# Onucki v. Fudge (Ont. Div. Ct.), [1990] O.J. No. 2175

Ontario Judgments

Ontario Court of Justice - General Division

Divisional Court - Toronto, Ontario

Carruthers, Hartt and Coo JJ.

Heard: October 29, 1990

Judgment: November 22, 1990

Action No. 105/90

**[1990] O.J. No. 2175**

Between Mike Onucki, Applicant/Respondent in Appeal, and George Fudge, Respondent/Appellant

## Case Summary

**Landlord and tenant — Termination, forfeiture and reentry — Superintendent's or caretaker's apartment — Termination of employment.**

Appeal from a decision terminating the appellant's tenancy. The appellant was employed as a superintendent by the respondent. Upon termination of the appellant's employment, the landlord requested the appellant to vacate the apartment occupied by him as superintendent.

HELD: Appeal dismissed.

The requirements of section 115 of the Landlord and Tenant Act were fulfilled. There was no evidence that a new tenancy had been created with the appellant after his dismissal.

## STATUTES, REGULATIONS AND RULES CITED:

Landlord and Tenant Act, R.S.O. 1980, c. 232, ss. 81(a), 112, 115.

Leroy Crosse, for the Applicant/Respondent in Appeal. George Fudge, Respondent/Appellant, in person.

The judgment of the Court was delivered by

## COO J. (orally)

**COO J.** (orally):— The trial judge found that the provisions of s. 115 of the Landlord and Tenant Act, applied to the apartment occupied by the appellant, obviously by reason of the testimony of the landlord/respondent as to the circumstances in which the appellant came into occupation of apartment 101 in the landlord's building.

The evidence accepted by the trial judge certainly supported the conclusion that the apartment was residential premises used for residential purposes by the appellant, employed as a superintendent under the provisions of s. 81(a) of the Act. It matters not whether the job which the appellant assumed for the respondent was full-time or not. There was certainly sufficient evidence to support this conclusion, and that the appellant continued to be to the time of termination of the relationship, the superintendent of the building.

Whether or not sufficient notice of termination of employment was given to the erstwhile superintendent is a matter for another forum. It is clear that the employment of the appellant was terminated, and that is all that is required under the provisions of s. 115. In our view, the approach adopted by the Divisional Court in Re Rio Algom Ltd. and Turcotte (1978), 20 O.R. (2d) 769 at 771 should be followed.

There is no evidence as to whether the landlord deposited the appellant's certified cheques for the proper rent after termination and, in any event, the provisions of s. 112 would apply here. There is no evidence from which the conclusion could reasonably be reached that by agreement there had been a new tenancy created by acceptance by the landlord of the appellant's cheques.

We see no merit in the suggestion which was made in the material although it was not pursued in argument that the appellant was by the trial judge deprived of the opportunity either to cross-examine or to introduce evidence on any relevant and significant issues.

For oral reasons given the appeal is dismissed. No costs.

COO J.
CARRUTHERS J.:— I agree.
HARTT J.:— I agree.

---

End of Document