

# COURT OF APPEAL FOR ONTARIO

CITATION: Gallant v. Johnson, 2025 ONCA 419

DATE: 20250605

DOCKET: COA-24-CV-1231

Huscroft, Trotter and Favreau JJ.A.

BETWEEN

Lori Gallant

Applicant (Appellant)

and

Sherril Johnson and Fitzroy Johnson

Respondents (Respondents)

William McLennan, for the appellant

Derrick M. Fulton, for the respondents

Heard: June 3, 2025

On appeal from the order of Justice John R. McCarthy of the Superior Court of Justice, dated December 20, 2024.

## REASONS FOR DECISION

[1] This is an appeal from the order of the motion judge striking the appellant's application under rule 14.05(3)(d) of the *Rules of Civil Procedure*, R.R.O. Reg 194, for a determination of her rights under a commercial lease with the respondents. The unsuccessful application sought an order fixing the rental rate for the renewal term at the market rate. We dismissed the appeal with reasons to follow. These are our reasons.

[2] The appellant leased property from the respondents for a five-year term. The lease agreement included a lease renewal clause that gave the appellant the option to renew the lease for an additional five-year term on the same conditions, “except for the rental rate for the renewed term, which shall be agreed upon by the Tenant and Landlord.” The appellant exercised the option to renew the lease agreement but the parties were unable to agree upon a rental rate for the renewed term. The appellant brought an application asking the court to set the rental rate for the renewal term.

[3] At the outset of the hearing for the application, the motion judge stated that the court may lack jurisdiction to grant the requested relief and directed the respondents to bring a motion to strike. The respondents did so. The motion judge granted the motion and struck the application.

[4] The appellant argues that the motion judge erred in concluding that the court had no jurisdiction to establish a rental rate for a renewed term of the lease, and in concluding that the respondents’ conduct in the rental negotiations did not breach the duty of good faith.

**There was no basis for the court to establish a rental rate**

[5] The issue in this case is not jurisdictional in nature. No questions of attornment arise. It is simply a question of interpreting the parties’ lease. The motion judge made no error in his interpretation of the renewal clause. There is no

basis in this contract that would permit the court to establish a rental rate, and no basis to read in an implied term establishing either the rental rate of the property or the means to establish it. The renewal provision in the lease was an agreement to agree; the appellant was entitled to renew the lease for a five-year term provided the parties reached an agreement on rent. The lease did not establish any method for establishing the new rent in the event the parties could not agree, and in particular did not require the parties to reach agreement on a new rent at “market rates”. Nor did the court acquire authority to establish a new rent simply because the respondents responded to the application and filed evidence.

**The respondents did not act in bad faith**

[6] Given that the renewal clause is simply an agreement to agree, and so unenforceable, the parties were under no obligation to reach a new agreement. The appellant has not established that the renewal clause gave rise to a requirement to bargain in good faith. In any event, we agree with the motion judge that the respondents acted in good faith. The motion judge found that the respondents engaged in negotiation, prepared draft lease proposals, and sought the assistance of a realtor. Ultimately, the respondents were entitled to act in their own economic self-interest. On no account were they required to reduce their rental demands in order to facilitate an agreement on a lease extension with the appellant.

[7] Accordingly, the appeal is dismissed. The respondents are entitled to costs in the agreed amount of \$5,500, all inclusive.

“Grant Huscroft J.A.”

“Gary Trotter J.A.”

“L. Favreau J.A.”