**CITATION:** Equity Builders Ltd. et al. v. Landlord and Tenant Board et al., 2025 ONSC 759
**DIVISIONAL COURT FILE NO.:** Appendix 1
**DATE:** 20250205

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**DIVISIONAL COURT**

**Sachs, Davies and Muszynski JJ.**

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|---|---|
| **BETWEEN:** | |
| Equity Builders Ltd., EQB Ltd., Joanne Smout, Tarang Shah and Ash Singh<br><br>Appellants/Applicants | *Timothy Duggan*, for the Appellants/ Applicants |
| **– and –** | |
| Landlord and Tenant Board et al. (see Appendix 1)<br><br>Respondents | *Eli Fellman*, for the Respondent, Landlord and Tenant Board<br><br>*Anna Rosenbluth*, *Daniel McCabe* and *Andrew Bolter*, for the Respondents named in Appendix 1 |
| | **HEARD at Toronto by videoconference:** December 18, 2024 |

2025 ONSC 759 (CanLII)

## THE COURT

### Overview

[1] This is a proceeding consolidating a number of appeals and applications for judicial review relating to several decisions of the Landlord and Tenant Board (the "Board") in relation to a residential apartment building containing 39 units in Sarnia, Ontario. In February of 2023 there was a fire in the residential complex, as a result of which the tenants were forced to vacate their units.

[2] The complex is owned by Equity Builders Ltd. EQB manages the complex on behalf of Equity Builders. Ash Singh is the principal of Equity Builders, and Joanne Smout and Tarang Shah are employees of EQB. Collectively, they will be referred to as the "Landlords".

[3] The responding parties, other than the Board, are tenants in the residential complex (the "Tenants"). In total the Tenants occupy 18 units in the building. The Tenants brought separate proceedings before the Board, alleging (i) that they were unlawfully denied access to their units after the City of Sarnia made an order that their units were fit for occupation, (ii) that the Landlords had substantially interfered with their reasonable enjoyment of their respective units and (iii) that the Landlords had harassed, obstructed, coerced, threatened or interfered with them.

[4] The Board made several orders these proceedings. In the First Interim Order dated May 8, 2023, the Board determined that the Tenants in fourteen units had been illegally locked out by the Landlords. The Board ordered that the Tenants be put back into possession. In the Second Interim Order dated March 11, 2024, the Board confirmed its finding in the First Interim Order that the Tenants had been illegally locked out of their rental units; found that the Landlords had substantially interfered with the reasonable enjoyment by the Tenants of their units; and found that the Landlords obstructed, coerced, threatened or interfered with the Tenants. The Board then issued 15 separate orders setting out the remedies to be awarded to the Tenants in fifteen units affected by the findings in the First and Second Interim Orders. Those remedies included damages for out-of-pocket expenses, general damages, a rent abatement, costs and an administrative fine to be paid to the Board.

[5] The Landlords seek to appeal and judicially review the First Interim Order, the Second Interim Order and the unit specific orders. In doing so, they make several allegations of procedural unfairness. They also argue that the Board erred in naming Mr. Singh as a landlord, that it erred in awarding the Tenants damages that had not been claimed in their applications and it erred in awarding those damages without considering their obligations to mitigate their damages through tenant insurance. In addition, the Landlords submit that the Board erred in awarding administrative fines that totalled over $500,000.00 and it erred in restoring possession of two units.

[6] For the reasons that follow, the appeals and applications for judicial review are dismissed with the sole except of the issue of the Board's decision to name Mr. Singh as a landlord. That aspect of the Board's orders is set aside, and that discrete issue is referred back to the Board for a hearing on whether Mr. Singh ought to be named as a landlord.

## Background

### *Events Giving Rise to the Board Proceeding*

[7] The residential apartment building at issue is located at 721 Earlscourt Drive, Sarnia, Ontario. The building is a three-storey building, known as Building B, that contains 39 rental units. The companion building, Building A, contains 36 rental units.

2025 ONSC 759 (CanLII)

[8] The Tenants are vulnerable tenants and former tenants. Five receive government income support and others work low wage jobs. Seven have disabilities, and five have young children. The Tenants' rents are affordable, with 13 of the 18 households paying less than $1000.00 per month.

[9] On February 20, 2023, a tenant in Building B left a pan of hot oil cooking on her stove. This caused a fire, as a result of which all of the tenants in the building were forced to vacate their units. The tenants in Building A were briefly displaced, but they were able to return to their units within a day. However, given the damage to Building B, the City of Sarnia ordered everyone to vacate Building B.

[10] On February 21, 2023, the Chief Building Official for the City of Sarnia issued an order to the Landlord directing that the premises be vacated. That order was updated 6 days later. On February 27, 2023, the Landlord was directed to restrict access to the entire second floor of Building B as well as Units 108, 306, 308 and 310 (the "City of Sarnia Order").

[11] The Tenants (who did not live in the units named in the City of Sarnia Order) asked to be let back into Building B. The Landlords continued to insist that Building B was unsafe to occupy because of air quality concerns and refused to allow the Tenants to reoccupy their units.

[12] Two days after the fire the Landlords advised the Tenants without contents insurance that the *Residential Tenancies Act* and their leases required them to have contents insurance. This requirement is disputed. Three days later the Landlords offered the first twenty tenants who agreed to terminate their tenancies a portion of the first and last months' rent on new premises. The Landlords refused to allow the Tenants access to their units to retrieve their belongings.

[13] Given the limited means of the Tenants, the impact on them of the Landlords' actions was severe. For example, one tenant, who occupied unit 309B, was a senior with limited mobility and COPD. As a result of his COPD, he relies on oxygen tanks and medication to breathe. Given his lack of income and alternate accommodation, he was forced to stay in a basement room in a shelter, which was cold and damp. The Landlords refused to allow him access to his unit to retrieve his medication, puffers and oxygen tanks. He developed pneumonia and spent a month in hospital. The tenants in 207B were expecting a baby at the time of the fire. The Landlords refused to allow them access to their unit to retrieve their belongings, including furniture they had bought for their baby. As a result, they were forced to take out a short-term, high interest loan.

[14] In late March of 2023, the Tenants applied to the Board for an order determining that they had been illegally locked out of their units, that Equity Builders had substantially interfered with their reasonable enjoyment of the premises at issue and that Equity Builders had harassed, obstructed, coerced, threatened or interfered with them. Originally, twenty-one applications were filed. One has been abandoned, 17 have been determined and three remain outstanding.

2025 ONSC 759 (CanLII)

***The Provisions in the Residential Tenancies Act respecting a landlord's ability to lock a tenant out of their unit.***

[15] In *White v. Upper Thames River Conservation Authority*, 2022 ONCA 146, the Ontario Court of Appeal noted that *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 (the "*RTA*") "enjoys primacy over all other legislation, save the *Ontario Human Rights Code*": at para. 10. The Court further stated, at para. 20:

> The circumstances in which a landlord may take possession of rental unit from a tenant are strictly limited to lawful termination, abandonment, death, assignment, eviction, or a Board order – in other words, the end of a tenancy in accordance with the Act. Nothing in the Act authorizes a landlord to take possession of a residential unit during an ongoing tenancy or assists the landlord in doing so.

[16] The *RTA* contains a specific provision setting out the process a landlord must use if they require possession of a unit for the purpose of repairs.

> **Notice, demolition, conversion, repairs**
> 50(1) A landlord may give notice of termination of a tenancy if the landlord requires possession of the rental unit in order to,
> (a) demolish it;
> (b) convert it to use for a purpose other than residential premises; or
> (c) do repairs or renovations to it that are so extensive that they require a building permit and vacant possession of the rental unit. (emphasis added).

[17] Thus, a landlord who needs vacant possession of a unit to do repairs must first deliver a notice of termination. Certain rights accrue to a tenant who receives a notice to terminate their tenancy for repairs. First, the tenant who receives the notice may choose to terminate their tenancy. If they do not, s. 53 of the *RTA* grants the tenant a right of first refusal to occupy the premises once the repairs are completed. Second, the tenant a right to compensation equal to three months rent unless the tenant is provided with a right to rent another unit acceptable to them or the repair was ordered to be carried out under the authority of the Act or any other Act: *RTA*, s. 54.

