

2001 CarswellOnt 4890
Ontario Superior Court of Justice (Divisional Court)

Hassan v. Niagara Housing Authority

2001 CarswellOnt 4890, [2000] O.J. No. 5650, 48 R.P.R. (3d) 297

Abdisamad Hassan (Appellant) and Niagara Housing Authority (Respondent)

O'Leary, Jennings, Epstein JJ.

Heard: February 5, 2001

Oral reasons: February 5, 2001

Docket: Hamilton 99-002412-DV

Counsel: *J. Gillespie*, for Appellant
M. Von Anrep, for Respondent

Subject: Property

Related Abridgment Classifications

Real property

V Landlord and tenant

V.4 Premises

V.4.c Quiet enjoyment

V.4.c.ii Breach of covenant

Headnote

Landlord and tenant --- Premises — Quiet enjoyment — Breach of covenant

Tenant and his family suffered repeated harassment by neighbouring tenant's children, which included verbal and physical abuse and damage to tenant's property — Harassment increased even after tenant informed landlord of harassment through verbal and written complaints — Tenant's application to Ontario Rental Housing Tribunal for order determining landlord had substantially interfered with reasonable enjoyment of rented premises by failing to control harassment was dismissed — Tribunal held there was no evidence showing landlord had substantially interfered with tenant's reasonable enjoyment of rental unit as there was no mens rea on part of landlord to do so — Tenant appealed — Appeal allowed — Landlord had legal responsibility to provide tenant with quiet enjoyment and to take reasonable steps within reasonable length of time to correct intrusion of neighbouring tenant to ensure tenant had quiet enjoyment of rental unit — Writing threatening letters and holding meetings with offending tenant was not enough if harassment only continued and worsened.

Table of Authorities

Cases considered by O'Leary J.:

Lush v. Dell Holdings Ltd. (September 3, 1986), Doc. M135029/86 (Ont. Dist. Ct.) — considered

Statutes considered:

Commercial Tenancies Act, R.S.O. 1990, c. L.7

Generally — referred to

Tenant Protection Act, 1997, S.O. 1997, c. 24

Generally — referred to

s. 26 — considered

APPEAL by tenant from decision dismissing tenant's application for order that landlord had substantially interfered with reasonable enjoyment of rented premises.

O'Leary J. (orally):

1 This is an appeal from the decision of the Ontario Rental Housing Tribunal, dismissing the tenant's application for an order determining that the landlord by failing to control the harassment of his family by a neighbouring tenant had substantially interfered with his reasonable enjoyment of the rented premises.

2 The landlord does not dispute that the tenant suffered harassment by the children of a neighbouring tenant from the time he moved into the premises in August of 1996 until the hearing before the Ontario Rental Housing Tribunal on September 1, 1999.

3 The harassment suffered by the tenant can be summarized as follows: swearing, verbal abuse against all the members of the tenant's family, pushing of tenant's small children by the neighbour's older children, throwing of eggs and other objects against the tenant's window, shining of a flashlight in the tenant's window, knocking on tenant's door by neighbour's children, use of tenant's driveway by neighbour's twenty year old son and his friends, scratching, kicking, and breaking a window of tenant's car, intimidation and threats to tenant's children by older sons of neighbour to the point of preventing their exit from their home, spraying of water onto the tenant's wife when she responded to the knock on her door by the neighbour's children, blockage of tenant's driveway by neighbour's children, sitting of those children on tenant's car, revving of a motorcycle in front of tenant's front lower window to disturb the tenant and his family, urinating by neighbour's children on tenant's basement windows and on his house.

4 Even before the tenant moved into the premises the troublesome tenant had been given a Notice of Termination by the landlord because of the inappropriate behaviour of her children. In October 1997 a window in the tenant's car was broken. In early 1998 the neighbour's children were seen scratching the tenant's car, and assaulting and terrorizing the tenant's children. On May 31, 1998 a child of the neighbour urinated in a bottle and threw the contents at the tenant's wife. When this incident was reported to the landlord's property manager a landlord representative met with the tenant and his wife on June 2, 1998, but concluded that while the tenant's family were being tormented there was no evidence the torment was racially motivated.

5 After the neighbour failed to keep two appointments, two representatives of the landlord met with the neighbour on June 23, 1998, told her her children's behaviour was inappropriate, that they were interfering with the reasonable enjoyment of the other tenants, that she could get and where she could get assistance with behavioural, parenting skills, that her children's behaviour was putting her tenancy in jeopardy, and that she would be evicted if the behaviour did not stop.

6 The harassment stopped for awhile but it resumed and was in full swing again by August 24, 1998, when a six year old child of the neighbour pushed the head of a three year old child of tenant into the pavement, scraping his head and frightening him. The tenant spoke to a landlord's representative who agreed to speak again to the neighbour, but suggested that the tenant might move.

