

SOL-54818-14 (Re), 2015 CanLII 22724 (ON LTB)

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Order under Sections 9(2) and 94
Residential Tenancies Act, 2006

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Background

1. DECI (the 'Landlord') applied to the Landlord and Tenant Board ("LTB"), pursuant to s. 93 of the *Residential Tenancies Act, 2006* ("RTA") for an Order to terminate the tenancy and evict PL (the 'Tenant') from 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. (L2 Application)
2. The Tenant's response to the Landlord's application was twofold:
 - a) First, the Tenant applied to the LTB pursuant to s. 9 of the RTA for an Order determining whether the RTA applies to the residential unit. (A1 Application).
 - b) Second, the Tenant served the Landlord, the LTB and the Attorney General of Ontario with a Notice of Constitutional Question. The Tenant claims that by requiring superintendents to vacate the rental unit within seven days of the termination of their employment, s. 93 of the RTA, breaches [section 15\(1\)](#) of the *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11*, "the Charter") by treating superintendents differently from other tenants, who are generally provided with sixty days' notice before a tenancy is terminated.
3. The Applications and the constitutional question raised by the Tenant were considered at a hearing in St. Catharines on February 5, 2015. The Landlord was represented by a paralegal, JC. The Tenant was self-represented, but was assisted by Tenant Duty Counsel, CW. The Attorney General of Ontario intervened with respect to the constitutional question raised by the Tenant and was represented by a student-at-law, HP, and counsel, CH.

Amendment to the Application

4. The Tenant's application identified EM as the Landlord. At the hearing, it was established that DECI, of which EM is the owner, is the Landlord. The application will be amended accordingly.

The Hearing

5. At the hearing, the Tenant focused on the constitutional question and it formed the only basis of his objection to the application of the *RTA* to the residential unit. In order to make a determination on the L2 application, the constitutional question raised by the tenant had to be considered on a preliminary basis.

The Tenant's Application/Notice of Constitutional Question

Relevant Statutory Provisions

6. Section 93, and the related section 94, of the *RTA* state the following:

Termination of tenancy

93. (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).*

Application to Board

94. *The landlord may apply to the Board 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.*

7. [Section 15\(1\)](#) of the *Charter* states the following:

15.(1) *Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.*

Analysis

8. Section 93 of the *RTA* terminates tenancies for a building superintendent's premises on the day that the superintendent's employment is terminated, and requires the former superintendent to vacate the rental unit within seven days. The Tenant's position was that s.93, breached his right to equality pursuant to [section 15\(1\)](#) of the *Charter* by treating superintendents differently from other tenants, who must generally be provided with 60 days' notice before a tenancy is terminated.
9. The Tenant quoted selectively from the Supreme Court of Canada's decision in *R. v. Big M Drug Mart Ltd.*, [1985] 1 SCR 295, [1985 CanLII 69 \(SCC\)](#), which was one of the first *Charter* cases decided by the Supreme Court, and which addressed freedom of conscience and religion guaranteed by [section 2\(a\)](#) of the *Charter*. He also quoted from the *Universal Declaration of Human Rights*. His bottom line position was that any law that distinguishes between persons, including section 93 of the *RTA*, should be seen as discriminatory, and contrary to [section 15\(1\)](#) of the *Charter*.
10. In general, the Tenant submitted that discrimination should never be tolerated. He placed significant weight on the first half of [section 15\(1\)](#) of the *Charter*. He claimed that the second half of section 15 (1), which referred to race, national or ethnic origin, colour, religion, sex, age or mental or physical disability," was unduly restrictive. The Tenant was unwilling to accept that he needed to

ground his claim on an enumerated or analogous ground. Nonetheless, it was evident that he was alleging discrimination on the basis of professional status. Based on this, I proceeded to hear submissions from the Attorney General on equality and professional status as an analogous ground.

11. The Attorney General relied on the Supreme Court of Canada's test in *R. v. Kapp*, [2008 SCC 41](#), [2008] 2 S.C.R., which sets out a two part conjunctive test for determining whether a law violates section 15(1):
 - (1) Does the law create a distinction based on an enumerated or analogous ground? and
 - (2) Does the distinction create a disadvantage by perpetuating prejudice or stereotyping?
12. The Attorney General submitted that professional status had been expressly rejected in multiple court decisions as an analogous ground.
13. The Attorney General drew my attention to *Delisle v. Canada (Deputy Attorney General)*, [1999] 2 SCR 989, [1999 CanLII 649 \(SCC\)](#) ("*Delisle*"), in which the Supreme Court of Canada expressly rejected professional status as an analogous ground. Based on *Delisle*, and other cases that reach the same conclusion, it was submitted that the Tenant's [Charter](#) argument must fail.
14. The Landlord offered no submissions on the constitutional issue, substantially relying on the Attorney General's position.
15. I accept the Attorney General's position that the Tenant's argument with respect to building superintendents is an argument asserting that professional status is an analogous ground under section 15(1).
16. I also accept, based on the undisputed and binding case law provided by the Attorney General, that professional status has been expressly rejected as an analogous ground by the Supreme Court of Canada. Given this finding, there is no need for an assessment of the second part of the *Kapp* test.
17. As the Tenant failed to meet his onus on the [Charter](#) issue, his claim that s.93 of the *RTA* contravenes the [Charter](#) must be dismissed. As the [Charter](#) claim formed the only basis of the objection to the application of the *RTA*, I must conclude that the *RTA* applies to the residential unit in question and proceed with determining the L2 application

