1999 CarswellOnt 5791
Ontario Rental Housing Tribunal

Glenview Corp. v. Piffard

1999 CarswellOnt 5791

In the matter of 1206, 1975 St Laurent Blvd Ottawa ON K1G 3S7

The Glenview Corporation, Landlord and Denis Piffard, Tenant

Guénette V-Chair

Judgment: July 13, 1999
Docket: EAL-06256

Counsel: None given

Subject: Property
Headnote
Landlord and tenant

***Guénette V-Chair*:**

1 The Glenview Corporation applied for an order to terminate the tenancy and evict Denis Piffard because he, another occupant of the rental unit or someone he permitted in the residential complex has substantially interfered with the reasonable enjoyment of the residential complex by The Glenview Corporation or another Tenant.

2 This application was heard in Ottawa on July 13, 1999. The tenant was represented by counsel, Todd K. Plant and Marc-Nicholas Quinn. The landlord was represented by an agent, Donna Dames.

Reasons:

3 This application was on the list of applications to be heard in the morning block on July 13, 1999. The cases in that block were mostly cases which had been adjourned administratively during the week of June 28 to July 2, 1999, because of a fire in the building where the Tribunal's Ottawa premises are situate.

4 On the morning of July 13, 1999, before the application was called for hearing, counsel for the tenant made a motion for an adjournment on the ground that counsel had only had 30 minutes notice of the hearing from their client and had not had sufficient time to prepare. I presume that counsel, while they had acted for the tenant previously in this matter, had not been noted as counsel of record and did not receive a notice of this hearing. The notices were sent by messenger to the parties and representatives of record. The motion was opposed by Ms. Dames who had convened two witnesses. I denied the motion but allowed that counsel might renew it when the case was called.

5 When the case was called, counsel again moved for an adjournment for two reasons. Firstly, to allow for the appointment of a litigation guardian for the tenant, and secondly, to allow counsel for the tenant to prepare for the hearing.

6 The Tribunal's file disclosed that the application, and notice of hearing were mailed to the tenant on May 12, 1999. The tenant filed a dispute on May 17, 1999. The application was first called for hearing on June 1, 1999, at which time Member Savage, on the motion of the applicant, adjourned the hearing to June 8, 1999. On June 8, the tenant attended with counsel, (not the same as counsel here) and on motion made on behalf of the tenant, the matter was adjourned by Member Fabowalé to

a peremptory date, June 22, 1999, with the further condition that the parties provide each other and the Tribunal with copies of documents they intended to rely on.

7 What occurred at and was decided as a result of the hearing of June 22, 1999, presided by Member von Cramon, can best be gleaned from the Member's order of June 24, 1999 which I find useful to reproduce in its entirety:

> The application was scheduled to be heard in Ottawa, Ontario on June 22, 1999.
>
> Denis Piffard requested an adjournment of the hearing because his lawyer requires adequate time to prepare his dispute, and the tenant is under a disability and requires a litigation guardian. The tenant claims that an adjournment of more than one week is required for this purpose.
>
> The landlord opposed the request for adjournment. The parties have filed written submissions with the Tribunal in relation to the request for adjournment and appointment of a litigation guardian.
>
> No evidence was filed that Denis Piffard has been found incapable with respect of an issue in this proceeding within the meaning of sections 6 or 45 of the *Substitute Decisions Act*, 1992.
>
> **It is determined that:**
>
> A The tenant has had an adequate opportunity to know the issues, to retain counsel and be heard on the merits of this dispute.
>
> B The tenant does not require appointment of a litigation guardian by the Tribunal's Rules of Practice.
>
> C In all the circumstances, and having regard to section 171 of the *Tenant Protection Act*, 1997, it is fair that the hearing of this application is adjourned on the terms of this order.
>
> **It is ordered that:**
>
> 1 This application is adjourned to be heard on June 29, 1999 at 9:00 a.m.
>
> 2 If either party does not attend on the hearing date set out in paragraph 1 of this order, this application will be determined in their absence.

8 As indicated above, on June 29 the hearing was rescheduled administratively.

9 In renewing before me their motion for the appointment of a litigation guardian, counsel for the tenant pointed to the written submission (tenant's brief) they had filed for the hearing on June 22, 1999. I asked counsel if the issue of whether the situation warranted the appointment of a litigation guardian had in effect been decided by Member von Cramon and whether or not the Tribunal had any authority to appoint a litigation guardian. Counsel argued that the Tribunal had "inherent jurisdiction to control its proceedings and appoint a litigation guardian. If counsel meant that the Tribunal has the same kind of jurisdiction in this regard as is usually understood of the common law powers of a superior court of general criminal and civil jurisdiction, I disagree. Counsel argued that this was a different hearing and that I was not bound by the determination made in the order of June 24, 1999. I asked counsel if there was new medical evidence as to their client that they wished to submit and was advised there was none.

10 I agree with the submission of counsel that, by reason of rule 2.2 and section 171 of the *Tenant Protection Act, 1997*, S.O. 1997, c. 24 (the Act), the Tribunal has the power to appoint a litigation guardian in a proper case. Those provisions read as follows:

> **Section 171**. The Tribunal shall adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter.

