Dollimore v. **Azuria Group Inc.,** (2001) 152 **O.A.C.** 57 (DC)

Judgment Date: November 6 2001

Cited as: (2001), 152 O.A.C. 57 (DC)

Jurisdiction: Ontario

Court: Superior Court of Justice of Ontario

Judge: McRae, Day and Caputo, JJ.

[1] Caputo, J. [orally]: This is an appeal by Azuria Group Inc. from a decision of the Ontario Rental Housing Tribunal ("OHRT") dated August 28, 2000. The appellant seeks to rescind the order of the tribunal or in the alternative, an order remitting the matter back to the tribunal for a new hearing.

Case cited by: 9 cases

Dollimore v. Azuria Group Inc. (2001), 152 O.A.C. 57 (DC)

MLB headnote and full text

Temp. Cite: [2001] **O.A.C.** TBEd. NO.056

Anna **Dollimore** (tenant/respondent) v. **Azuria Group** Inc. (landlord/appellant)

(642/00)

Indexed As: Dollimore v. Azuria Group Inc.

Court of Ontario

Superior Court of Justice

Divisional Court

McRae, Day and Caputo, JJ.

November 7, 2001.

Summary:

A landlord appealed a decision of the Ontario Rental Housing Tribunal. The landlord alleged that the tenant's application to the Tribunal had been statute barred.

The Ontario Divisional Court dismissed the appeal.

Landlord and Tenant - Topic 7144

Regulation - Procedure - Time for filing complaint - A tenant was required to pay one year's rent in advance - Therefore, the rent received by the landlord exceeded the amount permitted for rent deposits (Tenant Protection Act, s. 118(2)) - The tenant applied for an order under s. 144(1) that the landlord repay money collected or retained in contravention of the Act - Section 144(4) provided that no order under s. 144 could be made with respect to an application filed "more than one year after the person collected or retained money in contravention of this Act" - The landlord claimed that the tenant's application was statute barred because it was filed a year and 17 days after the rent was collected - The Ontario Divisional Court held that the application was not statute barred - It was "filed within one year after the landlord continued to retain the money in contravention of the Act".

Landlord and Tenant - Topic 7186

Regulation - Appeals - Standard of appellate review - A landlord appealed a decision of the Ontario Rental Housing Tribunal under the Tenant Protection Act - The Act only allowed for appeals on questions of law - The Ontario Divisional Court held that the appropriate standard of review was correctness - See paragraphs 2 and 3.

Cases Noticed:

Pezim v. British Columbia Securities Commission et al., [1994] 2 S.C.R. 557; 168 N.R. 321; 46 B.C.A.C. 1; 75 W.A.C. 1, refd to. [para. 2].

Pezim v. Superintendent of Brokers (B.C.) - see Pezim v. British Columbia Securities Commission et al.

Feingold v. College of Optometrists (Ont.) (1981), 123 D.L.R.(3d) 667 (Ont. Div. Ct.), refd to. [para. 3].

Statutes Noticed:

Tenant Protection Act, S.O. 1997, c. 24, sect. 117(1), sect. 118(1), sect. 118(2) [para. 5]; sect. 144(1), sect. 144(4) [para. 6].

Counsel:

Angela Costigan, for the respondent;

Julian B. Keller, for the appellant.

This appeal was heard on November 7, 2001, by McRae, Day and Caputo, JJ., of the Ontario Divisional Court. The following oral decision was delivered orally on November 7, 2001, by Caputo, J., and released on November 9, 2001.

[1] Caputo, J. [orally]: This is an appeal by **Azuria Group** Inc. from a decision of the Ontario Rental Housing Tribunal ("OHRT") dated August 28, 2000. The appellant seeks to rescind the order of the tribunal or in the alternative, an order remitting the matter back to the tribunal for a new hearing.

[2] The tribunal is a relatively new administrative body and there has not been much caselaw dealing with the appropriate standard at which this court should review the tribunal's decisions. However, since there is right of appeal on questions of law alone, the court should review these questions on a standard of correctness. For example, in **Pezim v. British Columbia Securities Commission et al.** , [1994] 2 S.C.R. 557; 168 N.R. 321; 46 B.C.A.C. 1; 75 W.A.C. 1, Iacobucci, J., stated at p. 405:

"At the correctness end of the spectrum where deference in terms of legal questions is at its lowest are those cases where the issues concerning the interpretation of a provision limiting the tribunal's jurisdiction or where there is a statutory right of appeal which allows the reviewing court to substitute its opinion for that of the tribunal and where the tribunal has no greater expertise than the court on the issue in question as for example in

the area of human rights."

[3] The Divisional Court also held that where there is a statutory right of appeal and particularly where the court is asked to review whether a board is right in its interpretation of a statutory provision the standard of review must be correctness. See **Feingold v. College of Optometrists (Ont.)** (1981), 123 D.L.R.(3d) 667 (Ont. Div. Ct.).

[4] The member made the following findings: At par. 9, he found that the lease began on August 16, 2000 [sic] and in par. 10, the member found that the tenant was forced to pay one year's rent in advance. It is not in dispute that twelve month's rent was paid on July 10th of that year and that the application for the order was made on July 27; one year and seventeen days later.

[5] Section 117(1) of the **Tenant Protection Act** provides:

"The only security deposit that a landlord may collect is a rent deposit collected in accordance with s. 118."

Section 118(1) provides:

"That a landlord may require a tenant to pay a rent deposit with respect to a tenancy if the landlord does so on or before entering into the tenancy agreement"

and (2) provides:

"The amount of a rent deposit shall not be more than the lesser of the amount of rent for one rent period and the amount of rent per one month."

It is without dispute that the landlord received ten months rent in excess of that provision.

[6] I next refer to s. 144 of the **Tenant Protection Act** . Subsection 1 provides:

"A tenant or former tenant of a rental unit may apply to the Tribunal for an order that the landlord, superintendent or agent of the landlord pay to the tenant any money the person collected or retained in contravention of this Act."

Subsection 4 provides:

"No order shall be made under this section with respect to an application filed more than one year after the person collected or retained money in contravention of this Act."

[7] The appellant takes the position that because the application was made one year and seventeen days after the rent money was collected, that the order was statute barred by s. 144(4). The section uses the phrase in ss. 4 and ss. 1, "collected or retained". On the undisputed facts before us, the landlord retained the money after July 17th. The application was therefore filed within one year after the landlord continued to retain the money in contravention of the **Act** .

[8] On that basis, we find that the members' decision cannot be said to be incorrect. The appeal on that issue is dismissed.

Appeal dismissed.

Editor: David Weir/gs

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