



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

Brenda Everall

Applicant

-and-

Ryan Coens and Rebecca Coens

Respondents

DECISION

Adjudicator: Holly Gomes
Date: February 13, 2024
File Number: 2019-32832-I
Citation: 2024 HRTO 206
Indexed as: **Everall v. Coens**

INTRODUCTION

[1] This is an Application filed under section 34 of Part IV of the *Human Rights Code*, R.S.O. 1990, c. H.19 (the “Code”) alleging that the respondent discriminated against her in the social area of housing on the basis of their disability and receipt of public assistance.

[2] The Tribunal initially sent the applicant a Notice of Intent to Dismiss the Application (“the Notice”) seeking the applicant’s submissions on the issues of (1) the timeliness of the Application and (2) that the Application as filed failed to identify any specific acts of discrimination within the meaning of the *Code*.

[3] Following the receipt of the applicant’s submissions in response to the Notice, the Tribunal issued a Case Assessment Direction (“CAD”) directing that a combined summary and preliminary hearing take place to decide the following issues:

- a. whether the Tribunal has jurisdiction over this Application as it appears to have been filed more than one year after many of the alleged breaches are said to have occurred; and,
- b. whether this Application should be dismissed on the basis that there is no reasonable prospect that the Application will succeed.

[4] The hearing was initially held before a different member of the Tribunal. Unfortunately, that member’s term completed before the decision was rendered and accordingly, this Summary Hearing proceeded on a *de novo* basis. The hearing was held by conference call and all parties participated.

[5] I note that in the Application, the applicant indicated that she named both respondents because they were both listed on her tenancy agreement but that she only had interactions with the respondent, Ryan Coens. Accordingly, for the purposes of this decision, all references to “the respondent” refer to Mr. Coens, unless stated otherwise.

[6] For the reasons that follow, I find that the Application has no reasonable prospect of success and should be dismissed. Given that finding, it is unnecessary for me to address the issue of delay.

Preliminary Issue

[7] At the commencement of the hearing, the applicant raised a number of concerns regarding the way in which this matter has progressed. Among other things, she raised that the Tribunal failed to respond to her inquiries regarding why the matter had been reactivated after so long and alleged that the Tribunal failed to explain what was to be discussed at the hearing.

[8] With respect to the “reactivation” of the proceeding, it was explained, as noted above, that as the adjudicator present at the initial hearing date was not longer with the Tribunal, this matter had to proceed *de novo*, in other words as a fresh hearing, as no order had been issued.

[9] With respect to the failure to explain the nature of the hearing, in my view, the CAD clearly advised the applicant as to the nature of the proceedings and the issues to be discussed. It also included detailed information outlining what to expect at the hearing. In addition, I note that the applicant’s submissions at the hearing also indicated clearly to me that she understood the nature of the hearing and the issues to be decided by the Tribunal.

[10] The applicant also alleged that respondent(s) and/or their legal counsel as well as staff of the Tribunal “may or may not be in obligation to the Masonic fraternity or another clandestine society, fraternity or order” and suggested that the Tribunal was colluding in this matter to “prevent actual justice from occurring”. At the hearing, the applicant asked the Tribunal and counsel for the respondent declare whether they had any conflicts, and in particular, any involvement with any clandestine organizations, in the nature of those cited above.

[11] Both myself and the respondents' counsel declared that we had no conflicts within the legal meaning of that term as it related to this proceeding before the Tribunal. The applicant indicated that she was content to move forward.

[12] The applicant also made general allegations regarding the Tribunal's processes which I will not repeat here as they relate to other matters unrelated to this Application.

The Summary Hearing Process

[13] The summary hearing process is described in Rule 19A of the Tribunal's Rules of Procedure as well as the Tribunal's Practice Direction on Summary Hearing Requests. The purpose of a summary hearing is to consider, early in the proceeding, whether an application should be dismissed, in whole or in part, because there is no reasonable prospect that the application will succeed.