[18] The landlord's obligation to pay may be attenuated if the repair is ordered to be carried out under the Act or another Act. There are a number of statutes that provide authority to order repairs. Under s. 15.9 of the *Building Code* Act, 1992, S.O. 1992, c. 23, a building inspector can declare a building unsafe if is structurally inadequate or it is "in a condition that could be hazardous to the health or safety of persons in the normal use of the building, persons outside the building or persons whose access to the building has not been reasonably prevented": s. 15.9(2)(b). A building inspector can, by order, prohibit the use or occupancy of a building that they find to be unsafe: s. 15.9(6)(a).

2025 ONSC 759 (CanLII)

[19] Under s. 13(1) of the *Health Protection and Promotion Act,* R.S.O. 1990, c. H.7 a medical officer of health or a health inspector can order that premises be vacated in the event of a "health hazard", which includes "(a) a condition of a premises, (b) a substance, thing, plant or animal other than man, or (c) a solid, liquid, gas or combination of any of them, that has or that is likely to have an adverse effect on the health of any person": (s.1).

[20] Similarly, under the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4, s. 21, an inspector, with the approval of the Fire Marshall, can prevent people, including tenants, from entering premises until certain corrective actions are taken.

[21] In this case, the Landlords did not deliver a notice of termination and did not offer to pay compensation equal to three months rent. The only orders preventing access to the premises were under the *Building Code Act.* While an order was made for vacant possession immediately after the fire, six days later that order was amended to allow for possession of almost all the units that were the subject of the applications before the Board.

***Previous Board Fine Against EQB***

[22] In 2010, there was a fire in a Mississauga building Mr. Singh operated through EQB. Following the fire, Mr. Singh, through EQB, locked the tenants out of their homes without serving any notice of termination under the *RTA*, and in the absence of any order restricting access.

[23] Two tenants applied to the Board for remedies. Mr. Singh attended the hearing and asserted that he was justified in locking out the tenants because "the insurance company has put the restoration of the rental unit on hold until the tenants provide proof of content insurance", and that, because of the fire, the landlord needed to update the "outdated wiring" in the building, prior to which the units would be unsafe to occupy. In a decision reported as *CET-10108-11 (Re),* 2011 CanLII 13385 (Ont. LTB), at para. 3, the Board rejected Mr. Singh's argument, holding that the insurance company "does not control the Landlord's obligations" under the Act, and finding that the landlord did not have the right to change the locks without serving a lawful notice of termination under the Act. The Board also continued:

> 6. The Landlord did not support his assertion that he is required by another authority that supersedes the Board's authority to secure the rental unit by changing the locks to it with any evidence, documentary or other. The Landlord does not have a right to do this in accordance with the Act unless the Tenants were served with a notice under section 50(1)(c) of the Act, to terminate the Tenancy because the Landlord requires possession of the rental unit to do repairs or renovations. The Tenants are entitled to compensation and security of tenure in accordance with the Act.
>
> …

2025 ONSC 759 (CanLII)

> 11. It has been determined that the Landlord illegally evicted the Tenants and does not want the Tenants to regain possession of the rental unit. This has substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants. The Landlord did not have a legal right to alter the locking system, to ask the Tenants to remove all of the belongings from the rental unit and to delay the process to restore the rental unit to a habitable condition. The Landlord has also been difficult for the Tenants to communicate with and has not provided them with any documentation and/or other information throughout the process which justifies the manner in which the Landlord dealt with this issue.
>
> …
>
> 14. The Landlord shall pay a fine to the Board of $500.00 for illegally evicting the Tenants from the rental unit. The Board finds that a fine is appropriate to deter the Landlord from contravening the Act in the future.

[24] The Landlord's appeal to the Divisional Court was dismissed: *Gouge v. EQB Ltd.*, Brampton Court File No. DC-11-0009 (October 20, 2011).

***First Interim Order***

[25] On April 13, 2023, the Board issued a direction notifying the parties that the Tenants' applications would be heard together on an urgent basis. On May 5, 2023, the Board held a hearing to determine the illegal lockout issue. The Landlord requested an adjournment of this hearing, which was refused on the basis that no adjournment would be appropriate until the illegal lockout issue had been addressed.

[26] On May 8, 2023, the Board issued the First Interim Decision in which it found that it "was not satisfied that a reasonable building contractor abiding by all applications building codes, and all applicable occupational health and safety standards and asbestos abatement protocols issued by the Province of Ontario could not undertake remediation as required without the need for vacant possession of the residential complex."

[27] The Board came to this conclusion on the basis of the affidavit evidence of the Sarnia Chief Building Official and his conclusion that that building was safe for occupation, except as specified in the City of Sarnia Order. That affidavit also contained evidence that the City of Sarnia had reviewed an air quality report and would not be amending its order.

[28] In the First Interim Order the Board adjourned the balance of the relief sought by the Tenants to a hearing date in July 2023 and set a timetable for the exchange of materials for that hearing.

2025 ONSC 759 (CanLII)

[29] The Landlord appealed the First Interim Order to the Divisional Court. On July 27, 2023, that appeal was struck because it sought to appeal an interlocutory order and because it was an abuse of process.

[30] After the appeal was struck, the Landlords still refused possession of the units in question. The Tenants engaged the sheriff and a locksmith and all but one were able to return to their homes.

[31] One unit, 110B, belonged to an Indigenous mother of two young children. Her window had been boarded with plywood and flooded with a hose inserted through a hole. The unit was "festering" with mould and none of her belongings were salvageable. The Landlords had not advised her of the flooding and had taken no steps to mitigate the damage to her family's belongings.

***Case Management Hearing***

[32] After the appeal was quashed, the Board convened a case management hearing. In that hearing the Board directed, among other things, each Tenants to file will-say statements setting out "the remedy that they're seeking because it'll be individualized for each of them."

[33] On July 21, 2023, the Board issued notices of hearing for three dates in September of 2023. Each notice of hearing named Equity Builders Ltd., EQB Ltd., Joanne Smout, Tarang Shah and Ash Singh as "Landlord Parties."

***The Hearing***

[34] Prior to the hearing the Tenants filed will-say statements as directed in which they set out the remedies they were seeking. They also filed submissions as to why an administrative fine was warranted.

[35] The Board heard evidence over four days. Thirty-two witnesses testified. The Tenants adopted their will-say statements under oath and the Landlords cross-examined them on the remedies they were claiming.

***Second Interim Order***

[36] On March 11, 2024, the Board issued a decision determining the merits of the Tenants' allegations that the Landlords had unlawfully locked them out, substantially interfered with their reasonable enjoyment of their units and subjected them to harassment and coercion.

[37] With respect to the 14 units not subject to the City of Sarnia Order access restriction, the Board held that the Landlord "did not have lawful authority to lock out the affected tenants": at para. 22. The Board stated, at para. 118:

> Ash Singh was not able to show what legal authority there was to restrict access to the units where the City of Sarnia had indicated

2025 ONSC 759 (CanLII)

> that it was safe for them to return. If as suggested that there are air quality issues, or the presence of asbestos made it unsafe, in my view there should be some legal authority for a Landlord to turn to, if they intend to deliberately deny tenants their right to occupy their rental units It appears that the Landlord made no efforts to make inquiries on this issue, and simply bowed to the advice and recommendations from his own contractors and insurance provider.

[38] Victoria Rochon, an engineer employed by the firm engaged by the Landlord's insurer, recommended to the Landlords that access to the complex should be restricted because of the presence of smoke, water damage resulting from the "fire loss", the accidental release of asbestos fibers during the fire and the presence of smoke contamination on surfaces. However, the reports she authored showed that:

- The "fire, smoke and/or water damage" was restricted to "Units 106, 108, 110, 206, 208 210, 306, 308 and 310, and the common hallways in the areas of these units", with the damage to the first and third floor hallway areas requiring only surface cleaning;

- An assessment of "smoke migration" showed all samples within a normal range, except one from the doorway of unit 309. However, that contamination could be remedied through "surface cleaning around the interior doorways" and cleaning of the HVAC system;

- Accidental release of asbestos fibres during the fire was restricted to units 108, 205, and the second-floor hallway, but even those areas passed air quality testing. Surface samples showed asbestos fibres in only units 108 and 308, and the first and third floor stairwells, but the stairwell samples were consistent with residue left by personnel travelling in and out of fire affected areas without having followed abatement precautions.

[39] Ms. Rochon testified that remedial work requiring the removal of materials could disturb asbestos, but this work was only required in "three units on level 1, three units on level 2, and …three units on level 3, in addition to the level 2 corridor." She agreed that those areas could be isolated from the rest of the building as work zones.

