1993 CarswellOnt 1140
Ontario Court of Justice (General Division) [Divisional Court]

Grenadier (Tenants of) v. We-Care Retirement Homes of Canada Ltd.

1993 CarswellOnt 1140, [1993] O.J. No. 1550, 41 A.C.W.S. (3d) 1056, 63 O.A.C. 387

All Residential Tenants of the Grenadier as Set Out in Schedule "A" to the Notice of Appeal, Tenants (Respondents in Appeal) v. We-Care Retirement Homes of Canada Limited and 582958 Ontario Limited, Landlords (Appelants); Keseph Investments Inc. and Central Guaranty Trust Company, Intervenors

Residential Tenants of the Grenadier v. We-Care Retirement Homes of Canada Ltd.

McMurtry A.C.J.O.C., D. Lane, Dunnet JJ.

Oral reasons: June 16, 1993
Docket: Doc. 717/91

Counsel: *Larry Taman, Judith Wahl*, and *George Monticone*, for the Tenants (Respondents in Appeal).
Ronald Manes and *David Golden*, for the Landlords (Appellants).
Thomas Dunn, for the Intervenor, Keseph Investments Inc.
Richard Anka and *James Bussin*, for the Intervenor, Central Guaranty Trust Company.

Subject: Property

Headnote

Landlord and Tenant --- Residential tenancies — Rent — Obligation to pay
Exemptions — Interpretation — Residential Rent Regulation Act, 1986, S.O. 1986, c. 63, s. 4(1)(e).
Appellants appealed from a decision of the Rent Review Hearings Board, which found that their facility was subject to the Act. They argued that the Board erred in formulating the test as to the meaning of the words "for the purpose of receiving care" in the exemption under s. 4(1)(e) of the Act. The Board in its reasons adopted a test of whether the facility was "primarily" housing or "primarily" care, although the word "primarily" did not appear in the statutory language. Held, the appeal was dismissed. The Legislature was taken to have intended that the receipt of care be more than merely incidental to occupancy of the premises. Given the remedial nature of the legislation, the language of the whole clause, the burden on one who sought to invoke an exemption, the opportunities for abuse opened up by a lesser standard and the use of the words "the purpose" in the section, it was the Legislature's intent to exempt accommodation only where the enumerated purpose was the primary reason why the occupant was occupying that particular accommodation.

D. Lane J. **(Orally):**

1 This appeal is from a decision of the Rent Review Hearings Board finding that the appellants' facility is subject to the *Residential Rent Regulation Act*, 1986. The Board's decision reversed a finding by the Minister of Housing that the facility was exempt under s.4(1) (e) of the Act as "living accommodation occupied by a person for penal, correctional, rehabilitative or therapeutic purposes or for the purpose of receiving care."

2 The key words of the statutory exemption in question are "for the purpose of receiving care". It is said that the Board erred in formulating the test as to the meaning of these words. At one point in its reasons, the Board asked whether this building was for the "sole" purpose of care, but that language did not emerge as the test actually adopted. The Board, in fact, adopted a test of whether the facility was "primarily" housing or "primarily" care in paragraph 204 of its Reasons. In paragraph 205, the Board spoke of the intent of the legislators to exempt from rent review those classes of building in which accommodation was a secondary purpose. Counsel for the appellants in this court were critical of this test. It was argued that if the legislature

had meant "primarily for the purpose of receiving care", it would have said so but did not. It is true that the word "primarily" does not appear in the statutory language, but it is surely not the case that any receipt of care, however insignificant in amount and however far removed in nature from medical or nursing care, can take premises out of rent review. To hold this would create a vast opportunity for evasion of rent review. The legislature must be taken to have intended that the receipt of care be more than merely incidental to occupancy of the premises. This view is reinforced by the remainder of the clause in which the key language is found. None of the other classes of accommodation are classes where the non-accommodation component is merely incidental to the accommodation component. This language is an exemption from a remedial statute and this fact must inform the Court's approach. Bearing this approach in mind, in my view, the plain meaning of the language is that, in every case, penal, correctional, rehabilitative and therapeutic, referred to in the section, the enumerated purpose must be more than merely incidental to occupation. Indeed, in my view, the language leads to the conclusion that it must be the primary purpose to qualify. There is no reason to differentiate the last phrase of the subsection from the preceding language by a finding for example that, whereas occupation for therapeutic purposes means primarily for therapeutic purposes, occupation for the purpose of receiving care means occupation primarily for accommodation, but incidentally to receive care. I realize that this view is contrary to the view of Jennings J. in *Keith Whitney Homes Society v. Payne* (1992), 90 O.R. (3rd) 186 that it was sufficient for the accommodation to be occupied for one of the listed purposes and not "primarily" for that purpose.

3 With great respect, and recognizing that the matter is by no means beyond doubt, I have concluded that, given the remedial nature of this legislation, the language of the whole clause, the burden on one who seeks to invoke an exemption, the opportunities for abuse opened up by a lesser standard and the use of the words "*the purpose*" (emphasis added) in the section, it was the legislature's intent to exempt accommodation only where the enumerated purpose is the primary reason why the occupant is occupying that particular accommodation.

4 I note, also, that the effect of this exemption, if interpreted as the appellants here contended, would be to establish a class of accommodation, inevitably catering primarily to the elderly, in which neither cost nor quality would be regulated. Given the complex statutory framework establishing Ontario's regime for the care of the elderly, this result would be an anomalous one.

5 For these reasons, the Board has, in my view, adopted the correct test when it asked itself whether the "accommodation with care" was primarily housing or primarily care. The Board then proceeded to find on the facts that it was primarily accommodation. This appeal lies solely on questions of law. Accordingly, if the Board has opted for the correct test and if there is any evidence upon which it could have reached its factual determination, the appeal cannot succeed. The Board thoroughly reviewed the evidence which is ample to support its factual conclusion and applied the correct test.

6 It is argued, however, that the hearing was not a fair one because the Board refused to permit scrutiny of the medical records of individual occupants in order to establish their need for care. In my view, since the Board invited and accepted survey evidence on this point, there was no unfairness to the appellants here in the Board's ruling. Indeed, the survey evidence had the potential of being more complete and, therefore, more persuasive than an exploration of the records of selected individuals and also avoided a wholesale and unnecessary intrusion into the privacy of the occupants.

7 For these reasons, I would dismiss the appeal. The costs will be fixed in the amount of $12,000 to be paid jointly and severally by the appellants and intervenors to the respondent tenants.

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