[14] The Tribunal cannot address allegations of unfairness that are unrelated to the *Code*. Put another way, the Tribunal's jurisdiction is limited to claims of discrimination that are linked to the protections set out in the *Code*. As the Tribunal indicated in *Forde v. Elementary Teachers' Federation of Ontario*, 2011 HRTO 1389 ("*Forde*"), for an application to continue in the Tribunal's process following a summary hearing, there must be a basis beyond mere speculation and accusations to believe that an applicant could show a breach of the *Code*. As such, the burden at the summary hearing is on the applicant to explain what evidence they expect to be able to present at a merits hearing in order to prove that the alleged differential treatment was due, at least in part, to one or more prohibited grounds of discrimination.

Analysis

[15] The applicant was a tenant in the respondents' rental unit with a rental agreement in place from November 14, 2016, to May 31, 2017. After some initial communications with the respondent and his agent at the commencement of the tenancy, the parties did not have any interactions with each other until March 2017, when the respondent reached

out to inquire whether the applicant wished to renew her lease and indicated that he would be happy to have her stay.

[16] The applicant submits that after she advised the respondent that she did not wish to renew her tenancy, the communications with the respondent deteriorated and the respondent began harassing and discriminating against her.

[17] The Application and the applicant's subsequent submissions contained detailed information regarding her interactions with the landlord and his agents and the history of the applicant's experience in the rental unit including the quality of the rental unit and failures of the landlord under the tenancy agreement.

[18] In her submissions in response to a Notice of Intent to Dismiss the Application, which preceded the issuance of the CAD, the applicant clarified that though she provided historical information regarding issues with respect to the tenancy, she understood that those were landlord and tenant issues and not allegations of discrimination under the Code. She clarified that the salient allegations in this Application were that: (1) she was unlawfully denied a rent receipt because of her disability and/or receipt of public assistance; and (2) she was harassed by the respondent from the moment that she declined the offer to renew the tenancy agreement. I address these allegations below.

The allegations of harassment have no reasonable prospect of success

[19] The applicant states that after she advised the respondent that she would not be renewing her tenancy, the respondent and/or his agents acting on his behalf, engaged in harassing behaviour including harassing communications and spreading rumours about the applicant within the community. For instance, the applicant alleges that the respondent spread rumours that the applicant failed to pay her rent, that she was a bad tenant, that she left the unit in poor condition and the respondent harassed her for payment of an overdue utility bill.

[20] The applicant took great issue with these allegations as she believed that she went above and beyond the requirements of a tenant and in fact had undertaken many tasks that should have been completed by the respondent.

[21] While the test of no reasonable prospect of success is determined by assuming that the applicant's version of events is true, accepting the facts alleged by the applicant does not include accepting the applicant's assumptions about why she was allegedly treated unfairly. See *McMullen v. Maackon Corporation*, 2013 HRTO 233 at para. 7. For the purposes of a summary hearing, an applicant must be able to point to some evidence, beyond their own suspicions, that could make out a link to the *Code*. The Tribunal has repeatedly said that an applicant's belief, no matter how strongly held, is not evidence upon which the Tribunal might find that discrimination has occurred. See for example *Leong v. Ontario (Attorney General)*, 2014 HRTO 311.

[22] Even accepting the applicant's allegations of harassing behaviour as true, the applicant has failed to point to any evidence which connects this behaviour to the applicant's *Code*-enumerated grounds.

[23] The only proposed evidence referred to by the applicant which linked the harassment to her receipt of public assistance was that she believed that the rumour that she did not pay rent may have been related to the fact that she paid her last months' rent through a community assistance program. She believed that the respondent was upset that she went this route and her Ontario Disability Support Program ("ODSP") caseworker had told her that they had seen similar situations where landlords were upset because they were hoping to avoid paying taxes.

[24] The applicant's submissions on this point are entirely speculative. She has pointed to no evidence to support that the respondent was upset that she paid her rent this way. In fact, this submission is inconsistent with the fact that the respondent accepted the rent payment and sought to renew the tenancy prior to its expiry. Accordingly, I find that the allegation that the applicant was harassed on the basis of her receipt of public assistance has no reasonable prospect of success.

[25] With respect to her disability, the applicant submitted in her Application that she believed she was discriminated against because she was very sick and that the respondent knew this but only cared about adding stress to her life, thereby making her sicker.

