1994 CarswellOnt 2204
Ontario Court of Justice (General Division) [Divisional Court]

Offredi v. 751768 Ontario Ltd.

1994 CarswellOnt 2204, [1994] O.J. No. 1204, 116 D.L.R. (4th) 757, 48 A.C.W.S. (3d) 426, 72 O.A.C. 235

Michele Offredi, Paul Offredi, Anthony Cook, Dawn Cook, Donna Boujold, Ron Boujold, Ron McLoughlin, Jennifer McLoughlin, Llyod Clark, Pauline Clark, Fred Wheeler, Patricia Wheeler, Tony Loder, Roxanne Loder, Lorna Wilson Peter Phelps, Willow Phelps, Marilyn Shannon, Charmaine Lyons, Victoria Cutler, Sid Cutler, Kevin Macdonald, Nancy Macdonald, Martin Lecointe, Debra Lecointe, Violet Bennett, Gary Zenarosa, Agnes Zenarosa, Kalpana Patel, Dushyanti Patel, John Easton, Jill Easton, Darlene Lloyd, Rosemary Bullin, Sebastian Bullin, Keith Black, Lisa Black, Richard Jeboo, Devitia Jeboo, Louise Dussault, Danny Dussault, Lois McLeod, Randell McLeod, Carl Brown, Laura Brown, Sheilla Martin, Harold Neilson, Michael Webster, Esther Webster, Marie Bond, and Greg Christin, Applicants/Tenants (Respondents) and 751768 Ontario Limited, Respondent/Landlord (Appellant)

Adams J., Southey J., Then J.

Heard: May 25, 1994
Oral reasons: May 25, 1994
Docket: 428/93

Proceedings: Affirmed (July 10, 1991), Toronto L9023/90, (Ont. Gen. Div.)

Counsel: *Joseph Markin* for Respondent/Landlord/Appellant.
Michael S. Green for Applicants/Tenants/Respondents.

Subject: Property

Headnote

Landlord and Tenant --- Residential tenancies — Repairs and fitness — Landlord's obligation — Remedies — Abatement Claim for abatement constituting claim for breach of contract — Reasonableness of landlord irrelevant — Landlord and Tenant Act, R.S.O. 1980, c. 232, s. 113(1)(g).

Tenants' application under s. 113(1)(g) of the Act for an abatement of rent as a result of deficiencies in the subject premises was allowed. On appeal, landlord claimed that he had acted reasonably in undertaking repairs to the premises. Held, the appeal was dismissed. Tenants' claim for an abatement constituted a claim for breach of contract and the reasonableness of landlord's actions was irrelevant.

Tenants awarded abatement in form of money rather than reduction in future rent — Award permitted — Landlord and Tenant Act, R.S.O. 1980, c. 232, s. 113(1)(g).

The trial Judge allowed tenants' application under s. 113(1)(g) of the Act for an abatement of rent as a result of deficiencies in the subject premises and awarded tenants money. On appeal, the issue arose as to whether the trial Judge was permitted to make an order for the payment of money rather than awarding tenants reductions on their future rent. Held, the appeal was dismissed. The purpose of the Act was to compensate tenants for deficiencies in the premises that had occurred in the past while they were paying full rent. Consequently, it was reasonable that the abatement of rent should relate to past rent paid. The trial Judge's order for the payment of money was permissible.

Southey J. **(orally):**

1 This is an appeal from an Order of the Honourable Mr. Justice Hoilett, dated July 10, 1991 in which he ordered the landlord, the appellant in this court, to make payments to some 29 tenants in connection with an application by those tenants under s.113(1)(g) of the *Landlord and Tenant Act*, R.S.O. 1980, c.232 for an abatement of rent. The abatement ordered related to deficiencies in the leased premises during the period September 1, 1988 to August 31, 1990. That was the period named in the notice of application on behalf of the tenants.

