

CITATION: Gonte Construction Limited v. Tenants of 90 Eastdale Ave. and 2 Secord Ave.,
2012 ONSC 6733

DIVISIONAL COURT FILE NO.: 268/12

DATE: 20121126

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

KITELEY, SWINTON AND LEDERER JJ.

BETWEEN:)	
)	
GONTE CONSTRUCTION LIMITED)	<i>Joseph J. M. Hoffer and Kristin Ley, for the</i>
)	Landlord (Respondent in Appeal)
Landlord)	
(Respondent in Appeal))	
)	
- and -)	
)	
TENANTS OF 90 EASTDALE AVENUE)	<i>Karen Andrews, for the Tenants (Appellants)</i>
and 2 SECORD AVE.)	
)	
Tenants)	
(Appellants))	
)	
)	
)	HEARD at Toronto: November 26, 2012

SWINTON J. (ORALLY)

[1] A number of tenants from 90 Eastdale Avenue and 2 Secord Avenue, Toronto appeal from the decision of the Landlord and Tenant Board dated April 30, 2012, as well as the Board's interim orders.

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

[3] The Board was interpreting and applying its home statute. It was determining issues that were within its core functions – for example, whether the landlord’s conduct constituted harassment or coercion, whether there was an agreement that the landlord added a prescribed service, and whether the charge for the prescribed service was an illegal charge or an unlawful rent increase. The Court of Appeal in *First Ontario Realty Corp. v. Deng*, 2011 ONCA 54 has determined that the standard of review is reasonableness where the Board is applying statutory provisions that relate to its core functions (see para. 21).

[4] The current appeal raises no issues of general legal import - for example, concerning illegality of contracts.

[5] Subsection 123(1) of the *Act* provides that:

A landlord may increase the rent charged to a tenant for a rental unit as prescribed at any time if the landlord and the tenant agree that the landlord will add any of the following with respect to the tenant’s occupancy of the rental unit:

...

2. A prescribed service, facility, privilege, accommodation or thing.

[6] The Board found that the tenants who did not confirm their consent to smartmetering with Stratacon had agreed to accept electricity, a prescribed service, from the landlord and, therefore, the landlord was entitled to increase the rent pursuant to s. 123(1) of the *Act*. That was a reasonable interpretation of the *Act* and a decision that the Board was entitled to make on the evidence before it. As the Board pointed out, s. 123(2) makes it clear that the landlord was not required to give notice of the increase.

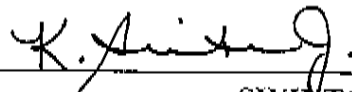
[7] The Board also found that there was no illegal charge by the landlord under s. 134 and, therefore, the tenants were not able to claim compensation from the landlord for monies paid to Stratacon, an independent contractor and not an agent of the landlord. That too was a reasonable interpretation of ss. 134 and 135 of the *Act*.

[8] Finally, the Board found that there was no harassment or coercion by the landlord, nor did the landlord interfere with the tenants' reasonable enjoyment of their rental units. The Board made findings of fact based on the evidence before it. This issue raises no question of law.

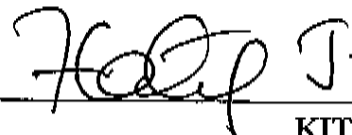
[9] Accordingly, the appeal is dismissed.

KITELEY J.

[10] I have endorsed the Appeal Book, "For oral reasons given, this appeal is dismissed. The appellants shall pay costs fixed at \$10,000 provided that the appellants listed in Schedule "A" to the Notice of Appeal shall pay in equal shares and are not jointly and severally liable. Schedule "A" to the Notice of Appeal shall be attached to the judgment."



SWINTON J.



KITELEY J.



LEDERER J.

Date of Reasons for Judgment: November 26, 2012

Date of Release: **DEC 3 2012**

SCHEDULE A – LIST OF TENANTS

Krishnaveni Akarapa	Shirin Akhter
Girim Alebachew	Mary Allert
Roger Alleyne	Charlene Annette
Rosita Arceo	Blessing Asaswara
Aline Ataklite	Estegenet Ayele
Patrick Bardos	Sadia Battar
David Belanger	Dustie Bennett
Teresa Bond	Ramon Buenconsejo
Kurt Cairns	Graciela Campos
Debatosh Choudhury	Pamena Condotta
B. Conner	Marc Corriveau
Lilybeth Cosico	Susan Cox
Annissa Crimp	Cheryl Cuning
Parvati Devi	Allen Dori
Similio Dube	Heba Elmoslimany
Oriser Esprit	Simoh Eubank
Addonica Evana	Tara-lynn Finn
Melanie Gogan	Stanislav Gomes
Yu Gie Gong	Kevin Hareguy
Laura Hawkins	Sandi Hindi
Cristal Hollick	Lorne Hyndman
Xi Jia	Bryden Jones
Nahid Kabir	Talimina Kahn
Melanie Kozai	Yvonne Kristensen
Jennifer Lambert	Anisa Latif
Jennie Layden	Solomon Yohannes Lisanework
Liz Little	Joseph Macdonald
Josie Maclachlan	Mohammed W. Malik
James Manuel	Fabian Marin
Hermon Markos	Rasoul Maymandi
Aline Mbawoot	Gloria Mesa
Misty Mirault	Victoria Mitchell
Lyle Morris	Emmah Muiruri
Nellie Munetsi-muaomba	Azeema Munir
Vincent Ndongera	Grant Norman
William O'Neill	Elva Owang
Jason Passmore	Regal Pike
Tom Puliyanmackal	Rahim Quaderi
Vinnette Richards	Karyn Riehl
Edward Rocha	Olivia Rolfe
Aquiba Shams	Marlene Sheridan
Oncil Simpson	Tim Street
K. Szywniewski	Ma Norma Regina Tangonan

- 2 -

Avia Thomas
Sharif Ullah
Napota Vanza
Andrew Veloza
Steve Warner
Shamim Ahsan
Qiang Xin
Michael Zrichuk

Paul Thompson
Brandy Van Benthem
Elaine Vautour
Clayton Warner
Philip James Watts
Laurie Woods
Abu Ziauddin

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 (Respondent in Appeal)

- and -

TENANTS OF 90 EASTDALE AVENUE and 2
 SECORD AVE.

Tenants
 (Appellants)

ORAL REASONS FOR JUDGMENT

SWINTON J.

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