Favreau J., "while self-represented litigants can be excused from complying with some of the Court's formal requirements in appropriate circumstances, they nevertheless have an obligation to inform themselves about court processes and to ensure that their proceedings are tenable at law."

Respondent's Compendium, *Macmull v. Ministry of Health*,
2022 ONSC 182 (Div. Ct.), Tab 18, para 14, p. 71

PART IV- ORDER SOUGHT

45. For all of the foregoing reasons, the Landlord asks that the appeal be dismissed with costs on a substantial indemnity basis.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of June, 2023.



signature electronically affixed

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CERTIFICATE

I, **Kristin A. Ley**, hereby certify the following:

1. that an order under subrule 61.09(2) is **not required**; and
2. the estimate of time that will be required for the Respondent's oral argument, not including reply, is **thirty (30) minutes**.



signature electronically affixed

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SCHEDULE “A”

LIST OF AUTHORITIES

1. [*Baker v. Canada \(Minister of Citizenship and Immigration\)*, \[1999\] 2 SCR 817 \(CanLII\)](#)
2. [*Canada \(Minister of Citizenship and Immigration\) v. Vavilov*, 2019 SCC 65 \(CanLII\)](#)
3. [*Housen v. Nikolaisen*, 2002 SCC 33 \(CanLII\)](#)
4. [*Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29 \(CanLII\)](#)
5. *Macmull v. Ministry of Health*, 2022 ONSC 182 (Div. Ct.)
6. [*Maynard v. Kerr*, 2022 ONSC 4259 \(CanLII\)](#)
7. [*Sterling v. Guillame*, 2021 ONSC 1160 \(CanLII\)](#)
8. [*Wei v. Liu*, 2022 ONSC 3887 \(CanLII\) \(Div. Ct.\)](#)

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

1. Residential Tenancies Act, 2006, S.O. 2006, c. 17

2. Statutory Powers Procedure Act, R.S.O. 1990, C. 22

Residential Tenancies Act, 2006, S.O. 2006, c. 17

Appeal rights

210 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. 2006, c. 17, s. 210 (1).

Board to receive notice

(2) A person appealing an order under this section shall give to the Board any documents relating to the appeal. 2006, c. 17, s. 210 (2).

Board may be heard by counsel

(3) The Board is entitled to be heard by counsel or otherwise upon the argument on any issue in an appeal. 2006, c. 17, s. 210 (3).

Powers of Court

(4) If an appeal is brought under this section, the Divisional Court shall hear and determine the appeal and may,

(a) affirm, rescind, amend or replace the decision or order; or

(b) remit the matter to the Board with the opinion of the Divisional Court. 2006, c. 17, s. 210 (4).

Same

(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. 2006, c. 17, s. 210 (5).

Statutory Powers Procedure Act, R.S.O. 1990, C. 22

Effect of non-attendance at hearing after due notice

7 (1) 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. R.S.O. 1990, c. S.22, s. 7; 1994, c. 27, s. 56 (14).

Same, written hearings

(2) Where notice of a written hearing has been given to a party to a proceeding in accordance with this Act and the party neither acts under clause 6 (4) (b) nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party is not entitled to any further notice in the proceeding.

Same, electronic hearings

(3) Where notice of an electronic hearing has been given to a party to a proceeding in accordance with this Act and the party neither acts under clause 6 (5) (c), if applicable, nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party is not entitled to any further notice in the proceeding. 1994, c. 27, s. 56 (15).

Adjournments

21 A hearing may be adjourned from time to time by a tribunal of its own motion or where it is shown to the satisfaction of the tribunal that the adjournment is required to permit an adequate hearing to be held. R.S.O. 1990, c. S.22, s. 21.

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