Rpms Property Management Inc v Twiddy, 2015 CanLII 881 (ON SCSM)

Date: 2015-01-19

File number: SC-13-00030234-0000; SC-13-00030234-00D1

Citation: Rpms Property Management Inc v Twiddy, 2015 CanLII 881 (ON SCSM), <https://canlii.ca/t/gfzgh>, retrieved on 2024-04-13

Court File No.: SC-13-00030234-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

RPMS PROPERTY MANAGEMENT INC.

Plaintiff

and

DARRYL TWIDDY

Defendant

AND
DEFENDANT'S CLAIM

Court File No.: SC-13-00030234-00D1

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

DARRYL TWIDDY

Plaintiff by
Defendant's Claim

and

RPMS PROPERTY MANAGEMENT INC

Defendant by
Defendant's Claim

DATE HEARD: December 16, 2014

APPEARING:

Roguska, E (licensed paralegal) for the Plaintiff and the Defendant by Defendant's Claim
Rosen, A. (licensed paralegal) for the Defendant and Plaintiff by Defendant's Claim

REASONS FOR JUDGMENT

Deputy Judge Marr

THE EVIDENCE

There were two witnesses who testified at trial. Mohammad Rana ("Rana") testified as the only witness called by the Plaintiff RPMS Property Management Inc. The Defendant Darryl Twiddy ("Twiddy") testified as the only witness called by the Defendant.

Rana is the property manager for the Plaintiff's property at 10 San Romanoway, Toronto. 10 San Romanoway is a high-rise apartment building of 428 units. Rana produced as evidence a copy of a residential tenancy agreement between the Plaintiff and the Defendant (exhibit 1). A copy of the same residential tenancy agreement was attached to the Small Claims Court Statement of Claim which was served upon Defendant in this action. The residential tenancy agreement has a term of one year, commencing December 15, 2012 and ending December 31, 2013. Pursuant to the residential tenancy agreement the rent for the shorter period between December 15th and December 31, 2012 was $490.81 and thereafter the monthly rent was $895.00.

Rana testified that Twiddy signed the residential tenancy agreement at the Plaintiff's place of business. Rana's evidence was that both the Plaintiff and the Defendant signed the residential tenancy agreement. The date of execution, as written on the Agreement, was November 30, 2012.

The Defendant Twiddy in his testimony acknowledged that he attended the Plaintiff's place of business and signed the residential tenancy agreement (exhibit 1).

Rana testified that Twiddy did not receive a copy of the residential tenancy agreement the day he signed it. Twiddy also testified that he did not receive a copy of the residential tenancy agreement the day he signed it. Rana testified that pursuant to the Plaintiff's standard business practices, it was intended that when Twiddy moved into his apartment, on the scheduled date of December 15, 2012 he would have received the keys to the unit, a copy of the residential tenancy

agreement and other information documents as required by the *Residential Tenancy Act*.

Rana testified the Defendant Twiddy did not receive the residential tenancy agreement and other documents because Twiddy never moved into the unit.

Twiddy testified that prior to the commencement of this small claims court action he never received a copy of the residential tenancy agreement, although he did pay a $1000.00 deposit. Rana confirmed both of these points in his testimony.

Exhibit 5 tendered as an exhibit by the Plaintiff, was a pre-authorized debit form signed by Twiddy for payment of the $895 monthly rent from Twiddy's bank account, commencing January 1, 2013.

The Plaintiff filed exhibit 2, being a handwritten note written by Twiddy dated January 10, 2013 which stated:

> "I, Darryl Twiddy, wish to back out of my lease agreement with RPMS and ask for my deposit back in the amount of one thousand (1000) dollars."

In his testimony Twiddy acknowledged signing the residential tenancy agreement. He testified that he was going to live in the apartment with his girlfriend. His girlfriend was pregnant with his child and there were complications in the birth of the child. The child was born December 18, 2012. After the birth, Twiddy's girlfriend changed her mind about moving into the area where the apartment was located. Twiddy testified that he contacted the Plaintiff about "backing out" of the lease. Twiddy testified that he was asked by the Plaintiff to put his request in writing. As a

result Twiddy prepared and signed a handwritten note (exhibit 2) and provided it to the Plaintiff.

Rana testified about the Plaintiff's efforts to lease the premises to new party once they received exhibit 2, and knew Twiddy was not moving into the apartment. Exhibit 3 are invoices disclosing monies spent to advertise apartments for rent. Exhibit 4 was a new lease entered into by the Plaintiff for the same apartment as the defendant was to lease. The new lease commenced April 6, 2013 and the new rent was $900 per month, $5 more per month than the defendant's lease with the Plaintiff.