The Landlord's Application for Termination of the Tenancy

18. The Landlord's L2 application sought termination of the tenancy based on the Tenant's dismissal as a building superintendent.
19. The Landlord terminated the employment of the Tenant on November 19, 2014. The Tenant had not vacated the superintendent's premises as of the date of the hearing and more than one week had passed since the Tenant's employment was terminated.
20. EM, the owner of the corporate Landlord, testified that he hired the Tenant to act as a part-time building superintendent in late 2012. He needed a live-in superintendent mainly to do repairs in the three-storey, eleven unit building. EM testified that he had never employed a building superintendent before, and that the Tenant was assigned a specific rental unit designated for his position. The rent, paid by work in lieu of payment, was \$675.00. No actual payments, including first and last months' rents, ever changed hands.
21. EM terminated the Tenant's employment based on performance issues on November 19, 2014. He did so by letter. However, the Tenant did not vacate within seven days, and he remains in possession.
22. The Tenant denied being a superintendent; characterizing himself instead as a tenant that performed superintendent functions, particularly as the work was only part-time. The Tenant testified

that he agreed to do ten hours of work per week, including repairs, drywall installation, plumbing and cleaning. He claimed to have paid first and last months' rents when the tenancy began.

23. The Tenant took the position that he was not a terminated superintendent. Instead, he maintained that he was a tenant whose superintendent work was terminated. He also took the position that he was wrongfully dismissed for agreeing to testify for another tenant in another Board proceeding, and so he remains employed as a part-time superintendent.
24. As I stated at the hearing, the employment dispute between the parties is an issue for another forum. Issues of wrongful termination of employment are irrelevant for the ground of eviction (See *Onucki v Fudge* [1990] O.J. No. 2175 (Ont. Div. Ct.), which was applied in *TSL-24989-12 (Re)*, [2012 CanLII 27871](#) (ON LTB)). My role is simply to determine whether the Tenant was employed as a building superintendent, whether his employment was terminated, and whether he has failed to vacate the superintendent's premises.
25. On each of these issues, I am of the view that the Landlord has met its burden of proof. I am satisfied on a balance of probabilities, based on EM's testimony, that the Tenant was employed as a building superintendent, that he continued to occupy the rental unit designated for a building superintendent to the date of the hearing, and that his employment has been terminated.
26. In reaching my conclusions, I note that EM's testimony was clear and relevant to the application. In contrast, the Tenant's testimony was evasive, argumentative, and primarily fueled by anger over his dismissal.
27. Based on my conclusions, I will terminate the tenancy as of April 24, 2015, pursuant to section 94 of the *RTA*. I am mindful of the Tenant's circumstances, including his financial distress and lack of alternate housing that he raised at the hearing. However, given that the tenant's employment ended five months ago, and that he has had ample time to find another residence, it would be unfair to delay termination.
28. The Tenant must pay per diem compensation for occupation of the rental unit since November 27, 2014, which was seven days after termination of his employment. I will also credit him with payments totaling \$503.13, which the Landlord acknowledged receiving from him after his employment ended.
29. The Landlord met its burden of proof on the L2 application. The constitutional challenge by the tenant of s. 93 of the *RTA* fails. The tenancy will be terminated as of April 24, 2015.

For the above reasons, it is ordered that:

- [1] The Tenant's application is amended to reflect that DECI is the Landlord.
- [2] The *RTA* applies to the rental unit, and the Tenant's *Charter* claim is dismissed.
- [3] The L2 application is granted. The tenancy between the Landlord and the Tenant is terminated as of April 24, 2015. The Tenant must move out of the rental unit as of April 24, 2015.
- [4] The Tenant shall pay to the Landlord \$2,647.85, which represents compensation for the use of the unit from November 27, 2014 to April 17, 2015, less the \$503.13 paid to the Landlord by the Tenant.
- [5] The Tenant shall also pay to the Landlord \$22.19 per day for compensation for the use of the unit from April 18, 2015 to the date he moves out of the unit.
- [6] The Tenant shall also pay to the Landlord \$170.00 for the cost of filing the application.
- [7] If the Tenant does not pay the Landlord the full amount owing on or before April 24, 2015, he will start to owe interest. This will be simple interest calculated from April 25, 2015 at 2.00% annually on the balance outstanding.

[8] If the unit is not vacated on or before April 24, 2015, then starting April 25, 2015, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

[9] 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 April 25, 2015.

April 17, 2015

Date Issued

Michael Soo

Member, Landlord and

Tenant Board
Southern-RO
119 King Street West, 6th Floor
Hamilton ON L8P4Y7

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on October 25, 2015 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.