CITATION: Seibert v. Juhasz, 2012 ONSC 5447
DIVISIONAL COURT FILE NO.: 393/11
DATE: 20120926

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

A.C.J.S.C. CUNNINGHAM, R.S.J. BROWN AND SWINTON J.

BETWEEN:	)	
	)	
DAVID SEIBERT	)	*Robert Di Vincenzo*, for the Appellant
	)	
Appellant	)	
	)	
– and –	)	
	)	
AGNES JUHASZ	)	*Jane Ferguson*, for the Respondent
	)	
Respondent	)	
	)	
	)	
	)	
	)	**HEARD at Toronto:** September 26, 2012

SWINTON J. (ORALLY)

[1] The appellant tenant appeals from a decision of the Landlord and Tenant Board ("the Board") dated May 11, 2011, in which the Board granted the landlord's application to terminate the appellant's tenancy, as the Board found that the landlord required the unit in good faith for her own use. The appellant also appeals the Board's decision of June 27, 2011 rejecting his request for reconsideration.

[2] An appeal lies to this Court only on a question of law (*Residential Tenancies Act, 2006,* S.O. 2006, c. 17, s. 210(1)).

[3] The appellant has brought a motion for fresh evidence. The evidence regarding the number of units in the building would not likely have affected the outcome of the hearing, as that evidence was already before the Board. The evidence of conduct after the hearing going to the landlord's motivation is not admissible, as this Court is only empowered to determine if the Board made an error of law. It is not our function to make findings of fact based on new evidence (see *Township of Scugog v. Fletcher* (1993), 13 O.R. (3d) 387 (C.A.) at p. 2 of the QuickLaw version). Therefore, the motion to admit fresh evidence is dismissed.

[4] The appellant argues that the Board erred in failing to consider s.72(2) of the *Act*. This argument was not raised before the Board and should not have been raised for the first time on appeal.

[5] In any event, s.72(2) does not apply. That provision states in part:

> The Board shall not make an order terminating a tenancy and evicting the tenant in an application under section 69 based on a notice of termination under section 48 or 49 where the landlord's claim is based on a tenancy agreement or occupancy agreement that purports to entitle the landlord to reside in the rental unit unless,
>
> (a) the application is brought in respect of premises situate in a building containing not more than four residential units. …

[6] There is no evidence that the landlord's claim was based on a tenancy or occupancy agreement that purports to entitle the landlord to reside in the rental unit. We reject the argument that the words "purports to entitle the landlord to reside in the rental unit" apply only to an occupancy agreement.

[7] According to Interpretation Guideline 12 of the Board, the provision only has application in co-ownership situations in which individual units in a multi-unit building are marketed and sold as individual units. That is not the present case. Therefore, s.72(2) has no application here.

[8] The appellant also argues that the Board erred in law in finding good faith by the landlord. Section 48(1) of the *Act* reads in part:

> A landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation by,
>
> (a) the landlord.

[9] The appellant argues that the Board misapplied the law in finding good faith, given the Board's finding that the landlord also intended to renovate.

[10] The Board set out the correct test for the application of s.48 and found at p. 2 of its reasons:

> I am satisfied based on the Landlord's evidence that she genuinely intends to move into the rental unit and therefore I am satisfied the Landlord has met the "good faith" requirement set out in subsection 48(1). The Landlord's

evidence was not shaken under through cross-examination by Tenant's counsel.

[11] We see no error of law committed by the Tribunal. There was ample evidence before the Board to support the finding of fact that the landlord had a genuine intention to possess the property for her own use.

[12] The appellant has failed to identify any error of law by the Board. Accordingly, the appeal is dismissed.

COSTS

A.C.J.S.C. CUNNINGHAM

[13] Costs to the Respondent fixed at $7,500, taking into account the offers to settle that were advanced. I have indicated in this draft order that the termination date will be October 15, 2012. Costs are fixed at $7,500 all inclusive. Mr. Seibert will have until December 31, 2012 to pay the costs.

SWINTON J.

A.C.J.S.C. CUNNINGHAM

R.S.J. BROWN

Date of Reasons for Judgment: September 26, 2012

Date of Release: October 15, 2012

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DAVID SEIBERT

Appellant

– and –

AGNES JUHASZ

Respondent

ORAL REASONS FOR JUDGMENT

SWINTON J.

Date of Reasons for Judgment: September 26, 2012

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