7 There is nothing in the record to indicate the representative did speak to the neighbour as promised or that the landlord took any steps to control the neighbour and her children.

8 Harassment continued through the rest of 1998, including the leaving of threatening and insulting letters in the tenant's mailbox. The tenant sent a copy of one of these letters to the landlord.

9 On January 26, 1999 the tenant sent a letter to the landlord describing further incidents of harassment, assault, and inappropriate notes. On February 10, 1999 the tenant and his wife met with two representatives of the landlord, but were told it would be difficult to prove the complaints about the neighbour's children, were, in fact, harassment. While one of the representatives of the landlord agreed to talk to the neighbour there is nothing in the record that shows there was any further contact with the neighbour at that time.

10 On March 4, 1999 the landlord was informed by two other tenants of harassment by the children of the same troublesome tenant. There is no indication of action by the landlord against the troublesome tenant because of this further information.

11 On March 25, 1999 one of the neighbour's children threatened to kill the son of another tenant (not the appellant) and his friend. When the mother went to speak to the troublesome tenant, one of her twenty year old sons grabbed her by the neck and held her until a neighbour appeared.

12 Further written complaints by tenants were received by the landlord on May 19, 1999. On May 20, 1999 the landlord prepared a Notice to Terminate the tenancy of the troublesome tenant, but that notice was not served until June 3, 1999.

13 Trouble by the neighbour's children only increased thereafter. The neighbour was still in her premises on September 1, 1999, and, indeed, was not moved by the landlord to another location until November 15, 1999.

14 Section 26 of the *Tenant Protection Act, 1997*, S.O. 1997, c. 24, reads:

A landlord shall not at any time during a tenant's occupancy of a rental unit . . . substantially interfere with the reasonable enjoyment of the rental unit

15 The member of the tribunal who heard the tenant's application on September 1, 1999 stated in reasons dated September 8, 1999 that in order to find that the landlord had substantially interfered with the reasonable enjoyment of the rental unit, he would have to find that the landlord itself and not just another tenant had substantially interfered with the tenant's reasonable enjoyment of the rental unit stating:

In my view, that means that the landlord or its employees or agents must either commit an offence or have the *mens rea* of the activity. I am not convinced that the actions of the other tenant can be imputed to the landlord.

16 It is not that the other tenant's actions are imputed to the landlord, but, rather, the landlord's legal responsibility to provide the tenant with quiet enjoyment that gives rise to the responsibility on the landlord to take reasonable steps to correct the intrusion of the neighbouring tenant on the tenant's right to quiet enjoyment.

17 As was stated by Judge Conant in *Lush v. Dell Holdings Ltd.* (September 3, 1986), Doc. M135029/86 (Ont. Dist. Ct.), 1986 District Court Toronto, at p. 4:

From time immemorial in the British judicial system the landlord must provide quiet enjoyment . . . the tenants have almost no method of recourse . . . There is really nothing . . . that the tenant . . . can do but get the landlord [to take action against the tenant].

18 As under the old *Landlord and Tenant Act* so under the new *Tenant Protection Act*, the landlord has the positive obligation to provide the tenant with quiet enjoyment and take the reasonably necessary action against any tenant that denies a neighbouring tenant quiet enjoyment of his premises.

19 On the evidence before it, there was no evidence that justifies the finding of the tribunal that the landlord took reasonable steps within a reasonable length of time to restore to the tenant the quiet enjoyment to which he was entitled.

20 Writing threatening letters to the offending tenant, holding meetings with the offenders and offended, is not enough if the harassment continues and, indeed, increases. The landlord had to do something effective, if necessary make application to terminate the tenancy of the offender.

21 In light of the harassment the tenant was subjected to in this case, much of it probably racial in origin, but whether racial or not, the landlord was under an obligation to act quickly, that is within weeks, not months or years to effectively

correct the substantial interference with his reasonable enjoyment of his premises caused by the acts of the children of his neighbouring tenant.

22 Because the reasons of the tribunal of September 8, 1999 are somewhat unclear on the point, it must be stated that on the evidence before it the tribunal had to find that from early in his tenancy the tenant suffered harassment that substantially interfered with his reasonable enjoyment of the rental premises.

23 For the reasons above-stated and contrary to the words of the tribunal of November 22, 1999, sitting in review of the decision of September 8, 1999, the earlier tribunal was not entitled on the evidence before it to find that the landlord had acted with reasonable diligence to correct the harassment the tenant was subjected to.

24 The earlier tribunal did make a palpable and overriding error for on the evidence the landlord failed to take reasonable steps to bring the harassment to an end.

25 In our view, at the latest the landlord was obliged by February 1, 1999 to take immediate steps to terminate the tenancy of the neighbour.

26 As to remedy, we award the tenant one-half of the rent paid by him for the months of February to June inclusive, which amount we understand to be \$80.00; together with costs of \$500.00 inclusive of disbursements.

Appeal allowed.