

2008 CarswellOnt 638
Ontario Superior Court of Justice (Divisional Court)

MacDonald v. Richard

2008 CarswellOnt 638, [2008] O.J. No. 6076, 164 A.C.W.S. (3d) 516

**James Ricky MacDonald, Plaintiff/Appellant and Tanya Richard and
The Ontario Landlord and Tenant Board, Defendant/Respondents**

Heeney J., Molloy J., Stong J.

Judgment: February 7, 2008

Docket: Ottawa 07-DV-1332

Counsel: None given

Subject: Property

Headnote

Real property --- Landlord and tenant — Residential tenancies — Definitions

Real property --- Landlord and tenant — Residential tenancies — Judicial review of decisions

Per Curiam:

1 For purposes of this decision we will accept, without specifically deciding, that the standard of correctness will apply, as that is the standard more advantageous to the appellant. We are of the view that the Review Decision by Member Ellacott on June 19, 2007 that "temporary full-time occupancy for four months does not constitute the purpose of residential occupation as contemplated by the *Residential Tenancies Act, 2006*" is correct. That conclusion is supported by case law directly on point that has held that a landlord is not entitled to evict an existing tenant in order to provide accommodation for his daughter on summer break from university: *Wiazek v. Armstrong*, [1994] O.J. No. 2737 (Ont. Gen. Div.) . See also, *McDonald v Smith*, [1993] O.J. No. 1680 (Ont. Gen. Div.) . It is also an interpretation that is consistent with the intention of the legislation, which is remedial in nature and directed towards the protection of tenants, including protecting the security of tenure for tenants. Accordingly, this appeal is dismissed. Costs fixed at \$ 1000.00 payable by the appellant.

2 Approval by draft order as to form and content is dispensed with. Counsel for respondent may simply submit draft order.