The Defendant presented no evidence pointing to any failure of the Plaintiff to reasonably mitigate its damages, nor did the Defendant raise this issue in his pleadings, cross-examinations or closing arguments.

Exhibit 6 was a calculation of the damages claimed by the Plaintiff. The Plaintiff calculates its damages by taking the rent not received of $895 per month between December 15, 2012 and April 1, 2013, and giving the Defendant Twiddy a credit for the $1000.00 deposit paid, and a $2.94 credit for interest on the last month's pre-paid rent, leaving the Plaintiff's claim for a balance owing of $2,319.99.

THE ISSUE

The facts in this case are not in dispute. The Defendant signed a lease, and changed his mind. The Plaintiff leased the premises to a new party once the Defendant advised the Plaintiff he was "backing out" of the Lease. The Plaintiff calculation of damages gives the Defendant a credit for the deposit received, and the Plaintiff claims from the Defendant the shortfall as damages for breach of contract.

The defence is entirely a legal argument. The *Residential Tenancies Act* provides as follows:

Information to be provided by landlord

11. (1) If a tenancy agreement is entered into, the landlord shall provide to the tenant information relating to the rights and responsibilities of landlords and tenants, the role of the Board and how to contact the Board. 2006, c. 17, s. 11 (1).

Form

(2) The information shall be provided to the tenant on or before the date the tenancy begins in a form approved by the Board. 2006, c. 17, s. 11 (2).

Tenancy agreement

Copy of tenancy agreement

12 ... (2) If a tenancy agreement entered into on or after June 17, 1998 is in writing, the landlord shall give a copy of the agreement, signed by the landlord and the tenant, to the tenant within 21 days after the tenant signs it and gives it to the landlord. 2006, c. 17, s. 12 (2).

...Failure to comply

(4) Until a landlord has complied with subsections (1) and (2), or with subsection (3), as the case may be,

(a) the tenant's obligation to pay rent is suspended; and

(b) the landlord shall not require the tenant to pay rent. 2006, c. 17, s. 12 (4).

After compliance

(5) After the landlord has complied with subsections (1) and (2), or with subsection (3), as the case may be, the landlord may require the tenant to pay any rent withheld by the tenant under subsection (4). 2006, c. 1

The Defendant's argument in support of both his defence and the Defendant's claim, is that no rent is due because the Defendant did not receive a copy of the lease (as required by s.12(2) of the *Act)* nor information relating to the rights and responsibilities of landlords and tenants, the role of the Board and how to contact the Board (as required by s.11(1) of the *Act)*. As a consequence of these statutory breaches, the Defendant argues (to quote from his Statement of Defence) that the residential tenancy agreement is "null and void, and the deposit paid to the Plaintiff should be immediately returned to the Defendant."

Neither side provided me with any case law on these issues. My research did not reveal any cases arising in substantially similar factual circumstances. However, I do set forth below principles from two cases that offer me some guidance.

In *Houle* v *Hayes*,[1] the landlord used an alias when signing the lease with the tenants in an effort to avoid accounting for assets in a separate matrimonial dispute. The tenants argued that the alias meant that the name and address provisions in s.12(1)[2] had not been met, and relied on s.12(4) of the *Residential Tenancies Act* to suspend payment of rent. On the appeal Lauwers J. wrote:

> **12** The purpose for section 12 has clearly been met. There is no doubt that Mr. Houle knows that Mr. Hayes owns the property and is the person with whom he has been dealing. The relevance of the identity issue is perhaps a legal issue; it is the sole possible legal issue in this appeal. But its importance dissolves on the facts.
>
> 13 Assuming that the use of an alias means that there was technical noncompliance with section 12, it could easily be remedied by having Mr. Hayes deliver another copy of the

residential rental agreement amended by the substitution of the name, "Edward Hayes" for that of "David Jons". He should deliver such an amended copy forthwith, using the copy that Mr. Houle has signed already. Even without the order of the Landlord and Tenant Board, Mr. Houle would then immediately be liable under section 12(5) of the *RTA* for all rent owing. The argument advanced by Mr. Houle is therefore a mere technicality and has no effect on his ultimate liability. See *Nicholls v. Tepperman*, [2008] O.J. No. 4123 (Div. Ct.).

