2010 ONSC 1686
Ontario Superior Court of Justice (Divisional Court)

Toronto Community Housing Corp. v. Vlahovich

2010 CarswellOnt 2115, 2010 ONSC 1686, [2010] O.J. No. 1463, 186 A.C.W.S. (3d) 1128, 262 O.A.C. 191

Toronto Community Housing Corporation (Landlord / Appellant) and Allan Vlahovich (Tenant / Respondent in Appeal)

Dambrot J., Ferrier J., and Jennings J.

Heard: March 18, 2010
Judgment: March 18, 2010
Docket: Toronto 603/08

Counsel: Mary Boushel for Landlord
Allan Vlahovich for himself

Subject: Civil Practice and Procedure; Property

Headnote

Civil practice and procedure --- Limitation of actions — Real property — Adverse possession — Statutory limitation periods — Suspension or interruption of statute — Payment of rent

Series of floods occurred in rental unit from December 2004 — Work was commenced in February 2007 to make certain repairs — In relation to application brought by tenant on January 16, 2008, board made order on August 5, 2008 and review order on October 27, 2008 — Orders called for eviction of tenant subject to paying of arrears — Board also ordered rent abatement, reducing arrears to $74.50 — Tenant paid this amount, and eviction was declared void — Community housing landlord appealed — Appeal allowed — Board erred in law in allowing abatement of rent prior to one-year period preceding making of application — It is plain from language of s. 30(1) of Residential Tenancies Act, 2006 that board can only order remedy under that provision in relation to determination of application under ¶ 1 of s. 29(1) of Act that landlord has breached obligation under s. 20(1) of Act — In light of one-year limitation period in s. 29(2) of Act, board can only make determination that landlord has breached obligation under s. 20(1) during one-year period before making application — Remedy that may be granted may only be granted in relation to breaches during that one-year period — It was not inconsistent with remedial nature of Act, or capable of leading to absurd results, to limit remedy of abatement to one-year period prior to bringing of application for abatement — It was hard to image why it would be absurd to encourage tenants to commence their applications for abatements for disrepair within one year after condition of disrepair commenced or came to their attention.

Real property --- Landlord and tenant — Residential tenancies — Termination of tenancy — Practice and procedure — Miscellaneous

Series of floods occurred in rental unit from December 2004 — Work was commenced in February 2007 to make certain repairs — In relation to application brought by tenant on January 16, 2008, board made order on August 5, 2008 and review order on October 27, 2008 — Orders called for eviction of tenant subject to paying of arrears — Board also ordered rent abatement, reducing arrears to $74.50 — Tenant paid this amount, and eviction was declared void — Community housing landlord appealed — Appeal allowed — Board erred in law in allowing abatement of rent prior to one-year period preceding making of application — It is plain from language of s. 30(1) of Residential Tenancies Act, 2006 that board can only order remedy under that provision in relation to determination of application under ¶ 1 of s. 29(1) of Act that landlord has breached obligation under s. 20(1) of Act — In light of one-year limitation period in s. 29(2) of Act, board can only make determination that landlord has breached obligation under s. 20(1) during one-year period before making application — Remedy that may be granted may only be granted in relation to breaches during that one-year period — It was not inconsistent with remedial nature of Act, or capable of leading to absurd results, to limit remedy of abatement to one-year period prior to bringing of application for abatement — It was hard

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APPEAL by community housing landlord from orders of Landlord and Tenant Board concerning eviction and abatement of rent.

***Dambrot J.*:**

1 Toronto Community Housing (the "Landlord") appeals from the order of Member Ruth Carey of the Landlord and Tenant Board (the "Board") dated August 5, 2008 and the review order of Member Jana Rozehnal dated October 27, 2008, each made in relation to an application brought by Allan Vlahovich (the "Tenant") on January 16, 2008. In these decisions, the Board ordered the tenant's eviction, subject to him paying arrears. The Board also ordered a rent abatement which reduced the arrears to $74.50. The tenant has paid this amount, and so the eviction has been declared void.

2 This appeal raises the following issue:

> Did the Board err in law in awarding an abatement of rent to the tenant for a period prior to the commencement of the one year limitation period mentioned in s.29(2) of the *Residential Tenancies Act, 2006*?

3 An appeal to this Court from a decision of the Board may be brought only on a question of law. Except where the decision appealed from involved an exercise of discretion, the standard of review is correctness (see *Caputo v. Newberg* (2009), 251 O.A.C. 281 (Ont. Div. Ct.)).

4 The issue in this appeal falls to be determined solely on the interpretation of the *Residential Tenancies Act, 2006*, and as a result raises a pure question of law. That question of law is a question of general application.

5 The provisions of the *Act* that are relevant here are as follows:

> **Landlord's responsibility to repair**
>
> 20(1) A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.
>
> . . . . .
>
> **Tenants applications**
>
> 29(1) A tenant or former tenant of a rental unit may apply to the Board for any of the following orders:
>
> 1. An order determining that the landlord has breached an obligation under subsection 20(1) or section 161.
>
> . . . . .
>
> **Time limitation**
>
> (2) No application may be made under subsection (1) more than one year after the day the alleged conduct giving rise to the application occurred.
>
> **Order, repair, comply with standards**
>
> 30(1) If the Board determines in an application under paragraph 1 of subsection 29(1) that a landlord has breached an obligation under subsection 20(1) or section 161, the Board may do one or more of the following:
>
> . . . . .
>
> 2. Order an abatement of rent.
>
> . . . . .

