

Langer Properties v. Langer, [1998] O.J. No. 515

Ontario Judgments

Ontario Court of Justice (General Division)

Divisional Court - Toronto, Ontario

Southey, Chilcott and Pardu JJ.

Heard: February 9, 1998.

Oral judgment: February 12, 1998.

[1998] O.J. No. 515

Between Langer Properties per Greenwin Property Management Inc. as Agent, landlord/respondent, and David Langer (occupants), tenant/appellant

(4 pp.)

Case Summary

Landlord and tenant — Termination, forfeiture and re-entry — Right of termination — By landlord, caretaker's premises.

Appeal by Langer from a judgment granting the landlord possession of the premises. At the time the appellant assumed occupancy of the premises, he managed his father's other rental properties since the other units in the building where the appellant lived were being readied for occupancy. As these units became occupied, the appellant performed the work of a manager of that building. He claimed that his tenancy could not be terminated pursuant to the provisions dealing with caretaker's premises.

HELD: Appeal dismissed.

There was ample evidence to support the finding that the appellant's occupancy of the apartment could be terminated pursuant to the provisions of the Landlord and Tenant Act dealing with caretaker's premises. The appellant became a manager of the building as soon as the other apartments in the building were occupied.

Statutes, Regulations and Rules Cited:

Landlord and Tenant Act, ss. 79, 115(1), 121(2).

Counsel

Shaun Nakatsuru, for the appellant. R.A. Maxwell, for the respondent.

The judgment of the Court was delivered by

SOUTHEY J. (orally)

1 We are all satisfied that, apart altogether from the evidence contained in the privileged communications, there was ample evidence to support the finding that the landlord was entitled to terminate the occupancy of the apartment at 66 Lowther under the provisions of the Landlord and Tenant Act dealing with caretaker's premises.

2 There is no question that David Langer, the appellant, was acting as a manager of his father's rental properties other than 66 Lowther at the time he assumed occupancy of an apartment at 66 Lowther. The apartment into which he moved at 66 Lowther was the only one under occupancy at that time. The other units were being readied for occupancy, and, as they became rentable and were occupied, he performed the work of a manager. In these circumstances, in our view, the premises were clearly caretaker's premises within the definition contained in section 79 of Part IV of the Landlord and Tenant Act dealing with residential tenancies.

3 The situation is entirely different from that in the Rondinelli case that the appellant relies upon. There, the landlord made an arrangement with a tenant who had occupied premises other than as a caretaker whereby that tenant would perform caretaking operations upon the property in return for a reduction in rent. That tenant had the security of the provisions of the Landlord and Tenant Act at the time that the arrangement was made with him on an ad hoc basis by the landlord.

4 In this case, as I have mentioned, the appellant was a manager of other premises at the time he took occupancy at 66 Lowther and became a manager of 66 Lowther in the ordinary sense of the word as soon as the other apartments were occupied. In our judgment, however, he was a manager from the outset in that he was taking care of a property that was being renovated to accommodate residential occupancy.

5 In these circumstances, in our opinion, the landlord was entitled to terminate the tenancy agreement, such as it was, with David Langer under the provisions of section 115(1) of the Landlord and Tenant Act. Accordingly the appeal is dismissed.

6 One of the grounds raised by the appellant tenant is that the judge below failed to consider the discretionary authority under section 121(2) to refuse to grant an application of the landlord unless the judge is satisfied having regard to all the circumstances that it would be unfair to do so. That section was not relied upon before Madam Justice Bellamy and in our opinion that section cannot be raised by a tenant for the first time in an appellate court as the tenant is seeking to do in this case.

7 The Order below is varied to provide for the premises to be vacated by midnight on March 31, 1998, and for a writ of possession to issue immediately, with no further notice to the occupants or to David Langer, if the premises are not vacated by that time.

8 The landlord respondent is entitled to its costs in this Court of the appeal. Those costs are fixed at \$1,500.

SOUTHEY J.
CHILCOTT J.
PARDU J.

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