2 The learned judge made a number of findings respecting the alleged deficiencies. The principal deficiencies found by him were:

> 1 A power outage in December, 1988, lasting for some five days, in which there was a complete power failure in the building. Coming at that time of year, there was a need for some tenants to find other accommodation. There were also losses of food in refrigerators, and other unpleasant problems;
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> 2 A shortfall in parking facilities resulting from a number of repairs that were undertaken to the underground garage over a period of approximately twelve months. As a result of those repairs, tenants were obliged to park on the lawns, in the tennis court and in areas where parking was prohibited, with the result that a number of them were ticketed and fined for illegal parking and cars were vandalized. There was also damage to cars caused by dust from the work in progress.
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> 3 As to the general level of maintenance, the corridor walls, stairwells and carpeting were usually in a dirty and poorly maintained state; the stairwells were littered with shopping carts, old couches, and a myriad of other alien objects; and the garbage rooms were in a constantly deplorable state with garbage being allowed to collect for days, with the attendant pungent stench.

3 Other matters were inadequate provisions for security, an inadequate hot water supply and an elevator service that fell far short of what reasonably could have been expected. The latter was a serious problem rather than a mere inconvenience, in the 20-storey building with which we are here concerned.

4 A number of points were raised by counsel for the landlord. The landlord took the position here, as he had done in the court below, that the deplorable state of the maintenance was due to the misconduct of the tenants themselves. The judge recognized that the landlord had taken steps to clean up the building, and keep it clean, but found that the failure of these steps to result in an adequately maintained building could not be attributed to the tenants. He said there was not one shred of evidence that the other tenants were guilty of any of the vandalism that occurred.

5 In our judgment, this is not a case that turns on whether the landlord can be said to have acted reasonably. What the tenants claim is a breach of contract. The tenants were paying full rent for premises which the landlord was under an obligation, under the *Landlord and Tenant Act*, to keep in a good state of repair and fit for habitation. The landlord failed to do that. That is the basis of the claim for an abatement.

6 Counsel for the landlord submitted that no burden should be placed on the landlord for making the repairs to the garage because those repairs were necessary for the structural safety of the building.

7 In our view, there is no merit whatsoever in that submission. It goes without saying that there was an obligation, and a very serious one, on the landlord to maintain the building in a sound structural condition. If the carrying out of essential repairs resulted in a failure to give to the other tenants the quiet possession of their apartments to which they were entitled, it is the landlord that must bear the burden and not the tenants.

8 The point that has given us some cause for concern is whether the tenants were entitled to have an order for payment to them of an amount of money. In this case, the order, generally speaking, was for repayment of 20% of their rents over the period in question, together with certain assessed damages for losses during the power outage. It was argued that the tenants were entitled, by way of abatement of rent, only to a reduction in the rent that they would otherwise be liable to pay in the future.

9 There are no cases in which this point has been expressly addressed, but there are authorities to which we have been referred in which orders have been made for payments of abatement of rent in respect of past periods. Examples of such orders are the decisions of Borins J. in *Pellatt v. Monarch Investments Limited* (1981), 23 R.P.R. 8 and of Montgomery J. in *Shaw and Bourgeois v. Pajelle Investments Limited* (1985), 11 O.A.C. 70. See also the chapter on Abatement of Rent in *Lamont on Residential Tenancies*.

10 Looking at the matter from the purpose of the legislation, the deficiencies in the premises that gave rise to the complaints all took place in the past, and it was in respect of occupation of the premises in that past that the tenants had paid rent. It would seem to be reasonable that the reduction in rent, for that is all that the word "abatement" of rent means, should be applicable in respect of the period of time in which the deficiencies existed.

11 Accordingly, we find no error in the decision of the trial judge that payments should be made to the tenants in respect of their occupancy during the period in question.

12 As to the amount of the reduction, the learned judge recognized that there was no mathematical way in which an appropriate amount could be determined. He obviously wrestled with the problem and arrived at the conclusion that 20% was a fair figure in this case to compensate the tenants for the deplorable conditions to which they have been subjected. We can see no justification for our changing that decision, made by the judge who heard the evidence as to those conditions.

13 For these reasons, the appeal is dismissed with costs, hereby fixed at $3,000, inclusive of the costs awarded by White J.

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