CITATION: Leaf v. Gonzalez, 2023 ONSC 3899
DIVISIONAL COURT FILE NO.: 23-1340 (Oshawa)
DATE: 20230630

SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT

RE: MICHAEL LEAF & VANESSA CARVALHO, Appellants (Tenants)

AND:

GERARDO GONZALEZ & PAOLINA SPREMULLI, Respondents (Landlords)

BEFORE: Schabas, Corbett, Trimble JJ.

COUNSEL: Delaram Mehdizadeh Jafari, for the Appellants

Spencer F. Toole, for the Respondents

HEARD: June 29, 2023

ENDORSEMENT

SCHABAS J. (ORALLY)

[1] This is an appeal of the Review Order of the Landlord and Tenant Board dated November 16, 2022, which upheld the Board Order of November 9, 2022, granting the Landlords' application for a termination and eviction order against the Tenants. The Tenants' principal arguments are that the Board erred by finding the Notice of Termination valid, and by barring the Tenants from providing evidence, which they wished to give at the hearing.

[2] Appeals from the Board are limited to questions of law. If the appeal does not raise a question of law, but one of fact, or mixed fact and law, i.e., an error in applying the facts to the law, then this Court has no jurisdiction to hear it.

[3] Questions of law, should they be raised, are reviewed on a correctness standard.

[4] The first issue raised by the Appellants is not a question of law alone. They complain about the sufficiency of notice and that it did not meet the requirements of s. 65 of the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17. In particular, that by failing to state the specific times when the Tenants smoked marijuana in their unit, the notice was deficient and denied them procedural fairness.

[5] Subsection 43(2) of the *Act* provides that a notice of termination "shall also set out the reasons and details respecting the termination ...". Similarly, section 65(2) of the *Act* requires the landlord to "set out the grounds" for the termination in the notice. It is not a question of law alone whether the details or grounds must include times. Rather, the issue of the sufficiency of the notice is dependent on the circumstances, or facts of each case.

[6] Counsel for the Appellants took us to cases she suggested make times of events a requirement of all notices. See: *Metro Capital Management Inc., Re*, 2002 CarswellOnt 8691, [2002] O.J. No. 5931; *York University v York*, 2021 CanLII 139918 (ON LTB); *HOL-04139-19 (Re)*, 2019 CanLII 87555 (ON LTB); *Parent v Girard*, 2021 CanLII 143620 (ON LTB). However, those cases must be considered in context. In some cases, specific times may be necessary to provide adequate notice, but those cases do not amend the *Act*, which does not require specific times be included in notices. What the *Act* requires is that notice provides the "grounds" or "reasons" for termination, not times.

[7] Even if the sufficiency of notice could be a question of law, as the Tenants have argued that the failure to include times created procedural unfairness, there was no procedural unfairness to the Tenants arising from the failure to specify times in the notice. The grounds were clearly specified in two pages of what the Board called "meticulously detailed" allegations providing numerous dates when marijuana was smoked by the Tenants, which caused health issues for the Landlords' children who lived in the house. The specific health issues were also included in the notice. While some cases may require times to be included, (complaints of noise during the night might be such a situation), they were not necessary here. Many dates were given, and the Tenants did not dispute that they smoked marijuana in the unit.

[8] Further, the fact that the Board on review stated, incorrectly, that the Landlords also provided *times* of the use of marijuana in no way detracts from the Board's finding that notice was sufficient. As the Review decision stated at para. 8 in words equally applicable to the proceeding before us:

> The Tenants are attempting to once again raise the same objection that they raised at the hearing. They take issue with the Member's finding that the N7 notice of termination contained sufficient particulars and details for the Tenants to know the case against them, and therefore be prepared to defend themselves against these allegations. The Tenants were well aware that the main point in dispute was the Tenants' marijuana smoking and its effects on the Landlords and the Landlords' children. This was clearly set out in the N7 notice of termination. Both sides gave extensive evidence in a hearing that took about 3 hours. In fact, the Tenants themselves admitted that they smoked marijuana in the rental unit, as stated by the Tenants in their request for a review in paragraph 1f. To now allege that there were insufficient particulars in the notice of termination is merely an attempt to rehash evidence that was already provided and considered at the hearing, in the hope of a better result.

[9] We can put it no better.

[10] The second argument also fails. The Board's intervention in the questioning of the Landlords by the Tenants simply kept the cross-examination focused on the facts in issue. The

assertion that the rule in *Browne v. Dunn* was misapplied to prevent the Tenants from giving evidence also has no merit.

[11] The Tenants' other arguments, such as alleging errors in failing to mark certain documents as exhibits, or that the Landlords were not required to prove its case do not raise questions of law alone and, in any event, have no merit. What gets marked as an exhibit, if anything, is up to the Board, whose proceedings are not as formal as a court. Further, there was clearly evidence, from both sides, that proved the Landlords' case that the Tenants smoked marijuana in the unit and that this affected the health of the Landlords' children.

[12] The appeal is dismissed. The Appellants shall pay costs to the Respondents in the amount of $3,000.

P. B. Schabas J.

I agree. D.L. Corbett J.

I agree. J. K. Trimble J.

Date of Reasons for Decision: June 29, 2023
Date of Written Release: June 30, 2023

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