6 In this case, the Board found that since December 2004 there had been a series of floods in the rental unit that caused extensive water damage. Major work was required to repair the floors and other parts of the apartment as a result of the water damage. The landlord made numerous efforts to repair some of the problems in the unit but never attempted to repair the badly damaged second bedroom and the bedroom floors. The tenant frustrated many of the efforts to repair the unit but in February 2007 work was commenced. As a result of the damage, the Board concluded that a fifty percent abatement of rent from January 2005 to July 2007 was justified, amounting to $5,826.05.

7 The landlord requested a review of this order. One of the issues raised on the review involved the proper interpretation of s.29(2) and s.30(1) of the *Residential Tenancies Act, 2006*. Section 29(2), as relevant here, when read together with s.29(1) and s.20(1) of the *Act*, provides that no application may be made for an order determining that the landlord has breached the obligation to maintain a rental unit in a residential complex in a good state of repair more than one year after the day the alleged conduct giving rise to the application occurred. Where the Board determines under s.29(1) that the landlord has breached the obligation to maintain a rental unit in a good state of repair, section 30(1) permits the Board to order an abatement of rent.

8 The landlord argued that having regard to the statutory scheme, the Board only had jurisdiction to award the remedy of abatement to the tenant back to January 16, 2007, a date one year prior to the bringing of the tenant's application. The Board concluded that while s.29(2) provides a one year limitation period for bringing an application under s.29(1), it does not create a limitation on the available remedy found in s.30. We do not agree.

9 It is plain from the language of s.30(1) that the Board can only order a remedy under that provision in relation to a determination in an application under paragraph 1 of subsection 29(1) that a landlord has breached an obligation under subsection 20(1). In light of the one year limitation period in s.29(2), the Board can only make a determination that a landlord has breached an obligation under s.20(1) during the one year period before the making of the application. Accordingly, the remedy that may be granted may only be granted in relation to breaches during that one year period. While evidence of events prior to the commencement of the one year period may be admissible at a hearing before the Board, for example, to enable the Board to understand the cause of the disrepair, this does not permit the Board to extend the remedy back to a time prior to the commencement of the statutory limitation period.

10 Our conclusion is consistent with the case law concerning limitation periods in respect of claims for nuisance (see *Roberts v. Portage la Prairie (City)*, [1971] S.C.R. 481 (S.C.C.)). Member Rozehnal attempted to distinguish *Roberts* and similar cases that were brought to her attention on the basis that they involved the common law tort of nuisance rather than a statutory remedy and that the statutory limitation periods considered in those cases were worded differently from s.29(2).

11 We see nothing in these distinctions that rises to the level of principle. There is no reason that the approach taken to this issue in *Roberts* should not be taken here. In addition, properly understood, the decision of this Court in *Goodman v. Menyhart*, [2009] O.J. No. 1602 (Ont. Div. Ct.) is not inconsistent with our approach. In that case the Court ordered that an abatement extend back one year before the application had been made and no further. The only issue in that case was whether the limitation period should extend back twelve months from the order of the Board or from the filing of the application.

12 The Member went on to say that the construction that we propose to place on s.29(2) is inconsistent with the remedial nature of the *Act* and could lead to absurd results. We do not consider it to be inconsistent with the remedial nature of the *Act* or capable of leading to absurd results to limit the remedy of the abatement to a one year period prior to the bringing of an application for abatement. It is hard to imagine why it would be absurd to encourage tenants to commence their applications for abatements for disrepair within one year after the condition of disrepair commences or comes to their attention.

13 Accordingly, we conclude that the Board erred in law in allowing an abatement of rent prior to the one year period preceding the making of the application.

14 The appeal is allowed and the following relief is granted:

(a) the order dated October 27, 2008 in file PSL-87099-RV and TST-01120-RV is set aside;

(b) paragraph 4 of the Notice and Direction dated August 29, 2008 in file PSL-87099-RV declaring the order of August 4, 2008 void is struck;

(c) the order dated August 4, 2008 in files TSL-87099-RV and TST-01120-RV is set aside and replaced with an order:

(i) terminating the tenancy on April 30, 2010;

(ii) for a payment of $9,096.25 to the landlord on or before April 30, 2010;

(iii) for payment of $30.77 per day for compensation for the use of the rental unit starting February 1, 2009 to the date the Tenant moves out of the unit;

(iv) for simple interest in the amount of 5% annually on the balance outstanding;

(v) allowing the landlord to file the order with Court Enforcement if the unit is not vacated;

(vi) directing the Court Enforcement Office to give vacant possession of the unit to the landlord after the termination date set out in the order; and

(vii) allowing the tenant to void the eviction upon payment of $9,096.25 and per diem compensation, on or before April 30, 2010.

15 In setting on the amount that the tenant must pay to the landlord we have taken into account an increase in the monthly rent to $936.00 commencing in October 2009. We are entitled to do so by virtue of s.210(4) of the *Act*.

***Jennings J.*:**

I have endorsed the back of the Record, "This appeal is allowed for oral reasons delivered today. Orders under appeal set aside. Relief granted as set out in reasons. Approval of order by respondent dispensed with. No costs being demanded, none ordered."

Appeal allowed.

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