

1979 CarswellOnt 2708  
Ontario Superior Court of Justice (Divisional Court)

Oshawa Housing Authority and Maule, Re

1979 CarswellOnt 2708, [1979] 1 A.C.W.S. 318

**IN THE MATTER OF an Appeal from the County Court of the Judicial District of Durham; AND IN THE MATTER OF The Landlord and Tenant Act, R.S.O. 1970, Chapter 236, Section 106, and amendments thereto; AND IN THE MATTER OF the tenancy of JOHN MAULE and MARGARET MAULE, of 1481 Ritson Road South, Unit 23 in the City of Oshawa, in the Regional Municipality of Durham BETWEEN: OSHAWA HOUSING AUTHORITY Landlord (Respondent) and - JOHN MAULE and MARGARET MAULE Tenants (Appellants)**

Reid, Hartt and Grange, JJ

Judgment: March 12, 1979

Docket: None given.

Counsel: G. Elliott, for the tenants, appellants

A. W. Furlong, for the landlord, respondent

Subject: Property

**GRANGE, J. (ORALLY):**

1 This is an appeal from the order of His Honour Judge Shearer whereby he ordered that the tenants be evicted pursuant to a notice served by the landlord. Reason given for the order was that the tenants had kept a fence on the premises which he had erected for the purpose of confining a dog owned by him.

2 The lease between the landlord and tenants contained a clause that no pets were allowed, and a notice was given by the landlord to the tenants pursuant to *The Landlord and Tenant Act*, R.S.O. 1970, c. 236, as amended, s. 103f, which I will refer to later, upon a form setting out as the reason for the notice that:

The tenant or his guests have substantially interfered with the reasonable enjoyment of the premises by the landlord or the other tenants.

The particulars were "keeping of pet at above address; namely 1 dog". The tenants were then required by the form, among other things, to permanently cease and desist from the activities which are set out under the particulars.

3 The evidence before the trial judge contained no specific complaints of the activities of the dog maintained by the tenants. There was some evidence that a fence that had been erected by the tenants for the purpose of confining the dog from time to time did cause some difficulty particularly for the landlord in maintaining the premises.

4 Section 98(1), contained in Part IV of *The Landlord and Tenant Act*, provides as follows:

98.-(1) Except as expressly otherwise provided in this Act, no tenancy of residential premises whether weekly, monthly, year to year or for any term certain, shall be terminated except upon notice by the landlord or the tenant given to the other in accordance with the provisions of this Part.

5 It is common ground that the only justification for the termination was that specified in the notice, namely s. 103f(1)(c) which reads:

103f.-(1). .. where,

...

(c) the conduct of the tenant or a person permitted in the residential premises by him is such that it substantially interferes with the reasonable enjoyment of the premises for all usual purposes by the landlord or the other tenants;

...

The landlord may serve on the tenant a notice of termination of the tenancy agreement to be effective not earlier than the twentieth day after the notice is given, specifying the act or acts complained of, and requiring the tenant, with seven days.. .. to cease and desist from the activities in the cases mentioned in clause c. . .

6 We are all of the opinion that the appeal herein must succeed. We have a certain sympathy with the position of the landlord who wished to maintain equality among the tenants, but the Act limits the rights of the landlord to evict tenants, and in the case at bar, the only relevant right is that which I have quoted under s. 103f(1)(c). It was not the dog that interfered with the reasonable enjoyment of the premises by the landlord or the other tenants. There was no evidence of that at all. It was the fence that was erected by the tenant that caused the interference and the notice made no mention of the fence, and provided no opportunity to the tenant to correct the situation as it should have under the provisions of s. 103f. It is true that without the dog there would have been no fence but, in my opinion, it is neither within the spirit nor the letter of the statute to fail to specify the real cause of complaint and give the tenant a chance to rectify it. It does not matter to the disposition of this appeal, but we are informed that the fence has now been removed.

7 It is, therefore, our opinion that the section was not complied with, and accordingly, the landlord was not entitled to evict the tenant and the learned judge should have so ordered. The appeal should be allowed and the order in appeal set aside.

8 In all the circumstances, we think there should be no costs either here or on the original application.