[40] Mr. Scott, the Senior Property Loss Specialist for a renovations company hired by the Landlords' insurer, agreed on cross-examination that renovations to asbestos-containing units could safely take place if the residential complex was occupied if precautions were followed. These precautions would increase the cost of the renovations.

[41] The Board found Ms. Rochon's evidence to be "contradictory and devoid of any legal authority to support recommendations that Building B remain unoccupied": at para. 71. The Board also noted the evidence that remediation could safely be undertaken in an occupied complex with proper precautions.

2025 ONSC 759 (CanLII)

[42] With respect to Mr. Singh, the Board found that while he acknowledged that he was the one who ultimately made the decisions, he refused to accept responsibility for the communications being made to the Tenants and how these might be perceived. The Board found that this conduct amounted to wilful blindness on Mr. Singh's part. The Board also made adverse findings concerning Mr. Singh's credibility.

[43] The Board found that the Landlords had substantially interfered with the reasonable enjoyment of both the Tenants who were not lawfully restricted from accessing their units and those who were. With respect to the Tenants whose access was restricted under the City of Sarnia Order, the Board found that the Landlords had substantially interfered with their reasonable enjoyment by "unreasonably den[ying] access, or limit[ing] the scope of access such that it was difficult if not impossible for them to retrieve important contents they each required, or to remove contents so that remediation could be undertaken": at para. 132. The Board also found that the Landlords' delay in repairing their units was an unreasonable interference with their ability to enjoy their units.

[44] The Board found that the Landlords had coerced and harassed the Tenants through correspondence pressuring them to terminate their tenancies for compensation below the statutory minimum, threatening to evict tenants who did not obtain insurance naming the landlord as a beneficiary, requiring tenants to obtain insurance to access their belongings, and engaging in abrasive and hostile communications.

***Remedies Orders for the first 14 Tenants***

[45] Following the Second Interim Order, the Board issued unit specific orders awarding remedies and fines in relation to 14 of the applications before it ("March Remedies Orders").

***Hearings and Orders in Relation to the Tenants remaining out of possession.***

[46] Four applications were not resolved by the March Remedies Orders – the applications of Danielle Waddilove (110B), Nicole Atkins (201B), the Jacobs/Wright family (205B) and the Whitstone/Fletcher family (207B). The Whitstone/Fletcher family agreed to terminate its tenancy, but the other households were waiting to return to their homes. Mr. Waddilove's unit was uninhabitable following the flooding and the other Tenants believed that the City continued to restrict access to their units (201B and 205B).

[47] On April 3, 2024, the Board issued an interim order in relation to these applications. It noted the Landlords' ongoing failure to comply with the May 8, 2023, direction to provide "remediation plans and a timeline for remediation" and ordered the Landlords to provide that information prior to the next hearing, failing which the Board could find the ongoing lack of compliance to be an abuse of process: at para. 7.

[48] On April 4, 2024, counsel for the Tenants received the results of a freedom of information request they had filed with the City of Sarnia to find out the progress of the building inspection reports. As a result, they discovered that on November 24, 2023, the City had removed the restrictions to the occupancy of units 201B and 205B. The Landlords were

2025 ONSC 759 (CanLII)

aware of this, but they did not advise the Tenants and did not provide the affected Tenants with occupancy to their units.

[49] On June 27, 2024, the Board convened a hearing to determine the timeline for repossession of the remaining households, including the households in 201B and 205B.

[50] Following that hearing, the Board issued remedies orders in relation to units 201B, 205B and 207B. Among other things, those orders permitted the Tenants in 201B and 205B to return to their homes. The Landlords' appeals stayed those orders, and those Tenants remain out of possession.

**Issues Raised**

[51] In their appeals and judicial review applications the Landlords raise the following issues:

1. Is judicial review available in the circumstances of this case? This issue involves a consideration of whether the applications for judicial review are premature since the Landlords did not avail themselves of their right to seek reconsideration of the Board's decision.

2. Did the Board deny the Landlords procedural fairness or act unreasonably in finding that the individually named Appellants were "landlords" for the purposes of finding them jointly and severally liable for the compensation to be paid to the Tenants? With respect to this issue, the Tenants are prepared to consent to an order by this court that Ms. Smout and Mr. Shah should not be named as "landlords". All parties agree that we have the jurisdiction to make this order. Thus, this issue is limited to whether Mr. Singh, the principal of Equity Builders, should have been named as a "landlord" by the Board. Further, if he should not have been named, what remedy should be granted?

3. Did the Board err in law or act unreasonably in granting the Tenants monetary relief that was not pleaded in their applications, disbursements that were legal costs and amounts that were not supported by documentation?

4. Did the Board err in law by failing to consider the Tenants' duty to mitigate their damages through tenant insurance policies? According to the Landlords, most, if not all of the damages claimed by the Tenants could have been mitigated if the Tenants had obtained and maintained the policies of insurance their leases required them to maintain.

5. Did the Board err in law or act unreasonably in ordering Equity Builders to pay an administrative fine in the total amount of $525,000?

6. Did the Board err in law or act unreasonably in conducting the hearing of the Tenant Applications in a manner that was procedurally unfair? In this regard the main allegation of the Landlords is that the Board descended into the arena and became an advocate for the Tenants, thereby rendering the hearings procedurally unfair.

2025 ONSC 759 (CanLII)

7. Did the Board err in law or act unreasonably in ordering that the Tenants of Units 201B and 205B could be restored to possession of their units?

**Standard of Review**

[52] Appeals from the Board's decisions are limited to questions of law: *RTA*, s. 210(1). The standard of review is correctness. Procedural fairness questions are questions of law that are subject to appeal.

[53] The *RTA's* limited right of appeal does not preclude judicial review of the aspects of the Board's decision that are not subject to appeal: *Yatar v. TD Insurance Meloche Monnex*, 2024 SCC 8, 489 DLR (4th) 191. On judicial review, the applicable standard of review is reasonableness.

**Analysis**

***Statutory Context***

[54] In *Elkins v. Van Wissen*, 2023 ONCA 789, the Ontario Court of Appeal recognized that the *RTA* is "remedial legislation with a tenant protection focus. The purposes of the [Act] are set out in s. 1. The first purpose listed is 'to provide protection for residential tenants from…unlawful evictions'": at para. 42. This case concerns an allegation of unlawful evictions.

[55] In *White v. Upper Thames River Conservation Authority*, 2022 ONCA 146, the Court of Appeal elaborates on the tenant protection focus of the Act as follows, at para. 10:

> The Act is remedial legislation designed to redress the imbalance of power between landlords and tenants. It removes leases from the ordinary contract law principles that would otherwise govern and establishes extensive statutory rights for tenants. The Act enjoys primacy over all other legislation, save the *Ontario Human Rights Code*, and the parties are prohibited from waiving or limiting the protection the Act provides.

[56] With respect to the allegation regarding procedural fairness, it is important to keep in mind that the purpose of the *RTA* is to "encourage speedy, fair and efficient access to justice in residential tenancy matters": *Ontario (Rental Housing Tribunal) v. Metropolitan Toronto Housing Authority*, [2002] 161 O.A.C. 57, at para. 16. Section 183 of the *RTA* requires the Board to "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."

[57] As the Court of Appeal went on to point out in *Ontario (Rental Housing Tribunal)*, at para. 17:

2025 ONSC 759 (CanLII)

> The *Act* also seeks to provide the Tribunal with the legal means necessary to accomplish the purpose of the legislation. Those means include wide discretionary powers over matters of procedure and process, including in connection with the joinder or removal of parties (s. 174(2)), the combining of applications [(s.173)], and the methods of determining questions arising in a proceeding (s. 171).

