

1993 CarswellOnt 4222
Ontario Court of Justice (General Division)

McDonald v. Smith

1993 CarswellOnt 4222, [1993] O.J. No. 1680

**Caroline McDonald, (Applicant/Landlord) and Ross Smith,
Rob Zeidler, and John Green, (Respondent/Tenants)**

Cosgrove J.

Judgment: January 18, 1993
Docket: Brockville L&T 1440/92

Counsel: Ms Barbara Sharpe, for Applicant / Landlord
Robert Zeidler, Esq., for Respondent / Tenants

Subject: Property

Headnote

Landlord and tenant

Cosgrove OCJ(GD), Orally:

1 Well then, the case is dismissed.

2 The applicant does not, in my view, wish the premises for occupancy; and in accordance with the definition of occupancy under the Act, which is normal residency; that is, use and control of the property for residential purposes as commonly understood as a main residence.

3 It would appear from the facts that the landlord wants to use the property occasionally when she travels this way when she is working, or occasionally she may want to make the property available to her friends or to her family, or she may want to visit it on weekend.

4 On the evidence, I find that this is not intended to be the main residence of the landlord; and for those reasons the case is dismissed.

5 I should say that, at this time, the tenant indicated that he agreed to all of the terms of the lease, except for a reference to pets. In other words, he has agreed to conditions (1) to (8) on Exhibit Number Two, with the exception of No. (6), so that he has agreed with No. (2), which says...

6 "The lessee agrees to move within 60 days of notice of sale of the property, and the tenant..." I am indicating to Counsel that if your client, as she has indicated, has the property up for sale, the tenant has agreed that he will move within 60 days of notice of the sale of the property.

7 ...

THE COURT: The question of costs? Mr. Zeidler, have you spent any money on court documents in this file?

MR. ZEIDLER: Nothing substantial, Your Honour.

THE COURT: Yes.

MS. SHARPE: No.

THE COURT: There will be no order as to costs.

MR. ZEIDLER: Your Honour?

THE COURT: Yes?

MR. ZEIDLER: May I ask a question? I... am wondering about where we -- where this leaves me, because when you declared the Case 1440, sine die, I assumed....

THE COURT: Yes.

MR. ZEIDLER:that it was over. Since then, I've had two more notices of evictions and an application for eviction. What -- where do we go from here, because the problem is, is this going to lead to Case No. 1495?

THE COURT: Well, those cases are still outstanding. Presumably, they have to be heard on their merits. The court record says that they can be returned to the court on seven days' notice, but I would indicate to Counsel that if those cases are returned and if the case is found without merit, the landlord will be penalized in costs, and it will not be worth her while to pursue cases that are without merit, but I cannot prevent somebody from coming to court. All I can do is assess costs against them in an attempt to dissuade them from doing something that is frivolous.

MR. ZEIDLER: Thank you, Your Honour.

THE COURT: And in view of the history of these matters before the court, these matters will have a short hearing in the future.

MS. SHARPE: Thank you.

THE COURT: Do you understand what I am saying?

MS. SHARPE: Yes, Your Honour.

THE COURT: My message is clear. Unless there is a legitimate basis of complaint between the parties, they ought not to clutter up the court's time.

MS. SHARPE: Yes, Your Honour.

8 *COURT ADJOURNED (1:00 P.M.)*