As in *Houle,* the Defendant Twiddy is advancing an argument based on technical non-compliance with the statute, which in my view should have "no effect on his ultimate liability." By the time the case came before me one aspect of the non-compliance had been eliminated because the Defendant had a copy of the actual residential tenancy agreement as signed by both the Plaintiff and Defendant, since the residential tenancy agreement was attached to the Small Claims Court Statement of Claim served upon the Defendant.

In *Daniel Leather*[3] the Ontario Court of Appeal set forth the principles for the modern approach to statutory interpretation, which must guide me in this case:

[82] [A statute] ... should be interpreted by applying Professor Driedger's "modern approach" to statutory interpretation, the approach consistently preferred by the Supreme Court of Canada:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[83] This modern approach has two aspects. One aspect is that context matters. The court must interpret s. 130, not as a stand-alone provision, but in its total context. In Bell ExpressVu at para. 27, Iacobucci J. stressed the importance of context in interpreting the words of a statute:

> The preferred approach recognizes the important role that context must inevitably play when a court construes the written words of a statute: as [page340] Professor John Willis incisively noted in his seminal article "Statute Interpretation in a Nutshell" (1938), 16 Can. Bar Rev. 1 at p. 6, "words, like people, take their colour from their surroundings."

[85] The second aspect of this modern approach imports the sound advice of Professor Ruth Sullivan, who has edited the third and fourth editions of Driedger. In interpreting a statutory provision, the court should take account of all relevant and admissible indicators of legislative meaning. After taking these indicators into account, the court should adopt an interpretation that complies with the legislative text, promotes the legislative purpose, and produces a reasonable and sensible meaning: see Ruth Sullivan, Sullivan and Driedger on the Construction of Statutes, 4th ed. (Toronto: Butterworths, 2002) at 1-3 ("Sullivan and Driedger") See also David Polowin Real Estate Ltd. v. Dominion of Canada General Insurance Co.; Segnitz v. Royal & SunAlliance Insurance Co. of Canada (2005), 2005 CanLII 21093 (ON CA), 76 O.R. (3d) 161, [2005] O.J. No. 2436, 255 D.L.R. (4th) 633 (C.A.).

The legislative purpose of the statutory provisions relied upon by the Defendant is to protect consumers' rights by providing tenants with information about the landlord tenant relationship. When I read the whole scheme of the act I conclude that the Ontario legislature has determined that a tenant should be given the lease and the other

documents specified in the *Residential Tenancies Act*, in order for that tenant to understand his or her rights. This is important so that a tenant is armed with the important information and knowledge as he or she navigates their own going relationship with their landlord during the course of a tenancy.

On the facts of the case before me there is no evidence that the Defendant ever asked for the lease or information documents prior to the litigation. The issue was only raised after the Defendant decided he and his girlfriend did not want to live at the Plaintiff's property and the Defendant was then sued for damages. The issue was raised for the first time in the Statement of Defence.

If the Defendant had moved in as originally agreed, and did not receive the lease and information documents the statute entitled him to, and for that reason refused to pay the monthly rent that would be a different case than the one before me.

I have no evidence to the contrary, and no reason to doubt Rana's testimony that the Defendant would have received the lease and the information documents as required by the *Residential Tenancies Act* with the keys if he had moved in December 15th. The lease was signed November 30, 2012 (see last page of exhibit 1) and if the Defendant had moved in on December 15th he would have according to Rana's testimony, which was not disputed and which I accept, received the lease on December 15th, and then the Plaintiff would have been compliance with the 21 day requirement of s.12(2) Residential *Tenancies Act*.

In deciding this case, I have considered what I concluded was the legislative purpose of the statutory sections relied upon by the Defendant (as I discussed above). In accordance with that purpose I do not interpret the statute as allowing a tenant to completely escape liability forever if he does not receive the documents simply because he did not move in, and when in any event he did have the lease document by the time the issue of his liability was being litigated in the small claims court.

If Twiddy had received all the required documents the day he signed the residential tenancy agreement, the parties would be in exactly the same position as they were by the date of trial: either way Twiddy would have been in the situation of not having moved in because of a decision he and not the Plaintiff made, either way Twiddy would have not paid any rent (beyond the deposit) and either way the Plaintiff would have suffered damages because of Twiddy's breach of contract. Twiddy did not testify that the breach of the statute in any way influenced his decision not to move in, or influenced his decision to not honour his agreement to pay rent as due. There was no evidence before me that if the Plaintiff had provided the lease and information documents this would have altered Twiddy's actions, or changed any of the events which took place leading to the Plaintiff's losses.

