CITATION: Two Clarendon Apartments Limited v. Sinclair, 2019 ONSC 3845
DIVISIONAL COURT FILE NOS.: 033/18 and 142/18
LANDLORD AND TENANT BOARD
FILE NOS.: TSL-86609-17 and TSL-86609-17-RV
DATE: 20190619

2019 ONSC 3845 (CanLII)

ONTARIO

SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

SWINTON, TZIMAS, and MYERS JJ.

BETWEEN:	
TWO CLARENDON APARTMENTS LIMITED	*Tom Halinski*, for the Landlord (Appellant)
Landlord (Appellant)	
– and –	
HEATHER ELIZABETH SINCLAIR	Heather Sinclair, acting in person
Tenant (Respondent in Appeal)	
	Brian A. Blumenthal, for the Landlord and Tenant Board
	HEARD at Toronto: June 19, 2019

SWINTON, J. (Orally)

[1] The Landlord appeals from a decision of the Landlord and Tenant Board (the "Board") dated December 21, 2017 that rejected its N13 Application brought pursuant to s. 50(1)(a) of the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 (termination of tenancy because of demolition) and granted the application pursuant to s. 50(1)(c) (termination to do repairs or renovations that are so extensive that they require a building permit and vacant possession of the rental unit). A request to review the decision was rejected by the Board.

[2] The Landlord's work to the tenant's unit involved extensive alterations that included the replacement of the floor joists, replacement of the plumbing system, removal and replacement of some of the unit's walls, floors and ceilings, the conversion of the two bedroom apartment into a one bedroom unit, changing the location of the kitchen and the creation of a second bathroom. However, the work would keep the outer boundary of the unit intact and the front door of the unit in about the same position.

[3] The key issue in the Landlord's application to the Board was whether the work constituted a renovation or a demolition for the purposes of s. 50(1) of the Act. The Landlord argues that the Board gave an unreasonable and unduly narrow interpretation of s. 50(1)(a) and should have found there was a demolition on the facts of this case. In addition, the Landlord argues that the Board had no jurisdiction to substitute s. 50(1)(c) for s. 50(1)(a) in the Landlord's N13 Application.

[4] An appeal lies to this Court only on a question of law (see s. 210(1) of the Act). The standard of review is reasonableness.

[5] With respect to the interpretation of s. 50(1) of the Act, the Board concluded that there was a renovation here because the unit would be available in the same floor space, albeit reconfigured and extensively rebuilt. The Board considered the language of s. 50, especially the right of first refusal of a tenant pursuant to s. 50(3) if a unit is renovated. The Board also considered the purpose of this section, especially the tenant protection goal underlying s. 50(3).

[6] The Board concluded at paras. 13 and 14:

> 13. In a situation where the rental unit continues to exist, albeit in an extremely altered form, it is possible for the tenant to exercise a right of first refusal, because the rental unit is still there: the tenant may move back and continue the tenancy. In a situation where the rental unit is gone, it is not possible for the tenant to exercise a right of first refusal: the rental unit is no longer there and so the tenant cannot move back. The fact that the Act distinguishes renovations and demolitions by the tenant's right of first refusal shows that the intention of these sections of the Act is to preserve tenancies where it is possible to do so.
>
> 14. Accordingly, a project will be defined as a renovation under the Act in a case where it is possible for the tenant to move back into the unit and a project will be defined as a demolition where it is not possible for the tenant to move back into the unit.

[7] The Landlord argues that the Board should have adopted the analysis in *One Clarendon Inc. v. Ross* (Ontario Rental Housing Tribunal, June 16, 1999) at paras. 15 and 16, where the member stated:

> All the dictionary definitions offered by the parties would lead me to believe that to be consistent, a demolition of an apartment must achieve the same result as a demolition of a building – it must cause it to disappear and change irrevocably. What subsequently happens to the space occupied by the building or the apartment does not concern the Tribunal. The land on which the building stood could be used to construct a new one or be left empty, the

2019 ONSC 3845 (CanLII)

> space where the apartment was can be used to build a new unit or can be converted into a storage space.
>
> That means, to my mind, such a degree of change that what was there disappears. In an ideal situation, a demolition of an apartment means a removal of all interior walls and doors, flooring, water and other fixtures, kitchen cabinets, electrical cabling – and then rebuilding it with new materials and fixtures, if that's the intention of the owner. Anything substantially less than that degree of change can not [*sic*] be described as a demolition of an apartment.

[8] I note that this passage was *obiter*, as the member found that there was a renovation on the facts of that case. I note, as well, that the Board did not consider the overall purpose of the section, as the current member did.

[9] The decision in the present case was consistent with the result in *Corbett v. Lanterra Developments*, 2014 ONSC 3297 (Div. Ct.), at para. 14, where there was a demolition permit, and the construction resulted in different units from those demolished, so that the tenant could not move back into the rental unit.

[10] In my view, the Board's approach to the definition of demolition was reasonable and consistent with the Act and modern principles of statutory interpretation.

[11] On the facts, the evidence supports the finding of a renovation. I note, although the Board did not mention this, that the affidavit evidence from the City Building Official states that the City had not granted a demolition permit, and the building permit required the same unit outside area as prior to the renovations.

[12] Given that there was no error of law and ample evidence to support the conclusion of the Board, this ground of appeal fails.

[13] With respect to the jurisdiction to amend the N13 Application and to grant relief under s. 50(1)(c) rather than s. 50(1)(a), ss. 183 and 204 of the Act give the Board the authority to act as it did. In particular, s. 183 states:

> The Board shall adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter.

Section 204 states:

> The Board may include in an order whatever conditions it considers fair in the circumstances.

2019 ONSC 3845 (CanLII)

[14] There was no prejudice to any party when the Board proceeded in the manner in which it did. Everyone had ample notice of the facts and the issues before the Board. It was a reasonable, efficient and proportionate way to proceed in the circumstances of this case.

[15] Accordingly, the appeal is dismissed.

[16] I have endorsed the Appeal Book and Compendium of the Landlord (Appellant) as follows: "This appeal is dismissed for oral reasons delivered today. No party seeks costs."

2019 ONSC 3845 (CanLII)

_____
SWINTON J.

I agree _____
TZIMAS J.

I agree _____
F.L. MYERS J.

Date of Reasons for Judgment: June 19, 2019

Date of Release: June 20, 2019

CITATION: Two Clarendon Apartments Limited v. Sinclair, 2019 ONSC 3845
DIVISIONAL COURT FILE NOS.: 033/18 and 142/18
LANDLORD AND TENANT BOARD
FILE NOS.: TSL-86609-17 and TSL-86609-17-RV
DATE: 20190619

2019 ONSC 3845 (CanLII)

ONTARIO

SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

SWINTON, TZIMAS, and MYERS JJ.

BETWEEN:

TWO CLARENDON APARTMENTS LIMITED

Landlord (Appellant)

– and –

HEATHER ELIZABETH SINCLAIR

Tenant (Respondent in Appeal)

ORAL REASONS FOR JUDGMENT

SWINTON, J.

Date of Oral Reasons for Judgment: June 19, 2019

Date of Release: June 20, 2019