

COURT FILE NO.: 590/07
DATE: 20090126

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT
JENNINGS, SWINTON AND LOW JJ.

BETWEEN:)	
BATHURST-VAUGHAN MALL LIMITED)	<i>David M. Golden, for the Landlord</i>
)	(Respondent in Appeal)
)	
Landlord)	
(Respondent in Appeal))	
- and -)	
)	
SIGAL, ENI AND BLAIN KOSTYK)	<i>Tracy Heffernan, for the Tenants</i>
)	(Appellants)
)	
Tenants)	
(Appellants))	
)	
)	
)	HEARD at Toronto: January 26, 2009
<u>JENNINGS J.:</u> (Orally))	

[1] This is an appeal by the tenant from the decision of the Landlord and Tenant Board, issued November 27, 2007, refusing to set aside an order for eviction.

[2] An appeal lies to this Court on a question of law. The appellant submits that she did not receive a fair hearing before the Tribunal, particularly having regard to her disability resulting from mental illness.

[3] We are all of the opinion that the Member, in the difficult situation that arises when a litigant is self-represented, provided adequate guidance to the appellant throughout the hearing. He inquired into her competency which she confirmed (see transcript, page 16, line 2) and

ensured that she was able to present her case before him. He explained the onus she was required to meet and reviewed with her the material provisions of the governing Act. From the record, her disability did not prevent her from participating in the proceeding. She at no time requested an adjournment. The circumstances revealed by the record do not indicate a situation where the Tribunal should, of its own motion, direct an adjournment to permit the tenant to receive help.

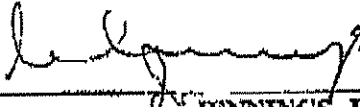
[4] The appellant further submits that the Tribunal did not embark upon an inquiry as to whether the landlord made any effort to accommodate the tenant's disability as it may have impacted upon her ability to pay rent on time, during the 4 ½ year period of the tenancy.

[5] There is simply no evidence on the record that at any time during the tenancy did the tenant advise the landlord of her disability and request accommodation. The first mention of disability was at the hearing. That being so, we see no merit in this ground of appeal.

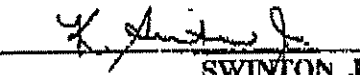
[6] Accordingly, the appeal must be dismissed.

COSTS

[7] I have endorsed the Record: "For oral reasons delivered today, appeal dismissed. Costs to the respondent fixed at \$1,000.00, inclusive, payable forthwith. On consent, no eviction to take place prior to April 1, 2009."



JENNINGS J.



SWINTON J.



LOW J.

Date of Reasons for Judgment: January 26, 2009

Date of Release:

JAN 29 2009

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Landlord
(Respondent in Appeal)

- and -

SIGAL EINI AND BLAIN KOSTYK

Tenants
(Appellants)

ORAL REASONS FOR JLDGMENT

JENNINGS J.

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