[58] In *Ontario (Rental Housing Tribunal)* the Court of Appeal concludes with the following statements about the approach the courts should bring to the Tribunal's exercise of its jurisdiction, at paras. 18-19:

> [18] In addition, because the *SPPA* applies to certain types of hearings held by the Tribunal, including a hearing of the type initiated here, the Tribunal's power over its own procedures and processes is confirmed by s. 25.0.1 of the *SPPA* and the rule-making authority conferred on the Tribunal under s. 164 of the Act and s. 25.1 of the *SPPA.* The Tribunal's discretion to formulate suitable procedures and directions for the hearing of applications, including tenant applications, is also enunciated in Rule 2.2 of the Tribunal's own Rules of Practice.
>
> [19] The statutory framework that governs the Tribunal's jurisdiction in connection with applications, including applications for rent abatements, argues for an expansive view of the Tribunal's jurisdiction over the presentation of evidence before the Tribunal. In my view, a liberal interpretive approach should govern interpretation of a remedial statute such as the *Act*, in a manner consistent with its tenant protection focus. In addition, both s. 2 of the *SPPA* and Rule 1.1 of the Tribunal's Rules of Practice contemplate that the rules of the Tribunal, including Rule 2.2, are to receive a liberal construction.

[59] The Board's powers to quickly and flexibly respond to applications reflects a legislative intention to not subject the Board to the same procedural requirements as civil court proceedings. Where the tenants allege, as they have here, that they have been wrongfully excluded from their homes, the need for a fair and expeditious proceeding is particularly important. Such circumstances are generally urgent, the stakes for the displaced tenants are high, and the alleged breaches strike at the heart of the Act's tenant protection purpose. In this case, many of the Tenants were vulnerable, making the imbalance between them and the Landlords particularly acute.

2025 ONSC 759 (CanLII)

***Should this Court Hear the Application for Judicial Review***

[60] The Tenants submit that this court should decline to hear the application for judicial review because the Tenants failed to request a reconsideration of the Board's orders. Under Rule 26.1 of the Board's Rules of Procedure:

> Any party may request review of any order which makes a final determination of the party's rights. For these purposes an interim order may contain a final determination of rights. A person who is directly affected by a final order may also request a review of an order.

[61] Rule 26.8 (e) of the Board's Rules stipulates that a request for review must provide sufficient information to support a preliminary finding of an alleged serious error or an explanation of why the requestor was not reasonably able to participate in the hearing.

[62] The Board's guideline contemplates that "serious errors" justifying a review of a decision include "unreasonable finding[s] of fact on a material issue" and "unreasonable exercise[s] of discretion which [result] in an order outside the usual range of remedies or results and where there are no reasons explaining the result".

[63] According to the Tenants, the Board's discretion to review is broad, and in this case, reconsideration would have been an adequate alternative remedy that should have been exhausted before applying for judicial review.

[64] In *Yatar*, the Supreme Court of Canada emphasized that determining the appropriateness of judicial review is ultimately a "balancing exercise" that goes beyond simply assessing the adequacy of the alternative remedy. As put by the Court, at para. 64:

> This Court in *Strickland*, at para. 43, also emphasizes the appropriateness of judicial review in the circumstances, referring to a "balancing exercise":
>
> > The categories of relevant factors are not closed, as it is for courts to identify and balance the relevant factors in the context of a particular case. Assessing whether there is an adequate alternative remedy, therefore, is not a matter of following a checklist focused on the similarities and differences between the potentially available remedies. The inquiry is broader than that. The court should consider not only the available alternative, but also the suitability and appropriateness of judicial review in the circumstances. In short, the question is not simply whether some other remedy is adequate, but also whether judicial review is appropriate. Ultimately, this calls for a type of balance of convenience analysis…(citations omitted, emphasis in original).

2025 ONSC 759 (CanLII)

[65] The Tenants are not suggesting that this court should not hear the Landlords' appeal because of a failure to apply for a review of the Board's orders. Further, their factum correctly points out that the grounds with respect to both the appeal and the application for judicial review are closely connected and intertwined. Therefore, from a judicial economy perspective, hearing the applications for judicial review at the same time as the appeals will not entail a significant use of additional judicial resources.

[66] In *United Brotherhood of Carpenters (Local 249) v. Matrix North Construction Ltd.*, 2019 ONSC 5647, the Divisional Court found that it may be appropriate to require reconsideration before judicial review when "there are conflicting decisions by the Board on a matter of policy, and the Court determines that the Board should be given an opportunity to clarify the issue": at para. 41. No such issue is raised in this proceeding. Another instance that might justify requiring judicial review might be where there is an allegation of procedural fairness, and the Court determines that the Board should have an opportunity to provide a remedy for the problem. However, the Tenants have conceded that the procedural fairness issues raised in this case are errors of law and, therefore, this court will be addressing them in the context of the appeal.

[67] To use the language adopted in *Yatar*, supra, the balance of convenience favours hearing the issues raised in the applications for judicial review at the same time as the issues raised in the appeal.

***Did the Board deny Mr. Singh procedural fairness by finding him to be a landlord without notice?***

[68] The Landlords argue that it was procedurally unfair for the Board to find that Mr. Singh is "landlord" as defined in the *RTA* and therefore personally liable for the monetary awards without giving Mr. Singh notice it was considering so and receiving submission on the issue. We agree.

[69] The term "landlord" is defined in the *RTA* to include the owner of a rental unit as well as any person who "permits occupancy of a rental unit" or any person who is "entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord."

[70] Mr. Singh was not named by the Board as a landlord in the first or second interim orders (dated March May 8, 2023, and March 11, 2024, respectively). He was only named as a landlord in the unit specific orders. In those orders, the Board incorrectly stated that the tenants had sought an order against Mr. Singh. In fact, none of the tenants named Mr. Singh as the landlord in their application. They each named Equity Builders or EQB as the landlord.[1]

[1] A few tenants also named Ms. Smout or Mr. Shah as the landlord. Given the tenant's concession that Ms. Smout and Mr. Shah should not have been named as landlords in the Board's orders, we need not address whether the Board erred in finding that Ms. Smout and Mr. Shah were also landlords.

2025 ONSC 759 (CanLII)

[71] The Board did not give reasons for naming Mr. Singh as a landlord.

[72] The Tenants argue there was ample evidence to support the finding that Mr. Singh is a landlord as defined in the *RTA*. The Tenants argue there was nothing unfair about the Board naming Mr. Singh as a landlord because he referred to himself as the landlord throughout his testimony and he testified that he was responsible for many of the decisions about whether the tenants would be permitted back into their units, which was the central issue in the hearings. Finally, the Tenants argues that Mr. Singh was effectively on notice that he may be named as a landlord because the Board raised the issue during the hearings.

[73] Ms. Singh was entitled to a fair hearing before the Board. What is required for a fair hearing is flexible, variable and context specific. When deciding whether the proceedings below were procedurally fair, we must consider the nature of the decision being made and the process followed in making it, the nature of the statutory scheme, the importance of the decision to Mr. Singh, and the choice of procedure selected by the administrative tribunal: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.

[74] In terms of the nature and importance of this issue, the Board's decision to name Mr. Singh as a "landlord" has very serious implications for him. Because of that decision, he is jointly and severally liable for all the damages awarded to the individual tenants. However, he is not personally liable for the administrative fines which total $525,000.

[75] Turning then to the procedure the Board followed in relation to this issue. The Board expressly raised the question of who ought to be named as the landlord during the hearings. At the start of the third day of the hearing, on September 29, 2023, the Board noted that the tenants had named different people and entities as the landlord(s) in their applications and the Board had named different people and entitles as the landlord(s) in the Notices of Hearing. The Board asked the parties to try to reach an agreement on that issue. The Board then said that if the parties could not reach an agreement, "we would probably have to go through on a case-by-case basis to determine who [is] to be listed or not listed."

[76] The parties never told the Board that they had reached an agreement on who should be named as the landlord(s) and none of the tenants sought to amend their application to name Mr. Singh as a landlord.

[77] In the written closing submission filed on behalf of the 14 tenants, the tenants referred to Mr. Singh as the property manager or a director of Equity Builders. In one paragraph, when describing Mr. Singh's evidence, the tenants referred to Mr. Singh as "the landlord." But the tenants did not make any submissions about who should be named as the landlord(s) or why Mr. Singh should be named as a landlord.

[78] The Landlord's closing submissions only name Equity Builders Ltd. as the landlord. The Landlord's closing submissions also contain no submissions on whether any other person or entity should be named as a landlord.

[79] The Board did not seek further submissions on the issue it raised on September 29, 2023.

2025 ONSC 759 (CanLII)

[80] There is no doubt that the Board had the authority to name Mr. Singh as a landlord. The Board can add or remove a party "as it considers appropriate": *Landlord and Tenant Board Rules of Procedure*, r. 1.6(b), *RTA*, s. 187(2). The Board is also expressly entitled to disregard "the separate corporate existence of participants" when making its findings: *RTA*, s. 202(1). The question, though, is not whether the Board had jurisdiction to name Mr. Singh as a landlord in addition to naming Equity Builder's Inc. The question is also not whether there was evidence to support the Tribunal's finding that Mr. Singh is a landlord. The question for us is whether it was procedurally fair for the Board to have done so in this case.