[26] This is insufficient to support a connection between the alleged harassment and the applicant's disability. To succeed in demonstrating that her rights as protected under the *Code* were breached, it is not enough for the applicant to demonstrate that the actions of the respondent impacted her by making her disability worse. See for instance *A.K. v. Peel District School Board*, 2019 HRTO 448, paras. 11-12, and *Dela Merced v. 975866 Ontario Inc. o/a Tagg Industries*, 2018 HRTO 510. Rather, the applicant has to point to evidence that she has or has reasonably available to her that would connect the respondents' actions to the *Code* grounds she relies upon. In her written materials and oral submissions, the applicant did not do so and accordingly, this allegation has no reasonable prospect of success.

[27] Throughout her submissions, the applicant used the terms harassment and discrimination, but failed to point to any evidence that could support such a finding. Simply stating that behaviour is discriminatory is not enough. There must be something that links the respondent's actions to the applicant's grounds. In the absence of such a connection, the allegations of harassment, even when assumed to be true, are only allegations of general unfairness which do not engage the *Code* and are therefore beyond the jurisdiction of the Tribunal (see *Forde*, above).

[28] Accordingly, I find that these allegations have no reasonable prospect of success.

The rent receipt

[29] After the applicant informed the respondent that she would not be renewing her lease, she wrote the respondent and, among other things, requested a rent receipt so that she could provide it to her Ontario Disability Support Program (ODSP) caseworker.

[30] The applicant alleges that the respondent initially agreed to provide the receipt, but when the applicant followed up, the respondent instead demanded that she provide him with the contact information for her ODSP caseworker before he would provide it. The applicant did not respond to this demand and did not receive the rent receipt.

[31] The respondent does not dispute that he requested that the applicant provide the name of her ODSP caseworker before providing a receipt, however, he submits that the request was made because he wanted to know to whom his personal information would be disseminated. He did not provide the receipt because the applicant did not respond to the request in any way, did nothing to facilitate the delivery of the receipt and did not advise that she was not willing to provide the information requested.

[32] The applicant alleges that denying her a rental receipt, which she is entitled to, unless she provides her ODSP caseworker's information, is discriminatory on its face and accordingly links the adverse treatment to her *Code* grounds of disability and receipt of public assistance.

[33] I do not agree. First, the applicant pointed to no evidence which could support that the rent receipt was denied owing to her disability. The only connection to her disability was the mere fact that the individual in question works for the Ontario *Disability* Support Program. This is insufficient to establish a link between the applicant's disability and the refusal to provide the rent receipt. Accordingly, this allegation has no reasonable prospect of success.

[34] With respect to the ground of receipt of public assistance, the request for the ODSP caseworker's information is of course "linked to" the applicant's receipt of public assistance, as the person who the applicant wished to provide this information to was the applicant's ODSP caseworker. However, this kind of link, in and of itself, is not indicative of discrimination. In order to establish that the demand to provide the caseworker's information was discriminatory "because of" the applicant's receipt of public assistance, the applicant would have to point to evidence which could establish that there was some arbitrariness in the request. The applicant has failed to do so.

[35] While the *Code* ground need be only one factor in the discrimination, the applicant has not pointed to anything beyond the fact that the information requested related to her ODSP, to demonstrate that the request was arbitrary or to connect the refusal to provide the rent receipt to her receipt of ODSP. For instance, she did not allege that the respondent did not require similar information from other tenants who were not in receipt of public assistance. In addition, the undisputed facts that the applicant received funding from a social assistance program to pay her rent and indicated that she intended to provide the receipt to her caseworker support that the request was not arbitrary. For these reasons, I find that this allegation has no reasonable prospect of success.

[36] Accordingly, in these circumstances, even if I accept the facts put forward by the applicant as true and provable, I must find that the Application stands no reasonable prospect of success under the *Code*. As such, it is unnecessary for me to consider the issue of the timeliness of the Application, and I decline to do so.

ORDER

[37] For the above reasons, the Application is dismissed.

Dated at Toronto, this 13th day of February, 2024.



Holly Gomes
Vice-chair