

C Maystar Holdings v. Isufaj, [2000] O.R.H.T.D. No. 127

Ontario Landlord and Tenant Board

Ontario Rental Housing Tribunal

R. Ittleman, Member

Heard: Toronto, Ontario, September 15, 2000

Decision: September 25, 2000

File No. TEL-14449

[2000] O.R.H.T.D. No. 127

Order under Section 80, Tenant Protection Act, 1997 IN THE MATTER OF: Unit 107, 10 Macey Avenue Toronto, ON, M1L 4R4 Between Maystar Holdings Inc., landlord, and Ragip Isufaj, tenant

(18 paras.)

Appearances

Ragip Isufaj, tenant, and Linda Vannucci, for the tenant. Mohamad Kasmani, property manager, for the landlord.

1 Maystar Holdings Inc. (the Landlord') applied for an Order to terminate the tenancy and evict Ragip Isufaj (the Tenant') from superintendent's premises on the grounds that the Tenant's employment as superintendent has ended. The Tenant filed a Dispute.

2 The hearing was held in Toronto on September 15, 2000. The Landlord was represented by Mohamad Kasmani, property manager. The Tenant appeared in person and was represented by Linda Vannucci, Barrister and Solicitor.

3 The decision of the Tribunal was announced at the conclusion of the hearing.

4 For Reasons attached,

It is determined that:

The Tenant's employment as superintendent was terminated on August 21, 2000.

The reason for this Application being brought was that the Tenant had attempted to secure or enforce his legal rights. Accordingly, pursuant to sub-section 84(2)(c) of the Tenant Protection Act, 1997, the Tribunal shall dismiss the Application.

5 It is ordered that:

The Landlord's Application is dismissed.

REASONS

Nature of Proceedings:

6 Maystar Holdings Inc. (the Landlord') applied for an Order to terminate the tenancy and evict Ragip Isufaj (the Tenant') from superintendent's premises on the grounds that the Tenant's employment as superintendent has ended. The Tenant filed a Dispute.

Cases Considered:

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Westdale Construction Co. v. Rapea (1990), 74 O.R. (2d) 29 (D.C.O.);

Re Public Utilities Commission of the Town of Mitchell and Ord, [1935] O.W.N. 31 (C.A.);

Tandem Management Group v. Selmonovski (O.R.H.T. TNL-03866, issued January 7, 1999).

Findings of Fact:

8 Having considered all of the oral and documentary evidence, as well as the submissions of the parties, I make the findings of fact below on a balance of probabilities.

9 Mr. Isufaj was hired by the Landlord on a probationary basis as assistant superintendent on May 31, 2000. The evidence was inconclusive as to the term of the probation, but nothing turns on the determination of this question. It was a term of the Tenant's employment that he be provided with Unit 107 as a residence at no charge, notwithstanding that similar rental units are rented out at between \$975.00 and \$1,025.00 per month. No evidence was presented as to this rental unit having any special features or facilities which to be utilized by an assistant superintendent.

10 On July 4, 2000, Mr. Isufaj was injured while performing the duties of his employment, specifically suffering an injury to his back and to his foot. He immediately reported this injury to the on-site assistant manager, Detty Jurca. The Landlord did not report this injury to the Workplace Safety and Injury Board (WSIB), and Mrs. Jurca told Mr. Isufaj to seek medical attention, which he did. Mr. Isufaj received initial medical advice to rest for two days, but this was rejected by Mr. Kasmani, who insisted that he continue to perform his duties, failing which he would be out of a job. Mr. Isufaj, a recent immigrant to Canada, was not aware of the availability of a claim under workers' compensation legislation, and he continued to work for several weeks, notwithstanding his continuing injuries.

11 On August 18, 2000, after continuing to perform his duties in pain for several weeks, Mr. Isufaj again sought medical attention, this time from Dr. N. Siddiq. I found Dr. Siddiq to be a forthright and credible witness, and I accept her evidence as to the nature of Mr. Isufaj's injuries. Dr. Siddiq reported the injury to the WSIB and wrote a letter to the Landlord on August 18, 2000, advising that Mr. Isufaj required rest as a result of his work-related injury.

12 On August 21, 2000, Mr. Isufaj advised his superiors that he was unable to perform certain of his duties, specifically the taking out of the garbage. The Landlord terminated his employment verbally that very day, and this was confirmed by a letter of the same date, requesting that the rental unit be vacated within two weeks.

The Law:

13 The relevant sections of the Tenant Protection Act, 1997 (the Act) are sections 68(1) and (2), 80 and 84(2)(c), which read as follows:

68.(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.

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

80. The landlord may apply to the Tribunal for an order terminating the tenancy of a tenant of superintendent's premises and evicting the tenant if the tenant does not vacate the rental unit within one week of the termination of his or her employment.

84.(2) Without restricting the generality of subsection (1), the Tribunal shall refuse to grant the application where satisfied that,

(c) the reason for the application being brought is that the tenant has attempted to secure or enforce his or her legal rights.

14 The Tribunal has no jurisdiction to determine the propriety of the Tenant's dismissal from his employment. The parties agreed and the evidence confirmed that the Tenant's employment with the Tribunal was terminated on August 21, 2000. As to whether this was a wrongful dismissal or not is a matter which is beyond the jurisdiction of the Tribunal. Section 68 of the Act is unequivocal, that the tenancy terminates when the employment terminates, and the Tenant shall move out within one week thereafter. However, I cannot accept the argument of the Landlord's representative that section 68 supersedes section 84 and that, in the case of an Application relating to superintendent's premises, the Tribunal has no discretion to consider the relief from eviction provisions of section 84. The jurisdiction given to the Tribunal by sub-section 84(1) relates to "an application for an order evicting a tenant or subtenant", and does not distinguish among different types of rental units nor make any exception for rental units which are occupied as superintendent's premises. Moreover, sub-section 84(1) is clear that this jurisdiction conferred on the Tribunal exists "despite any other provision of this Act or the tenancy agreement." There exists on the facts of this case, as set out above, an obligation to consider the relief from eviction provisions of section 84.

15 When Mr. Isufaj refused to take out the garbage on August 21, 2000, this constituted a work refusal, pursuant to the Occupational Health and Safety Act. This, coupled with the letter from Dr. Siddiq of August 18, 2000, was a clear indication to the Landlord that Mr. Isufaj was attempting to enforce his legal rights. This was the reason, based on the evidence before me, that he was terminated and that this Application was brought by the Landlord.

16 Therefore, an Order should issue dismissing the Application.

17 If my interpretation and/or application of sub-section 84(2)(c) to the facts of this case is incorrect or if no such provision existed, then, having considered all of the circumstances, I would have ordered termination, postponed eviction until October 31, 2000, and ordered the Tenant to pay compensation at the rate of \$33.70 per day (based on rent of \$1,025.00 per month).

18 However, since the Application is being dismissed, I have no discretion to order the Tenant to pay rent

or compensation to the Landlord. There is no jurisdiction in the Tribunal on a Landlord's Application to "make any other order that it considers appropriate." Such discretion only exists on a Tenant's Application, as prescribed by sections 34 and 35 of the Act. The discretion set out in sub-section 190(1), that the Tribunal may include in an order whatever conditions it considers fair in the circumstances" does not confer as wide a discretion on the Tribunal as sections 34 and 35, since the operative word "conditions" presupposes that a term may be included in an order as a condition of some other term being ordered or not ordered. In a case, as here, where the Application it is being dismissed, not due to the exercise of discretion but because it is statutorily mandatory to do so (pursuant to sub-section 84(2)(c)), the inclusion of a condition in the Order is not available to the Tribunal.