[81] We find that it was procedurally unfair for the Board to name Mr. Singh as a landlord in the absence of an express request by the tenants to do so without giving Mr. Singh notice of its intention to name him as a landlord and without giving him an opportunity to make submissions on that issue.

[82] The appropriate remedy for this breach of the duty of procedural fairness is to remit the matter back to the Board for a new hearing only on the narrow issue of whether Mr. Singh should be named as a landlord in the orders.

***Did the Board err or act unreasonably in granting relief to the tenants that was not specifically pleaded?***

[83] The Landlords submit that the Board erred or acted unreasonably the following ways: (i) awarding damages in excess of amounts pleaded; (ii) awarding damages in the absence of supporting documentation; and (iii) awarding amounts for disbursements which are essentially legal costs, when counsel for the tenants stated no legal costs were being sought and without the opportunity to respond.

(i) Award of damages in excess of amounts claimed in pleadings.

[84] There are discrepancies between the damages claimed in some of the Tenants' applications and the amounts ultimately awarded by the Board. The Landlords submit that the Board erred or acted unreasonably in making awards that exceed the amounts claimed in the original applications.

[85] The scope of pleadings was discussed between counsel and the Board at the case management hearing. Instead of amending individual applications, it was agreed that the Tenants would provide particulars and updates to their claims for damages in will-say statements that would be delivered to the Landlords prior to the hearing. The Landlords did not object to proceeding in this manner at the time. Accordingly, the will-say statements with particularized and updated damages claims were served on the Landlords and the Landlords had the opportunity to cross-examine the Tenants on the amounts claimed at the hearing.

[86] The Landlords now submit that this was an inappropriate way for the Tenants to advance new or updated claims for damages. We disagree.

2025 ONSC 759 (CanLII)

[87] Proceedings before the Board are meant to be less cumbersome and more flexible than civil proceedings in the Superior Court of Justice. Section 183 of the *RTA* which requires the Board to adopt the most expeditious method of proceeding so long as it affords affected persons sufficient notice and to be heard on the matter.

[88] After discussing the issue with counsel, the Board exercised its jurisdiction to allow will-say statements setting out updated damages claims as opposed to requiring the Tenants to formally amend their applications. The result is the same. The will-say statements provided the Landlords with knowledge of the case it had to meet in advance of the hearing.

[89] The Board did not err nor act unreasonably by controlling its own process and adopting the most expeditious method of determining the issues in a manner that still provided the Landlords with the opportunity to challenge and respond to the damages claims.

(ii) Award of damages without supporting documentation

[90] In certain instances, the Board allowed claims for out-of-pocket expenses in the absence of receipts. The Landlords dispute those awards.

[91] Some examples of the Board making awards for out-of-pocket expenses without documentary support include:

a. Unit 110B: The family of four that lived in this unit was not permitted to attend to pick up personal belongings following the fire. While they were locked out by the Landlord, the unit was flooded. All their furniture, clothing and personal items were destroyed. The unit was deemed unfit for habitation. The family was unable to attend to make a complete list of the items that were destroyed. After hearing evidence of the tenant, the Board accepted that $3,000 was a reasonable amount to award for out-of-pocket expenses in the circumstances given most of the family's belongings had to be replaced.

b. Unit 303B: The tenant provided a summary of the out-of-pocket expenses being claimed, totalling $1,800, with no receipts. The Board was satisfied that a nominal award of $1,200 was reasonable in the circumstances. The Board specifically rejected the submission of the Landlords that corroborating receipts were required. The Board reduced the amount sought by the Tenant on the basis that amounts claimed for food and transportation would have been incurred regardless of the Landlords' actions.

c. Unit 302B: The tenant claimed out-of-pocket expenses in the amount of $100 without receipts. The Board allowed the claim and held that: "Tenants should not be expected to have receipts for every little thing, and the amounts are minor, and would likely not have been reimbursed under a tenant insurance policy as there would most likely be a deductible."

[92] Out-of-pocket expenses were particularized in will say statements, which were adopted by the Tenants under oath. The Landlords had the ability to cross-examine the Tenants on

2025 ONSC 759 (CanLII)

their claims. The Board considered the evidence of the Tenants and, in some cases, ordered reasonable out-of-pocket expenses to be paid. When the Board found that the out-of-pocket expenses claimed were unreasonable, they were not included in the awards.

[93] There is nothing that prohibits the Board from making awards for out-of-pocket expenses in the absence of supporting documentation. The *RTA* provides that the Board has the authority to award "reasonable" out-of-pocket expenses: *RTA*, s. 31(1). Here, the Board considered the will say statements and evidence of the Tenants at the hearing and awarded amounts for out-of-pocket expenses that were deemed to be reasonable. The Landlords have failed to demonstrate how this is a legal error or unreasonable.

(iii) Awards for disbursements and legal costs

[94] At the hearing of the appeal and judicial review, for the first time, the Landlords advanced the argument that the Board erred or acted unreasonably in awarding the Tenants' claims for costs. The basis for this position stems from assurances given by counsel for the Tenants that no legal costs would be sought.

[95] The Tenants were collectively represented by Community Legal Assistance Sarnia, a legal clinic funded by Legal Aid Ontario. At the commencement of the hearing, on September 21, 2023, when questioned about the damages being claimed, counsel for the Tenant advised the Board that it was not seeking legal costs, but that the Tenants would be advancing claims for disbursements including the application fee and locksmith costs which were incurred by the legal clinic.

[96] In each of the Tenants' will say statements, $700 is requested under the heading "costs". In most instances, that amount is broken down as follows: (i) $53.00 for the application filing fee; (ii) $108.78 for the locksmith's fee; and (iii) $538.22 for "legal fees" or "legal services".

[97] At the hearing itself, and in written submissions on the specific relief sought by the Tenants, the $700 is noted to include: (i) $53.00 for the application filing fee; (ii) $108.78 for the locksmith's fee; and (iii) $532.88 for "other disbursements".

[98] During the examination-in-chief of one of the Tenants at the hearing, the Board asked for clarification as to whether legal costs were being sought. In response, counsel for the Tenants confirmed that legal costs were "off the table" but that the legal clinic was seeking reimbursement for disbursements incurred on behalf of the Tenants.

[99] Under the heading "Costs" in each of the 15-unit specific orders, the Board included the same or similar narrative:

> The Tenant requested that their disbursement costs totaling $700.00 be ordered. The Tenant testified that they were not seeking legal fees, only disbursements. This is broken down as follows:
>
> a. Application fee: $53.00;

2025 ONSC 759 (CanLII)

b. Locksmith costs: $108.75; and

c. Other disbursements totaling $538.22.

The Board's Interpretive Guideline 3, entitled Costs provides that the Board may order costs.

> In most cases, the only costs allowed will be the application fee. Where appropriate, this cost will be ordered regardless of whether or not the applicant seeks such a remedy.
>
> Other Costs: A party who wants to claim costs in addition to the application fee should be prepared to speak to the matter and to provide support for the claim. The other party will also be allowed to make submission on the issue.

The Landlord was aware that the Tenant was seeking these costs as they were set out in the will say statement and confirmed in oral testimony. The Landlord had the opportunity to cross-examine the Tenant. The Landlord did not make submissions on costs.

I am satisfied that the application fee and disbursements should be ordered. The Tenants were represented by a Community Legal Clinic, funded by Legal Aid Ontario, and as such I have no reason to doubt the veracity of this amount.

[100] Upon noticing a purported claim for "legal fees" in a will say statement, the Board received clarification from the Tenants that legal fees were not being sought, only disbursements. The Landlords had the opportunity to cross-examine the Tenants further on the issue but did not do so. In these circumstances, the Board reasonably accepted that what was described as either "legal fees" or "legal services" in the will say statements were in fact disbursements the legal clinic was seeking to recover. The Board accepted the veracity of the disbursements claimed by the legal clinic. The Landlords have not established that this amounts to a legal error or was unreasonable.

