

CITATION: Evgeniya v. Gurevitch, 2016 ONSC 6253
DIVISIONAL COURT FILE NO.: 565/15
LTB File No.: TNL-69115-15-SA
DATE: 20161005

ONTARIO

**SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

R.S.J. GORDON, NORDHEIMER and C. HORKINS JJ.

BETWEEN:)
)
CHERNUKHINA EVGENIYA) *Olga S. Morozova*, for the Tenant/Appellant
)
Tenant/Appellant)
)
– and –)
)
SOFIA GUREVITCH) *Arkadi Bouchelev and David Bernstein*, for
) the Landlord/Respondent
Landlord/Respondent)
)
)
) *Brian A Blumenthal* for the Landlord and
) Tenant Board
)
)
) **HEARD at Toronto:** October 5, 2016

NORDHEIMER J. (orally)

[1] The appellant/tenant appeals from an order of the Landlord and Tenant Board made October 5, 2015 that refused to set aside an eviction order that had been previously made by the Board. The appellant’s central contention is that she was not a tenant of the respondent regarding the property in question. Rather, the appellant asserts that she actually owns the property, but that legal ownership of the property is in the name of the respondent because of a fraud perpetrated by the respondent and members of her family.

[2] At the outset, I note that the standard of review regarding decisions of the Landlord and Tenant Board is reasonableness. That standard of review is made clear in cases such as *Onyskiw v. CJM Property Management Ltd.*, [2016] O.J. No. 3817 (C.A.) and *First Ontario Realty Corp. v. Deng*, [2011] O.J. No. 260 (C.A.).

[3] Of more importance than the standard of review in this case is the issue of this court's jurisdiction to hear the appeal. An appeal from the Landlord and Tenant Board to this court lies only on a question of law: *Residential Tenancies Act, 2006*, S.O. 2006, c. 17, s. 220.

[4] In my view, the appellant has failed to make out any question of law that would clothe this court with jurisdiction to hear this appeal. Rather, the appellant essentially seeks to re-litigate issues that were before the Board and which the Board determined based on the facts as the Board found them. In particular, the Board concluded as a matter of fact that the appellant was a tenant of the respondent. While the appellant may ultimately be able to revisit that conclusion in the proceeding that she has outstanding in the Superior Court, she cannot invoke this court's jurisdiction to re-litigate it by way of this appeal.

[5] The appellant's complaints regarding the Board's failure to undertake a more thorough investigation of the issues between the appellant and the respondent and the Board's failure to order production of documents suffer from the same fundamental flaw. They do not raise any question of law. Rather, those decisions reflect the Board's exercise of its discretion in terms of the manner in which it chose to conduct the hearing.

[6] One other issue falls to be addressed. The appellant sought to adduce fresh evidence before us that she had obtained through the discovery process in her Superior Court action. I have serious doubts whether the appellant has satisfied the four part test in *R. v. Palmer*, [1980] 1 S.C.R. 759 for the admission of fresh evidence, notably the requirement that the evidence could not have been earlier obtained through the exercise of due diligence. However, even assuming that the appellant can satisfy the test, all that evidence does is to attempt to contradict the factual findings made by the Board. That is a matter over which this court does not have jurisdiction as I have already mentioned. It is not the function of this court to revisit factual findings.

[7] I make one final observation on this matter. The appellant still has all of her rights in her Superior Court action to pursue her claim that the property in question actually belongs to her. Allowing her to revisit the tenancy issue, in these circumstances, is both unnecessary as well as being contrary to the fundamental principle, reflected in s. 183 of the *Residential Tenancies Act, 2006*, that such issues should be determined in the most expeditious manner.

[8] The appeal is dismissed.

COSTS

[9] I have endorsed the Appeal Book & Compendium as follows: "This appeal is dismissed for oral reasons given by me. The costs sought by the respondent for a matter such as this in this

court are excessive. The costs of the appeal and of the motion are fixed in the total amount of \$7,500.00 all inclusive. The Board did not seek costs.

NORDHEIMER J.

R.S.J. GORDON

C. HORKINS J.

Date of Reasons for Judgment: October 5, 2016

Date of Release: October 6, 2016

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BETWEEN:

CHERNUKHINA EVGENIYA

Tenant/Appellant

– and –

SOFIA GUREVITCH

Landlord/Respondent

ORAL REASONS FOR JUDGMENT

NORDHEIMER J.

Date of Reasons for Judgment: October 5, 2016

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