Rule 2.2 The Member may decide the procedure to be followed for an application and may make specific procedural directions or orders at any time and may impose such conditions as are appropriate and fair.

11 From reading the decision of June 24, 1999, I am of the opinion that the Member von Cramon did not view the state of the law differently from what I concluded above, but that on considering the motion on behalf of the tenant for the appointment of a litigation guardian, the member concluded that the situation here did not warrant such an appointment. In view of the fact that there are no new circumstances nor any new evidence here, I do not propose to act at variance with that finding.

12 I wish to add a comment concerning counsel's submissions that the Tribunal might act in analogy with what is provided in Rule 7 of the Rules of Civil Procedure. In the tenant's brief, counsel advised that the Office of the Public Guardian and Trustee has been "notified of the Application on June 21, 1999 and is investigating this matter". The Rules of Civil Procedure are adopted pursuant to the Courts of Justice Act and, as such, have, subject to the statute itself, the same force of law as the statute. Rule 7 specifically provides a number of instances where the Public Guardian and Trustee shall act as litigation guardian. Whenever Rule 7 so provides, there is a corresponding obligation on the Public Guardian and Trustee to act. This would not be so in the case of an appointment by the Tribunal unless the prior consent of the Public Guardian and Trustee had been obtained.

13 Further, counsel argue that section 7 of the *Charter of Rights and Freedoms* (Charter) mandates the appointment of a litigation guardian because the tenant is not otherwise able to insure the security of his person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. I would agree, if the evidence justified the conclusion that the tenant is so prejudiced. As stated earlier, the dispute prepared and filed by the tenant and the medical evidence filed and considered by Member von Cramon do not lead me to differ from his conclusion that the tenant had not established a requirement for a litigation guardian under the Tribunal's rules. Finally, counsel refer to the *Ontario Human Rights Code* (Code) and argue that the Act is subject to the Code "which prohibits discrimination on the basis of a condition of mental impairment or disorder. Subsection 2(1) and clause (d) in the definition of "because of handicap" in subsection 10(1) provide that a person who suffers from a mental disorder is entitled to equal treatment with respect to the occupancy of accommodation. However, the definition of "equal" in subsection 10(1) is also relevant, and I find that the tenant is not the object of discrimination by reason of mental disorder, such as it may be, but is being pursued because he unduly interferes with the reasonable enjoyment of the residential complex by other tenants.

14 On the motion of counsel to adjourn to allow time for preparation, based on the short notice of one half hour, I offered to counsel to adjourn the hearing to this after-noon so as to provide them with three hours of preparation. Counsel declined this offer. I then decided against a further adjournment on the ground that counsel were familiar with the case and could proceed with it today.

15 Ms. Dames called as her first witness, Karen Turrieff, who is the assistant to the landlord's Property Manager, Doug McDougall. Ms. Dames also called Jeremy Leckie of Response Safety Security & Investigation, the landlord's security contractor. Some of the evidence of the witnesses was hearsay to which counsel objected. I decided to allow such evidence and indicated that the fact that some of it was hearsay would go to its weight.

16 As I find, the evidence disclosed that a few years ago, there was an application under Par IV of the *Landlord and Tenant Act* based on grounds similar to those alleged here and that after a third party undertook that the tenant would change his behaviour, those proceedings were adjourned sine die. On April 5, 1999, at about 9:15 pm, following a complaint from another tenant, Jeremy Leckie attended at the tenant's unit and from the corridor, as soon as he exited the elevator, heard the tenant who was inside his unit, preaching loudly. On April 9, 1999, the landlord mailed to the tenant an N5 Notice of Termination. On April 23, at about 10:50 pm, Leckie again attended at the tenant's unit and again witnessed the same loud preaching as well as loud music, and again warned the tenant. Leckie found the noise to be very loud. The landlord sent a second N5 Notice of Termination by mail on 5, based on the April 23, 1999, incident, and the next day sent a third N5 based on a third complaint.

17 Counsel for the tenant declined to cross-examine or to present the evidence of the tenant on the ground that because of their tenant's mental condition, they were unable to obtain proper instructions which would allow for meaningful cross-examination or examination.

18 Ms. Dames argued that because of the recurrence of the problem, the landlord felt compelled to act, and that the landlord could be open to proceedings against it by other tenants under the covenant for quiet enjoyment. Although I agree with that general proposition, it is not determinative of the result in any particular case. Here, I find that the Notices of Termination were justified and the landlord is entitled to the claimed remedy under subsection 67(1). Ms. Dames has indicated that her client was somewhat flexible as to the date of actual termination.

19 *It is ordered that:*

1. The tenancy between The Glenview Corporation and Denis Piffard is terminated. Denis Piffard must move out of the rental unit on or before September 30, 1999.

2. Denis Piffard shall also pay to The Glenview Corporation $60.00 for the cost of filing the application.

3. If the unit is not vacated on or before September 30, 1999, then starting October 1, 1999, The Glenview Corporation may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

4. Upon receipt of this order, the Enforcement Office is directed to give vacant possession of the unit to The Glenview Corporation on or after October 1, 1999.

End of Document