

1995 CarswellOnt 2946  
Ontario Court of Justice (General Division)

Yonge Pleasant Holdings Ltd. v. Dragonov

1995 CarswellOnt 2946, [1995] O.J. No. 2448, 57 A.C.W.S. (3d) 219

**Yonge Pleasant Holdings Limited, Landlord/  
Applicant and George Dragonov, Tenant/Applicant**

Gibson J.

Judgment: August 22, 1995  
Docket: Toronto 95-LT-96555

Counsel: *D.L. Rubin*, for Landlord/Applicant.  
George Dragonov, for himself.

Subject: Property

**Headnote**

Landlord and tenant --- Residential tenancies — Rent — Obligation to pay — General

***Gibson J.:***

- 1 The tenant vacated at the end of July, the basic issue is what are the proper arrears presently owing.
- 2 Soutar, the landlord's property manager, testified that the tenant had been in arrears of small amounts of rent, and two reminders had been sent to him in the early spring.
- 3 In May the tenant had requested a second parking spot, at a cost of \$55 per month, which was granted, and the sum of \$55 was added to the rent effective June 1 (making the rent \$630.41). The tenant paid the first \$55 on June 15, and the only other rental payment of \$558 was made on July 14th.
- 4 A notice of termination had been served on the tenant on June 21st for rental arrears.
- 5 On July 19th the tenant attended upon Ms. Soutar and went over the rent history, and requested that she apply the last month's rent to the arrears of rent, which she refused to do. He then advised her that although he had given them an earlier notice of termination back in May (which she denied ever receiving) he would serve another notice of termination and would vacate by the end of July.
- 6 Ms. Soutar received a notice of termination dated July 20th (exhibit 1) effective the end of July.
- 7 She replied, in her letter of July 26th (exhibit 2), that no previous notice of termination had been received, and that 60 days' notice was necessary, and that she was applying the last month's rent to the August rent, which in fact was done.
- 8 Exhibit 4 is the landlord's rental history alleging that the amount owing (after applying the last month's rent to the August rent) was \$741.79. In this calculation it does not appear that the tenant has been given any credit for the interest on his last month's rent in the amount of \$38.
- 9 I accept Ms. Soutar's evidence that no notice of termination had been given by the tenant in May, and in any event, absent any other legitimate consideration, unless it was given by the end of April, it would not have been effective by the end of July when the tenant vacated.

10 The interesting issue (which I do not believe I have considered before, or at least in a very long period of time) is whether the landlord is entitled to require 60 days' notice from the tenant, and failing same, recover the rent for such period, in circumstances where the landlord has already given a notice of termination and brought an application for arrears of rent returnable on July 26th.

11 The matter was argued on the 31st, and because I was concerned about the above issue, Mr. Rubin kindly agreed to furnish (and did so a few days later) me with some unreported decisions, which I did not get a chance to review until last week.

12 I reviewed these decisions, and unfortunately they do not materially assist the landlord in the specific circumstances of the case before me.

13 The decisions of *190 Lees Avenue v. Dew* (1991) 2 O.R. (3d) 686, and *Pajelle Investment v. Braham*, unreported, February 5, 1993, by Chapnik J., are distinguishable from the case at bar, as in each of those cases there was a written lease for a term certain, whereas this case appears to have been a monthly tenancy only.

14 The decisions of the late Justice Hayes in *Bonshaw Estates v. Singh*, unreported, September 28, 1992 and followed by Dilks J. in *682840 Ontario v. Granton*, November 20, 1992, are also distinguishable on the facts therein, as I read those decisions, that the tenant's notice of termination, which was clearly inadequate in each case, was given prior to the landlord's application to the court for arrears of rent (whereas in the case at bar the landlord had delivered his notice of termination and notice of application prior to the tenant's notice). In *H & R Management v. Gill*, unreported, a decision of Pitt J., July 24, 1995, the tenant had kept the keys, so clearly did not properly vacate the property at the end of June as alleged, so that the case is distinguishable on this ground, as well as there being no notice of termination served by the tenant. However, Pitt J. does seem to support the landlord's position in one of his comments in his reasons.

15 After considering all of the circumstances here, and the various authorities cited to me, with some reluctance I find that since the landlord itself sought to terminate the tenancy agreement (a monthly one) by service of the notice of termination and a notice of application, albeit for legitimate reasons (non-payment of rent), and the tenant who thereafter gave a written notice of termination, need not give the landlord 60 days' notice, and may vacate after the date that the tenancy agreement was to be terminated in accordance with the notice of termination, and his only responsibility in law is for such rent which is due and owing when he vacated the premises. If there was a last month's rent in place, as there was here, then the tenant is entitled to appropriate credit for the amount of the security deposit and the interest thereon.

16 On the basis of exhibit 4, upon which there was no cross-examination and no evidence to contradict same, I find the arrears of rent to be as follows:

Arrears			
Prior to June 30	\$	111.38	
July		630.41	
			\$ 743.79
Less:			
Last month's rent (plus interest)			\$ 668.41
(plus interest)			
			\$ 73.38

17 The landlord will have judgment for this sum at this time.

18 In view of the tenant's rental history, and the fact that he did not make any payments until well after the application had been launched, I feel the appropriate order is to grant costs to the landlord, which I fix at the amount of \$150.00.

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