In my view, the legislature could not have intended in drafting the *Residential Tenancies Act* the unreasonable result that would arise in these circumstances if Twiddy had no liability for his breach of contract. The legislative scheme is a carefully crafted balance between protecting the landlord's right to obtain rent, and ensuring a tenant is treated fairly and knows his or her rights and responsibilities. The *Act* was designed to ensure that the tenant receives the documents necessary to know his

rights, but it was not intended that a tenant who never moves in and breaches a lease contract would escape liability for damages, and leave a landlord forever without compensation for this breach of contract.

As I sit here today, the Defendant has the lease. The Defendant has no need for the tenant information documents with respect to informing him of his rights in his relationship with the Plaintiff, because the Defendant ended the legal relationship with the Plaintiff, and that information is accordingly of no value to Twiddy because he has no ongoing relationship with his landlord the Plaintiff. To allow Twiddy in such circumstances to break the contract without bearing any responsibility for the losses he caused, is not in my view the "reasonable and sensible" result that the Legislature of Ontario intended.

Accordingly, I find that the Defendant Twiddy is liable to the Plaintiff for damages for breach of contract.

DAMAGES

With respect to the quantum of damages, the Plaintiff claims it is entitled to payment by the Defendant Twiddy of its losses, in the sum of $2,319.99.

The Plaintiff's calculation of damages misses a couple of points. The new lease entered into for the unit (exhibit 4) provides for rent of $787.50 for the shorten rental period between April 6, and April 30, 2013. The Plaintiff's calculation of damages (exhibit 6) shows the deposit was applied so $147.12 was paid by the Defendant to the Plaintiff for first 5 days of April. So this means that the Plaintiff received $934.62 ($787.50 plus $147.12) for April 2013 rent which is $39.62 more than the $895 rent due by the defendant under the lease (exhibit

1). Accordingly the Plaintiff's claim for damages needs to be reduced by $39.62, or the Plaintiff would be overcompensated.

Similarly the new lease entered into for the unit (exhibit 4) provides for monthly rent commencing May 1st, 2013 of $900.00, which means that for the remaining months in the lease agreement between the Plaintiff and Defendant (exhibit 1) the Plaintiff receives and extra $5 per month. So for the months of May, June, July, August, September, October, November and December, 2013 (8 months) the Plaintiff received an extra $40.00 of rent (8 months at $5 per month). Accordingly the Plaintiff's claim for damages needs to be reduced by $40.00, or the Plaintiff would be overcompensated.

Except for these two credits for the extra rent received, the Plaintiff has proven that it suffered a loss for the rent not paid while the unit was not leased between December 15th, 2012 and April 5th, 2013.

Accordingly the Plaintiff has suffered a loss of the amount claimed of $2,319.99 less the $40.00 and the $39.62 for a total loss of $2,240.37

Accordingly, I order that the Defendant Twiddy shall pay to the Plaintiff $2,240.37.

DEFENDANT'S CLAIM

For the reasons I have already set out above, the Defendant is not entitled to the return of his deposit nor is he entitled to any damages. Accordingly, the Defendant's claim is dismissed.

COSTS AND INTEREST

If the parties wish to make submissions on costs and prejudgment and post-judgment interest, they should serve written submissions upon each other, and file the submissions with the Court (along with proof of service) in accordance with the following schedule:

(a) on or before January 31st , 2015 the Plaintiff's paralegal shall deliver to the Court, and to the Defendant's paralegal written submissions with respect to any request for interest and costs. Submissions shall be filed with the Court in the usual manner, but shall also be sent to me by email to smarr@lmklawyers.com;

(b) on or before February 10th, 2015, the Defendant's paralegal shall deliver to the Court, and to the Plaintiff's paralegal responding written submissions. Submissions shall be filed with the Court in the usual manner, but shall also be sent to me by email to smarr@lmklawyers.com;

(c) the submissions on a claim for interest should include the date from when pre-judgment interest is calculated, the applicable rate under the *Courts of Justice Act*, and the calculation of the total amount of pre-judgment interest.

In making submissions on costs, the parties should advise if any settlement offers were made which should be taken into account in fixing costs.

Released: January 19, 2015. _____

Samuel S. Marr, Deputy Judge

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[1] 2010 ONSC 924 (CanLII), [2010] O.J. No. 633

[2] S.12(1) of the *Act* provides:

12. (1) Every written tenancy agreement entered into on or after June 17, 1998 shall set out the legal name and address of the landlord to be used for the purpose of giving notices or other documents under this Act.

[3] 2005 CanLII 46630 (ON CA), 77 O.R. (3d) 321