

1948 CarswellOnt 219
Ontario Court of Appeal

Stekel v. Wasylyshyn

1948 CarswellOnt 219, [1948] O.W.N. 464

Stekel et al. v. Wasylyshyn

Robertson C.J.O. and Laidlaw and Roach JJ.A.

Judgment: April 21, 1948

Counsel: *Mannie Brown*, for the landlords, appellants.

Walter Humeniuk, for the tenant, respondent.

Subject: Property

Headnote

Landlord and Tenant --- Forfeiture and re-entry — Practice and procedure — Notice

Landlord and Tenant — Recovery of Possession by Landlord — Breach of Covenant by Tenant — Necessity for Notice by Landlord — Contents of Notice — The Landlord and Tenant Act, R.S.O. 1937, c. 219, s. 18(2) — Order No. 315, The Wartime Prices and Trade Board, s. 13(b).

An appeal by landlords from an order of Honeywell Co. Ct. J., of the County Court of the County of York, dismissing an application for possession.

The judgment of the Court was delivered by *Robertson J.C.O.* [after stating the nature of the appeal]:

1 The premises in dispute are commercial accommodation within the wartime regulations, and are held by the tenant on a yearly lease, the term of which has not expired by lapse of time. The landlords claim that the tenant has committed a breach of a covenant in the lease, by which he agreed not to assign or sublet the demised premises, or any part thereof, or to make any alterations, without the written consent of the owner or agent. They claim that this breach of covenant entitled them, under s. 13(b) of Order No. 315 of The Wartime Prices and Trade Board ([1945] 3 C.W.O.R. 401), as amended, to recover possession of the accommodation in accordance with the law of the Province.

2 Numerous objections are made on behalf of the tenant, but I think it is necessary to refer to only one of them.

3 According to the terms of s. 13 the landlords were required, before exercising their rights under that section by reason of the breach of the provisions of the lease, to inform the tenant in writing of the nature of the alleged breach. The only notice that the landlords gave the tenant before instituting proceedings for possession is a notice in writing, which reads as follows:

We, Issy Stekel and Bertha Stekel, hereby give you notice that you have broken and contravened the following covenants and conditions contained in the lease to you dated the first day of November, 1940, of premises known as 691 Queen Street West, Toronto,

I also agree not to assign or sublet the same or any part thereof or make any alterations, without the written consent of the owner or agent.

By reason of the breaches aforesaid, the said lease is hereby forfeited.

4 It is provided by subs. 2 of s. 18 of The Landlord and Tenant Act, R.S.O. 1937, c. 219, as follows:

A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease other than a proviso in respect of the payment of rent, shall not be enforceable, by action, entry or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of, and if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor for the breach.

5 Even assuming that the landlords had a right of re-entry or forfeiture under any proviso or stipulation in the lease — a matter that is not conceded, for the lease contains no provision for forfeiture or re-entry on non-performance of a covenant — the landlords are prevented by s. 18 of The Landlord and Tenant Act from enforcing such a right unless and until notice as provided by the statute has been given. Section 13(b) of Order No. 315 does not even make the law of the Province available to the landlords for the purpose of recovering possession, until the notice in writing that it requires is given. The landlords, therefore, were not proceeding, nor entitled to proceed, in accordance with the law of the Province in assuming to forfeit the lease without giving any prior notice whatsoever.

6 The appeal will, therefore, be dismissed with costs.

Appeal dismissed with costs.