***Did the Board err in law by failing to consider the Tenants' duty to mitigate their damages through tenant insurance policies?***

[101] The Landlords take the position that the Board failed to address the effect of the Tenants' failure to mitigate their damages, specifically their out-of-pocket expenses, by having tenants' insurance in place that was required by virtue of the tenancy agreements. The Landlords submit that if the Tenants had been insured, they would have been able to make claims for damages to their insurer, thereby reducing the amounts sought against the Landlords.

[102] The Tenants dispute that insurance coverage was a contractual requirement of the tenancy agreements. The Tenants also argue the Board appropriately addressed the issue of insurance and the allegation that the Tenants failed to mitigate their damages.

2025 ONSC 759 (CanLII)

[103] The tenancies in question are subject to different forms of tenancy agreements. Some tenancy agreements contained a requirement on the tenant to maintain insurance. Other agreements were silent with respect to insurance. Some tenants no written tenancy agreement at all. Given the Board's finding on the issue of mitigation, it is not necessary to examine the individual tenancy agreements to determine whether insurance coverage was an enforceable contractual term.

[104] To successfully raise the issue of mitigation before the Board, the obligation was on the Landlords to establish that that Tenants failed to take reasonable steps to mitigate their damages and that mitigation was possible in the first place: *Southcott Estates Inc. v. Toronto Catholic District School Board*, 2012 SCC 51, [2012] 2 S.C.R. 675, at para. 24.

[105] The Board considered and rejected the Landlords' submission on mitigation noting that many of the amounts claimed for out-of-pocket expenses were nominal and would likely have fallen below an insurance policy deductible even if insurance had been in place.

[106] It is important to keep in mind that the damages awarded by the Board are to compensate the Tenants for the Landlords' breaches of the *RTA*. The Landlords did not put forward any evidence about what types of policies were available to the Tenants and whether the policies would respond to damages caused by the Landlords' actions. Even if a policy were to provide coverage for these types of damages, policies often include subrogation rights which would permit the insurer to pursue the Landlords for the amounts paid out under the policy. The Landlords failed to establish that mitigation was possible in the first place.

[107] The Board considered the issue of mitigation and reasonably rejected the Landlord's submission. There is no legal error.

***Did the Board err in fining Equity Builders a total of $525,000?***

[108] The Landlords argue that Tenant Applications arose out of single event and that, therefore, the fine imposed should have been one single amount limited to the maximum monetary jurisdiction, namely, $35,000.00. Instead, the Board imposed a fine of $35,000 per unit for 15 units for a total of $525,000.00. According to the Landlords, the Board essentially "split the case" with respect the fine, a practice which the Landlords submit this court has held to be improper. Further, by imposing a fine of $525,000 the Board infringed on the jurisdiction of the Superior Court in a manner that was impermissible.

[109] If the Board did have jurisdiction to impose the fine it did, the Landlords maintain that the quantum of the fine was a "marked departure from the Board's precedents". According to the Landlords, the Board imposed the fine without an explanation, which was procedurally unfair and unreasonable.

[110] The Board's authority to impose an administrative fine is set out at s. 31(1)(d) of the Act:

> s. 31(1) If the Board determines that a landlord, a superintendent, or an agent of a landlord has done one or more of the activities set out in paragraphs 2 to 6 of subsection 29(1), the Board may,

2025 ONSC 759 (CanLII)

…

> (d) order that the landlord pay to the Board an administrative fine not exceeding the greater of $10,000 and the monetary jurisdiction of the Small Claims Court….

[111] The Board found that the Landlords did one or more of the activities set out in the relevant subsections of s. 29(1) and that the monetary jurisdiction of the Small Claims Court is $35,000.

[112] Section 207(1) of the Act provides that the "Board, may, where it otherwise has the jurisdiction, order the payment to any given person of an amount of money up to the greater of $10,000 and the monetary jurisdiction of the Small Claims Court." [emphasis added.] The Landlords are correct that this section precludes the Board from awarding any Tenant any more than $35,000. However, the fines awarded are not paid to the Tenants; they are paid to the Board. Under s. 196 of the Act, if a landlord owes money to the Board as a result of a failure to pay a fine, the Board may do a number of things, including not allowing the Landlord to file an application with the Board, staying or discontinuing an application that has been filed with the Board and delaying issuing an order or discontinuing an application where the information about the unpaid fine comes to the attention of the Board after the hearing has been held.

[113] While not binding on Board adjudicators, the Board's Interpretation Guideline 16 states:

> An administrative fine is a remedy to be used by the Board to encourage compliance with the *Residential Tenancies Act, 2006* (the "RTA"), and to deter landlords from engaging in similar activity in the future. This remedy is not normally imposed unless a landlord has shown a blatant disregard for the RTA and other remedies will not provide adequate deterrence and compliance. Administrative fines and rent abatements serve different purposes. Unlike a fine, a rent abatement is intended to compensate a tenant for a contravention of a tenant's rights or a breach of the landlord's obligations.

[114] One of the Board orders under appeal and review in this proceeding, court file number DC-24-00000054-0000, contains extensive reasons for the Board's determination as to the appropriate administrative fine. In the decision the Board refers to Guideline 16 and finds as follows, at paras. 44-54:

> 44. In effect, I should consider the nature and severity of the breach, the effect of the breach on the tenant, and any other relevant factors, such as the conduct of the Landlord.

2025 ONSC 759 (CanLII)

> 45. Deterrence for egregious conduct, beyond whatever deterrent effect simple damages might provide, is an over-riding factor.
>
> 46. In my view this is an appropriate case in which to impose the maximum administrative fine in the amount of $35,000.00. The Landlord not only blatantly disregarded the Act but also disregarded an order putting the Tenant back in possession. The Landlord's behaviour demonstrates a contempt for the Board and for the Act where they engaged in 'self help' that must be addressed. I believe that there are no other remedies that would provide adequate deterrence and compliance in these circumstances.
>
> 47. The Tenant…[was] illegally locked out of her unit from February 27, 2023, to July 27, 2023 (150 days). They had to sleep on an air mattress. Their entire life was turned upside down awaiting the return of their unit.
>
> …
>
> 50. The Board notes that the Landlord had been found previously to have illegally locked out Tenants after a fire…, that was confirmed at the Divisional Court, and at the Ontario Court of Appeal. A small fine of $500.00 had been awarded in that order "to deter the Landlord from contravening the Act in the future." That application involved a single rental unit.
>
> …
>
> 54. The Landlord's actions not only constitute a breach of the May 8, 2023, order, and that of the Divisional Court their actions constitute an egregious disregard of the Board's authority and of the Act. One of the explicitly stated purposes of the Act is to prevent unlawful evictions. In this case, despite being aware of a Board order putting the Tenant back in possession of the unit, the Landlord refused to voluntarily cooperate, and once possession was restored, proceeded to change the locks to the unit. Essentially the Landlord locked out the Tenant not only in the absence of legal authorization but in spite of the Tenant's explicit legal authorization to possess the rental unit. This behaviour must be discouraged in the strongest terms.

[115] The other Board orders under appeal and review contain similar reasons for the Board's determination of an appropriate administrative fine. Thus, contrary to the Landlords' submissions, the Board gave an extensive explanation for their decision to impose the maximum administrative fine – a decision based on the serious nature of the Landlords'

2025 ONSC 759 (CanLII)

conduct, the serious effect on the Tenants of that conduct, the apparent disregard of the Landlords for Board orders and the fact that this was not the first time the Landlord had been fined for similar conduct arising out of similar circumstances. In the end the Board was convinced that such a fine was necessary to deter such conduct in the future. As this Court has found in *Glonczi et al v. Dupont/Landsdowne Holdings Inc.*, 2024 ONSC 5645, and *Toolabi v. Simpson* 2019 ONSC 2686, the Board's decision to an award a fine is a discretionary one. Discretionary decisions are entitled to considerable deference from this Court. The Landlords have pointed to no errors in principle that would justify interfering with those decisions.

[116] In this case the Board was not dealing with one Tenant application, but with a number of Tenant applications, which it decided to hear together. The maximums set out in the Act are per application maximums. The Board's procedural decision to hear the applications together, in the interests of efficiency and due to the urgency of the common issue of illegal lockouts, did not limit the Board's monetary jurisdiction to a single administrative fine of $35,000.

