

© Parkette Place Apartments (c.o.b. Investors Property Services Ltd.) v. MacIntosh, [2006] O.R.H.T.D. No. 55

Ontario Landlord and Tenant Board

Ontario Rental Housing Tribunal

W. Burke (Member)

Heard: Toronto, Ontario, May 17, 2006.

Decision: May 25, 2006.

File No. TEL-61007

[2006] O.R.H.T.D. No. 55

Order under Section 80, Tenant Protection Act, 1997 IN THE MATTER OF: 109, 25 Parkette Pl. Toronto, ON, M1N 2E4 Between Parkette Place Apartments c/o Investors Property Services Ltd., landlord, and Sandy MacIntosh, tenant

(8 paras.)

Appearances

S. Hildyard, Representative and C. Angona, witness, for the landlord.

S. Zakuta, Representative, Sandy MacIntosh, tenant and D. Smith, witness, for the tenant.

1 Parkette Place Apartments c/o Investors Property Services Ltd (the 'Landlord') applied for an order to terminate the tenancy and evict Sandy MacIntosh (the 'Tenant') of a superintendent's premises, because the Tenant's employment as superintendent has ended. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

2 This application was heard in Toronto on May 17, 2006.

3 The Landlord (represented by Mr. S. Hildyard) and the Tenant with her representative, Ms. S. Zakuta, attended the hearing.

Witnesses:

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Mr. C. Angona for the Landlord

Ms. D. Smith for the Landlord

Findings of fact:

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1. The Landlord purchased the residential complex on July 20, 1998. At that time the Tenant was the Superintendent of the building. The Tenant signed an affidavit on July 23, 1998. That affidavit set out the duties of the Tenant as Superintendent as well as a clause that the Tenant would receive a monthly compensation plus free rent for apartment 109 in consideration for the performance of the services set out as duties of the Superintendent in that affidavit.
2. Mr. C. Angona gave evidence that he has designated unit 109 as the Superintendents unit. The reason this was done is because the unit is close to all of the building services and because of the concerns of security risks. Mr. Angona also gave evidence that the Tenant submitted a letter of resignation to him on December 30, 2005. That letter indicated the Tenant would be retiring on April 1, 2006. Mr. Angona also gave evidence that there were letters back and forth between himself and the Tenant with regard to her retirement. In one (1) of those letters, dated January 13, 2006, Mr. Angona advised the Tenant that her services as Superintendent would no longer be required effective immediately. The Letter advised the Tenant that she must move out of the unit by March 31, 2006. This letter also advises the Tenant to surrender all keys, ledgers, log books or any other documentation pertaining to the residential complex.
3. During questioning by the Tenant's representative Mr. Angona stated that this unit was also the office for the complex. The unit contained filing cabinets as well as office equipment related to the duties of the Superintendent. Mr. Angona also stated that he fired the Tenant as Superintendent after receiving the letter of resignation because of complaints he had received from other tenants in the complex.
4. Ms. D. Smith testified for the Landlord and stated she had been hired as Superintendent of the complex in February 2006. Ms. Smith lives in unit 214 of the complex and did so prior to being hired as Superintendent. Ms. Smith gave evidence that the Landlord advised her she would be allowed to move into unit 109 as soon as the Tenant vacated that unit. Ms. Smith testified that she was advised by the Landlord that unit 109 was the Superintendent's unit.
5. During questioning by the Tenant's representative Ms. Smith gave evidence that she has lived in the complex for twelve (12) years and has lived in unit 214 for the past nine (9) years. Ms. Smith also stated that unit 109 has been the Superintendent's unit as long as she has lived in the complex.
6. The Tenant gave evidence that she has lived in the complex for thirty-four (34) years and has lived in unit 109 for thirty (30) of those years. The Tenant also gave evidence that she has been Superintendent for twenty (20) years. The Tenant also gave evidence that she is the first Superintendent to live in unit 109. Prior to her becoming Superintendent several different units were used as the Superintendent's unit. The Tenant also gave evidence that she was never advised by the present owner or any previous owner that unit 109 was designated as the Superintendent unit. The Tenant also gave evidence that the previous owners advised her she could remain in unit 109 even after she was no longer the Superintendent. The Tenant did not provide any documented proof to substantiate this statement. Several documents provided by the Tenant do substantiate her statement that previous Superintendents have lived in other units. All of these documents are from the time before the present owner took possession of the complex.

7. The Tenant presented case law in the form of Rondinelli et al. and Cain indexed as Rondinelli v. Cain reported February 17, 1989.
8. During questioning by the Landlord's representative the Tenant indicated that she was employed by the Landlord as the Superintendent and the unit she resided in was within the complex where she was the Superintendent.

Legislation:

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1. Section 1 of the Tenant Protection Act, 1997 (TPA) states for the definition of Superintendents premises "means a rental unit used by a person employed as a janitor, manager, security guard or superintendent and located in the residential complex with respect to which the person is so employed".
2. Section 68 of the TPA states "(1) if a Landlord has entered into a tenancy agreement with respect to a Superintendent's premises, unless otherwise agreed, the tenancy terminates on the day on which the employment of the Tenant is terminated.

Same

- (2) A Tenant shall vacate a Superintendent's premises within one week after his or her tenancy is terminated.

No rent charged for week

- (3) A Landlord shall not charge a Tenant rent or compensation or receive rent or compensation from a Tenant with respect to the one-week period mentioned in subsection (2)."

7 It is determined that:

1. The Landlord terminated the employment of the Tenant on January 13, 2006. The Tenant has not vacated the Superintendent's premises and more than one week has passed since their employment was terminated.
2. I find that the case law provided by the Tenant is not relevant to this matter. In the case provided, the Tenant was a part time caretaker who lived in the building where he worked. In the case provided the set up of the complex was that the caretaker may or may not live in the complex. The caretaker was provided with a salary and reduced rent based on the work that was completed. In the case provided the Court ruled that the section of the legislation that deals with the caretaker's unit is specifically designed to deal with the unit of a person that is engaged as a fulltime caretaker and as part of the operations of the complex. In the case provided this was not the case and the Court dismissed the Landlord's claim that the part time caretaker was subject to the legislation relating to the Superintendents unit. The Court held that in the case provided Mr. Cain was a Tenant firstly and a caretaker secondly. In the matter before me it is clear the Tenant was the Superintendent and not a Tenant.
3. Based on the evidence before me I find that the Landlord had an agreement with the Tenant that was signed on July 23, 1998 allowing the Tenant to remain in the unit as long

as she was the Superintendent. I find that this unit has been designated as a Superintendents unit by the Landlord.

4. Based on the legislation cited above the Tenant was required to vacate the unit within seven (7) days.
5. I find it would not be unfair to exercise my discretion under section 84 of the TPA and delay the eviction of the Tenant until June 30, 2006 to give the Tenant an opportunity to find alternative living accommodations. This is based on the fact the Tenant is a long standing Tenant in the complex.

8 It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before June 30, 2006.
2. If the unit is not vacated on or before June 30, 2006, then starting July 1, 2006, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after July 1, 2006.