

**SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT**

RE: BREEN AGNEW AND CARISSA DUPUIS, Appellants

AND:

TIM BOURGETTE AND MIDORI MYAMOTO, Respondents

BEFORE: Matheson J.

COUNSEL: *Delaram Jafari*, for the Appellants

Samuel Mason, for the Respondents

HEARD at Toronto: May 20, 2026, by video-conference

ENDORSEMENT

[1] Breen Agnew and Carissa Dupuis seek to appeal from the decision of the Landlord and Tenant Board (LTB) dated April 23, 2025 (the Decision), and the LTB motion decision dated June 11, 2025 (the Motion Decision). They need an extension of time to appeal the Decision. There is also an issue with appealing the Motion Decision, which was an order denying an extension of time to seek a review.

[2] The rental premises are part of a mixed-use building that was 100% owned by Dupuis Agnew Holdings Inc. for most of the more than fifteen years that the respondents have been tenants. That corporation was and continues to be wholly owned by the appellants. The respondents signed a lease with the corporation and have paid rent to the corporation throughout the relevant time.

[3] On September 25, 2024, Agnew and Dupuis arranged for the transfer of a 0.5% ownership interest in the property from their corporation to each of them. Less than a week later, the appellants served the respondents with an eviction notice naming themselves as the landlords. The appellants then commenced an application at the LTB to evict the respondents relying on s. 48 of the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17.

[4] Section 48 permits termination of a lease where the “landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year”. As set out in s. 48(5), to use this section, the landlord must be an individual, not a corporation.

[5] After a full LTB hearing including testimony from Agnew, the LTB dismissed the application. The LTB relied on s. 202 of the Act, which requires that the Board ascertain the “real substance” of all the related transactions and the good faith of the participants. The LTB found that the appellants acted in bad faith. The LTB held that the real substance of the transfer of a 1% interest from the corporation to the appellants was to evade the prohibition in s. 48(5) that precludes a corporation from using s. 48 to evict.

[6] As set out in the Decision, the LTB found that the landlord was still the corporation. The reasons for decision expressly state that the Member made this finding after considering all the evidence. The appellants were therefore not entitled to evict under s. 48.

[7] The appellants were late requesting a review of the Decision and therefore needed an extension of time from the LTB to do so. The LTB considered that request and denied it.

[8] Although not raised in response to this appeal, there is no right of appeal from the Motion Decision. The Motion Decision was the denial of an extension of time, which is not a final decision. However, this does not change the outcome. An appeal from the Motion Decision would nonetheless be unsuccessful as discussed below.

[9] There was a right of appeal from the Decision. However, it was commenced several months late. With respect to the request for an extension of time to appeal the Decision, I exercise my discretion to grant that extension. There is a reasonable explanation for the delay and, having now heard the appeal on its merits, I conclude that the interests of justice are to decide the appeal.

[10] This appeal is limited to questions of law, which include issues of procedural fairness. The appellate standard of review applies.

[11] The appellants have not shown an error of law. For the most part, the appellants seek to reargue the facts seeking a different outcome by submitting that there are extricable legal issues.

[12] The appellants submit that there was no evidence on which to base the decision that they were not landlords, made under s. 202 of the Act. They submit that there was therefore an error of law. On the contrary, there was a factual basis for the Decision under s. 202 that the appellants sought to evade the requirements of s. 48. Without recounting all the facts, there was evidence that the appellants chose to purchase the multi-use property using a corporation to benefit from the advantages of corporate ownership, that they instructed their accountant to transfer a nominal ownership just days before taking steps to evict and did so to avoid the requirements of s. 48(5), and that the rent payments continued to be made to the corporation.

[13] The finding that the appellants were not landlords was founded on the facts with no error of law.

[14] The appellants submit that the Decision did not address the test for good faith having regard for their evidence about their genuine intention to occupy the premises under s. 48. There was no need to apply the s. 48 requirement that a landlord in good faith required possession of the rental unit for the purpose of residential occupation. The appellants were found not to be landlords.

Further, the reasons for decision expressly state that all the evidence was considered. The reasons need not recount all the evidence.

[15] The appellants further submit that there can be more than one landlord. This does not assist the appellants. The Decision did not hold that there could be only one landlord. The LTB found that the appellants were not true landlords on the facts of this case.

[16] The appellants further submit that there is no minimum ownership requirement to be a landlord. The LTB did not impose a minimum ownership requirement in the Decision. Again, the Decision found that the appellants were not landlords on the facts. Nor did the LTB err in law in its treatment of the cases.

[17] The appeal from the Decision is dismissed.

[18] The appellants did not raise a distinct legal error in their challenge to the Motion Decision. The issues still focused on the transfer of the 1% ownership and s. 48, as discussed above. If there was a right of appeal, it would also be dismissed.

[19] The extension of time to appeal the Decision is granted. The appeal is dismissed with costs to the respondents in the agreed upon amount of \$3,500, all inclusive.

Matheson J.

Date: May 22, 2025