[117] The Board has previously found that it has the authority to order a landlord to pay the maximum administrative fine in respect of each rental unit in a residential complex where the landlord unlawfully denied the tenants their right to return to the rental unit. In doing so the Board rejected the landlord's submission that the Board is a "person" within the meaning of s. 207(1) of the Act and held that that provision applied to parties and that administrative fines contained their own limits. That case (*TST-90503-17 (Re)*, 2019 CanLII 87012 (Ont. LTB)) concerned three separate units in an eight-unit building. The Board found that the landlord had exhibited a blatant disregard of the Act by failing to allow the tenants to exercise their statutory right to return to their rental units after renovations to the building were completed. The Board ordered the landlord to pay administrative fines of $25,000 per unit, which was the maximum at the time. Thus, the fine imposed in this case is not "unprecedented". It is larger because there were more applications before the Board and the maximums for each fine had increased.

[118] For these reasons there is no merit to the Landlords' submission that the Board erred in its orders imposing an administrative fine.

***Was the hearing procedurally unfair because the Board "descended into the fray" and was, therefore, biased against the landlord?***

[119] The Landlords argue that the Board unfairly interjected during the testimony of the Landlords' witnesses and interfered with their ability to answer questions. The Landlords also argue that the Board effectively became an advocate for the Tenants by conducting his own cross-examination of the landlord's witnesses. In effect, the Landlords argue that there was a reasonable apprehension that the Board was biased against them and in favour of the tenants.

[120] We would not give effect to this ground of appeal. We are not satisfied that the Board did anything more than exercise its authority to control the process.

2025 ONSC 759 (CanLII)

[121] There is a strong presumption that administrative decision makers are impartial: *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General),* 2015 SCC 25, [2015] 2 S.C.R. 282, at para. 25; *Halton (Regional Municipality) v. Canadian National Railway Company*, 2024 ONCA 174, 171 O.R. (3d) 41, at para. 42. That presumption can only be displaced if the decision maker's conduct, when assessed in context of the entire proceedings, gives rise to a reasonable apprehension of bias: *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484, at para. 114.

[122] Decision-makers are not expected to be passive during a hearing: *Brouillard v. The Queen*, [1985] 1 S.C.R. 39, at 44. At the same time, if a decision maker repeatedly interrupts the evidence, extensively cross-examining key witnesses or directly challenges a witness' testimony during the hearing, that could give rise to a finding that the decision maker is no longer objective or impartial: *Children's Aid Society of the United Counties of Stormont, Dundas and Glengarry v S.V.D.*, 2016 ONSC 350, at para. 128. The assessment of whether a decision maker's conduct creates a reasonable apprehension of bias must, therefore, be context-specific and fact-specific: *Francophone School Board*, at para. 26.

[123] Here, the landlord complains that the Board interfered with Mr. Singh's ability to answer questions. On occasion, the Board did ask Mr. Singh to answer the questions he was asked. This was, however, after Mr. Singh repeatedly gave answers that were not responsive to the questions posed by the landlord's counsel and offered his opinion on irrelevant issues. For example, at one point Mr. Singh was asked about how a specific tenant responded when the landlord asked them to remove their belongings. Rather than answering that question, Mr. Singh gave several answers about how that tenant wanted to be referred to by a different name than was on their government issued identification. The Board tried to redirect Mr. Singh to answer the question that the landlord's lawyer had asked. A few minutes later, Mr. Singh was asked a question about the clause in the lease agreement used by Equity Builders about tenant insurance. Mr. Singh answered the question but then continued to give evidence about an issue that was not responsive to the question. The Board again reminded Mr. Singh to answer the questions he was asked. The Board said that was the final warning Mr. Singh would get and if he continued to give unresponsive, rambling answers, he would be fined. The Board then gave counsel for the landlord an opportunity to speak to Mr. Singh privately so counsel could explain the caution to Mr. Singh and give him instructions about how he to respond to question.

[124] We find that the Board's interjections during Mr. Singh's testimony were appropriate. The Board is required to ensure its hearings are expeditious and fair: *Rules of Procedure*, r. 1.4. To do so, the Board has the express authority to define and narrow the issues, question witnesses, and limit the evidence or submissions on any issue: Rules 1.6(m), 1.6(n) and 1.6(p). The Board's interjections during Mr. Singh's testimony were designed to ensure the hearing proceeded expeditiously and remained focussed on the issues the Board had to decide*: El Sayed v. Ottawa Community Housing Corporation*, 2019 ONSC 3703, at paras. 9-10, *Chippewas of Mnjikaning First Nation v. Chiefs of Ontario*, 2010 ONCA 47, 265 O.A.C. 247 at para. 243 and *Cannon v. Cemcor Apartments Inc.*, 2017 ONCA 378, paras. 13-18. This was an extremely complicated matter in which the Board was considering 21

2025 ONSC 759 (CanLII)

separate applications. The Board was required to control the process to ensure the hearing time was used effectively.

[125] There was nothing unfair about the Board's cautions to Mr. Singh, particularly considering the Board's decision to give Mr. Singh an opportunity to speak to counsel in private before continuing with his evidence. The fact that Mr. Singh made comments about feeling constrained in the way he answered questions after the Board's two cautions does not render the cautions unfair. We are satisfied that Mr. Singh was able to fully answer the questions he was asked after the caution.

[126] The landlord also complains that the Board cross-examined its witnesses, including Ms. Rochon.

[127] The Board interjected during Ms. Rochon's evidence and asked several questions. There is nothing inherently problematic about an administrative decision maker asking a witness questions. The Board's *Rules* authorize the Boards to do so: *Rules of Procedure,* Rule 1.6(n). In this case, the Board apologized for the interruption and explained that it was trying to make sure it understood Ms. Rochon's answers and that its notes were clear. The Board asked counsel for the landlord if counsel would prefer the Board to save all its questions for the end of Ms. Rochon's evidence. Counsel for the landlord said he was "in the Board's hands." The Board then asked if either counsel had any concerns about his interventions "from a procedural fairness perspective." Counsel for the landlord said that he was content with how things were proceeding. Counsel for the Tenants said they were used to Boards taking an active role in the hearings and did not feel the interventions were interfering with his ability to answer questions.

[128] If the landlord truly felt the Board's interventions were creating an apprehension of bias or unfairness during the hearing, they were obliged to raise their concerns as soon as they arose: *Techsavvy Solutions Inc. v. Bell Canada*, 2024 FCA 121, at paras. 58-62. Here, counsel for the landlord did the opposite. When asked if the Board's interventions were causing any unfairness, the landlord's counsel did not raise any concerns and said they were "content" to carry on with the hearing. Having not raised the procedural fairness issues below, we are not prepared to give effect to these arguments on appeal.

[129] When the record of proceeding is considered as a whole, we are not satisfied the Board's interventions during the evidence demonstrate a reasonable apprehension of bias.

***Did the Board err in ordering that the Tenants in Units 201B and 205B be restored to possession of their units?***

[130] In the First and Second Interim Orders the Board found that the City of Sarnia Order dated February 27, 2023 (from the Chief Building Official, Mr. MacDonald), was key to his determination that the first fourteen Tenants were entitled to be restored to possession of their units. That order has not been officially amended by Mr. MacDonald since it was first issued. However, building inspectors employed by the City of Sarnia subsequently issued occupancy permits in relation to other units, including units 201B and 205B.

2025 ONSC 759 (CanLII)

[131] The Landlords submit that since the City of Sarnia Order has not been officially amended the Board erred in law in allowing the Tenants in units 201B and 205B to be restored to possession of their units. Occupancy permits are not a formal amendment of the City of Sarnia Order and the building inspectors who issued the occupancy permits in relation to the units at issue had no power to amend the City of Sarnia Order. According to the Landlords, the Board cannot on the one hand find that the City of Sarnia Order was determinative of the issue of possession (as it did in the First and Second Interim Orders) and then order possession of two more units when that Order has not been amended.

[132] There is no merit to this submission. The Board's Interim Orders did not establish an immutable legal test by which the City's order restricting access to certain units had to be formally amended or discharged as a precondition to the Board making an order for possession. Those orders were based on the evidence before the Board at that time concerning the Landlords' lawful authority (or lack thereof) to restrict access to the units at issue.

[133] By the time of the June 27, 2024, hearing before the Board where the rights to possession of units 201B and 205B were being determined, circumstances had changed. Mr. MacDonald, who testified at that hearing, stated that occupancy of those units was permitted on the basis of the subsequent building department inspections that had taken place after the September 2023 hearings, and that occupancy did not depend on the City amending or discharging the City of Sarnia Order. Mr. MacDonald further confirmed the City's practice of not amending an order under the *Building Code Act* with each progressive inspection that granted partial occupancy of a building. Instead, the practice is to just remove the order from title only once it has been fully complied with.

