

 **Rondinelli v. Cain, [1989] O.J. No. 235**

Ontario Judgments

District Court of Ontario

Gautreau D.C.J.

February 17, 1989.

Action No. 7093

[1989] O.J. No. 235 | 67 O.R. (2d) 382 | 2 R.P.R. (2d) 5 | 14 A.C.W.S. (3d) 30

Re Rondinelli et al. and Cain

Counsel

S. De Wetter, student-at-law, for applicant.

M. Kelly, for respondent.

GAUTREAU D.C.J.

1 Mr. Cain was a tenant under a tenancy agreement with the prior owner of an apartment at 117 Godfrey Dr. in London. The prior owner then asked if he would take on the caretaker's responsibilities. He agreed and as a result he was given reduced rent. Mr. and Mrs. Rondinelli then purchased the building. It is a 12-unit building. They became dissatisfied with Cain's performance of the caretaker's duties and fired him. This was on November 6, 1988. He was given one week to vacate but failed to do so. The landlord has now brought an application for vacant possession.

2 The issue in this case is whether the normal termination provisions for residential tenancies apply or whether the summary termination provisions that relate to caretaker's premises apply.

3 At the hearing I said that Mr. Cain's rights were those of a tenant as opposed to those of a caretaker with the result that the summary termination caretaker provisions of the Landlord and Tenant Act, R.S.O. 1980, c. 232, were not available to the landlord. I gave very brief reasons at that time and subsequently was asked by counsel to give some written reasons. I now do so.

4 Section 115 of the Landlord and Tenant Act reads as follows:

115(1) Notwithstanding anything in this Part, where a landlord has entered into a tenancy agreement in respect of caretaker's premises, unless otherwise agreed, the tenancy of the tenant is terminated on the day on which the employment of the tenant is terminated and the tenant shall within one week thereafter vacate the caretaker's premises.

(2) If the tenant fails to vacate the premises as set out in subsection (1), the landlord may forthwith make application under section 113.

5 I think that there are several reasons why s. 115 does not apply in this case. Mr. Cain did not commence his tenancy as a caretaker but assumed these duties later on. It seems to me that the wording of s. 115 requires a simultaneous occurrence that when the tenancy agreement is entered into it is in relation to the caretaker's premises.

6 As I understood the facts, the apartment in question was and is not specifically designed as a caretaker's unit. There is no apartment so designated. At another time in the history of this building the tenant who was responsible for the caretaking duties occupied a different apartment.

7 As I understand the set-up in this building, the caretaker may or may not live in the building and when a tenant does the caretaker's work it is on a part-time basis.

8 It is my opinion that s. 115 is meant to deal with situations where a caretaker's apartment is specifically set up as part of the building and as part of the operations of the building as is common in larger buildings with full-time on-site caretaking. In such cases the specific and primary purpose of entering into a tenancy agreement is the provision of caretaker's services and the premises are specifically those of the caretaker. This is not the case here. As I mentioned, the caretaker and the caretaker's premises were really coincidental and ad hoc.

9 I am of the view that Mr. Cain was a tenant firstly as a straight residential tenant and only secondly as a caretaker. He is entitled to the rights of a tenant as opposed to the rights of a caretaker.

10 The landlord argues that there was a novation of the tenancy arrangement. Mr. Cain went from a straight tenant to a caretaker tenant. I do not think that is the case. His role of caretaker was quite secondary to his status as residential tenant.

11 For these reasons s. 115 does not apply and there will be no declaration that the tenancy agreement is terminated.

12 Application dismissed.

Application dismissed.