[134] The Board's acceptance of Mr. MacDonald's testimony that the City had permitted occupancy of units 201B and 205B despite the continued existence of the City of Sarnia Order, does not raise an issue of law nor an issue of fact or fact and law that would justify this court's intervention.

**Conclusion**

[135] The appeals and applications for judicial review are dismissed except with respect to the Board's orders naming Mr. Singh as a landlord. That aspect of the Board's orders is set aside, and that issue is referred back to the Board for a hearing on whether Mr. Singh ought to be named as a landlord.

[136] The parties shall make written submissions (not to exceed 4 pages) on the issue of costs. The Tenants shall make their submissions within 10 days of the release of these reasons; the Landlords shall have 10 days from the receipt of the Tenants' submissions to respond.

2025 ONSC 759 (CanLII)

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Sachs J

_____
Davies J

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Muszynski J

**Released:** 20250205

2025 ONSC 759 (CanLII)

## Appendix 1

**Appeals**

| Court File No. | Appellants | Respondent(s) |
|---|---|---|
| DC-24-00000051-0000 | Equity Builders Ltd., Joanne Smout, Tarang Shah and Ash Singh | Danielle Waddilove |
| DC-24-00000054-0000 | Equity Builders Ltd., Joanne Smout, Tarang Shah and Ash Singh | Valerie Petrella |
| DC-24-00000052-0000 | Equity Builders Ltd., Joanne Smout, Tarang Shah and Ash Singh | Julie Robinson |
| DC-24-00000053-0000 | Equity Builders Ltd., Ash Singh and EQB Ltd. | Matthew Roberts |
| DC-24-00000057-0000 | Equity Builders Ltd., Joanne Smout, Tarang Shah and Ash Singh | Dwayne Mottley |
| DC-24-00000060-0000 | Equity Builders Ltd., EQB Ltd Property Management, Joanne Smout, Tarang Shah and Ash Singh | Natalie Liles |
| DC-24-00000055-0000 | Equity Builders Ltd., EQB Ltd Property Management, Joanne Smout, Tarang Shah and Ash Singh | Shawn O'Grady |
| DC-24-00000056-0000 | Equity Builders Ltd., Joanne Smout, Tarang Shah and Ash Singh | Jacob Naylor |
| DC-24-00000058-0000 | Equity Builders Ltd., Tarang Shah, Joanne Smout and Ash Singh | Christopher McGill |
| DC-24-00000059-0000 | Equity Builders Ltd., Joanne Smout, Tarang Shah, Ash Singh, EQB and Terri Hall | Daciana MacDuff |
| DC-24-00000061-0000 | Equity Builders Ltd., EQB LTB Property Management, Joanne Smout and Ash Singh | Jessica Latreille |
| DC-24-00000062-0000 | Equity Builders Ltd., Joanne Smout, Tarang Shah and Ash Singh | Jonathan Havill and Michelle Pitman |
| DC-24-00000063-0000 | Equity Builders Ltd., EQB Ltd Property Management, Joanne Smout, Tarang Shah and Ash Singh | Lloyd Ginez and Angel Ginez |

2025 ONSC 759 (CanLII)

| | | |
|---|---|---|
| DC-24-00000064-0000 | Equity Builders Ltd., Joanne Smout, Tarang Shah and Ash Singh | Gary Conn |
| DC-24-00000065-0000 | Equity Builders Ltd., Joanne Smout, Tarang Shah and Ash Singh | Kimberly Comeau |
| DC-24-00000084-0000 | Equity Builders Ltd., Joanne Smout, Tarang Shah and Ash Singh | Nicole Atkins |
| DC-24-00000085-0000 | Equity Builders Ltd., Joanne Smout, Tarang Shah and Ash Singh | Angela Jacobs and Gabriel Wright |
| DC-24-00000088-0000 | Equity Builders Ltd., Joanne Smout, Tarang Shah and Ash Singh | Michael Whitstone and Emily Fletcher |

**Applications for Judicial Review**

| Court File No. | Appellants | Respondent(s) |
|---|---|---|
| DC-24-00000035-0000 | Equity Builders Ltd., Joanne Smout, Tarang Shah and Ash Singh | The Landlord and Tenant Board and Danielle Waddilove |
| DC-24-00000036-0000 | Equity Builders Ltd., Joanne Smout, Tarang Shah and Ash Singh | The Landlord and Tenant Board and Valerie Petrella |
| DC-24-00000037-0000 | Equity Builders Ltd., Joanne Smout, Tarang Shah and Ash Singh | The Landlord and Tenant Board and Julie Robinson |
| DC-24-00000038-0000 | Equity Builders Ltd., Ash Singh and EQB Ltd. | The Landlord and Tenant Board and Matthew Roberts |
| DC-24-00000039-0000 | Equity Builders Ltd., Joanne Smout, Tarang Shah and Ash Singh | The Landlord and Tenant Board and Dwayne Mottley |
| DC-24-00000040-0000 | Equity Builders Ltd., EQB Ltd Property Management, Joanne Smout, Tarang Shah and Ash Singh | The Landlord and Tenant Board and Natalie Liles |
| DC-24-00000041-0000 | Equity Builders Ltd., EQB Ltd Property Management, Joanne Smout, Tarang Shah and Ash Singh | The Landlord and Tenant Board and Shawn O'Grady |
| DC-24-00000042-0000 | Equity Builders Ltd., Joanne Smout,Tarang Shah and Ash Singh | The Landlord and Tenant Board and Jacob Naylor |

2025 ONSC 759 (CanLII)

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|---|---|---|
| DC-24-00000043-0000 | Equity Builders Ltd., Tarang Shah,<br>Joanne Smout and Ash Singh | The Landlord and Tenant Board and Christopher McGill |
| DC-24-00000044-0000 | Equity Builders Ltd., Joanne Smout, Tarang Shah, Ash Singh, EQB and Terri Hall | The Landlord and Tenant Board and Daciana MacDuff |
| DC-24-00000045-0000 | Equity Builders Ltd., EQB LTB Property Management, Joanne Smout and Ash Singh | The Landlord and Tenant Board and Jessica Latreille |
| DC-24-00000046-0000 | Equity Builders Ltd., Joanne Smout, Tarang Shah and Ash Singh | The Landlord and Tenant Board, Jonathan Havill and Michelle Pitman |
| DC-24-00000047-0000 | Equity Builders Ltd., EQB Ltd Property Management, Joanne Smout, Tarang Shah and Ash Singh | The Landlord and Tenant Board, Lloyd Ginez and Angel Ginez |
| DC-24-00000049-0000 | Equity Builders Ltd., Joanne Smout, Tarang Shah and Ash Singh | The Landlord and Tenant Board and Gary Conn |
| DC-24-00000050-0000 | Equity Builders Ltd., Joanne Smout, Tarang Shah and Ash Singh | The Landlord and Tenant Board and Kimberly Comeau |
| DC-24-00000101-0000 | Equity Builders Ltd., Joanne Smout, Tarang Shah and Ash Singh | The Landlord and Tenant Board and Nicole Atkins |
| DC-24-00000100-0000 | Equity Builders Ltd., Joanne Smout, Tarang Shah and Ash Singh | The Landlord and Tenant Board and Angela Jacobs and Gabriel Wright |
| DC-24-00000087-0000 | Equity Builders Ltd., Joanne Smout, Tarang Shah and Ash Singh | The Landlord and Tenant Board and Michael Whitstone and Emily Fletcher |

2025 ONSC 759 (CanLII)

**CITATION:** Equity Builders Ltd. et al. v. Landlord and Tenant Board et al., 2025 ONSC 759
**DIVISIONAL COURT FILE NO.:** Appendix 1
**DATE:** 20250205

2025 ONSC 759 (CanLII)

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**DIVISIONAL COURT**

**Sachs, Davies and Muszynski JJ.**

**BETWEEN:**

Equity Builders Ltd., EQB Ltd., Joanne Smout, Tarang Shah and Ash Singh

Appellants/Applicants

**– and –**

Landlord and Tenant Board et al. (see Appendix 1)

Respondents

**REASONS FOR JUDGMENT**

**Released:** 20250205