

COURT FILE NO.: 04-212DV
Hamilton
DATE: 2005XXXX

ONTARIO
SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

JUSTICES STAYSHYN, MATLOW, BELLEGHEM

B E T W E E N:)	
)	
STANBAR PROPERTIES LIMITED)	
)	
Appellant)	Margaret Waddell, for the Appellant
)	
- and -)	
)	
JOSEPH ROOKE)	
)	
Respondent)	Respondent in person
)	
)	
)	HEARD: September 22, 2005

MATLOW J

[1] At the conclusion of the hearing of this appeal, we ordered that this appeal from the order of the Ontario Rental Housing Tribunal (“the Tribunal”) dated August 31, 2004, be allowed and that the Tribunal’s order dismissing the appellant’s application for an order terminating the respondent’s tenancy be set aside. As well, we gave effect to an arrangement between the parties, made by them, on consent, that would allow the

respondent's tenancy to continue if certain conditions were met by him. We also stated that written reasons would be delivered and what follows are those reasons.

[2] Our jurisdiction on this appeal is confined by section 196 (1) of the Tenant Protection Act, 1997, ("the Act") to questions of law. It is submitted by counsel for the appellant, and not disputed by the respondent, that the standard of review with respect to the issues in this appeal is that of correctness. I agree with that.

[3] Section 196 (3) of the Act gave the Tribunal the right to be heard at the hearing of this appeal. However, we were advised by counsel for the appellant that she had been notified that the Tribunal had decided not to participate.

[4] The principal issues in this appeal arise in the context of the following facts. The parties entered into a written tenancy agreement by which the respondent, as tenant, occupied certain premises owned by the appellant. The agreement included a provision which required the respondent to make arrangements with his own bank for the payment of his monthly rent "by pre-authorized direct debit as required by the Landlord". As well, the agreement included a provision which required the respondent to maintain insurance coverage with respect to certain perils for the protection of the appellant and to provide proof of the insurance coverage to the appellant upon request.

[5] Despite the fact that the appellant required the respondent to make the necessary arrangements for pre-authorized direct debit and requested proof of the insurance coverage, the respondent refused to comply with either. It was evident that the respondent's refusals were, for him, acts of principle. The appellant acknowledged that, in all other requests, the respondent complied with the tenancy agreement and was a satisfactory tenant.

[6] Because this confrontation between the parties was of importance to the appellant too, it sought to have the issues raised determined in accordance with law. Accordingly, it gave notice to the respondent of termination of the tenancy pursuant to section 64 (1) of the Act and subsequently applied to the Tribunal for an order terminating the tenancy.

[7] Section 64 (1) of the Act provides as follows:

64. (1) A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

[8] In its decision, the Tribunal made the following findings and determinations:

1. Section 119 of the Act forbids landlords from requiring tenants to provide post-dated cheques or other negotiable instruments for payment of rent. Pre-authorized debit is a form of negotiable instrument and, therefore, may fall within the scope of this provision. However, if the parties agree to it, it then becomes a contractual issue which the landlord can seek to enforce in a court of competent jurisdiction.
2. The Act is silent about whether or not a landlord has the right to demand that tenants maintain insurance or that they provide proof of coverage to their landlords. However, if the parties agree to it, it too becomes a contractual issue which can be determined only by a court of competent jurisdiction.
3. Accordingly, the Tribunal does not have jurisdiction to deal with matters that are not provided for by the Act. Breaches of contractual obligations do not fall under the jurisdiction of the Act.
4. "A breach of a covenant in a residential tenancy does not permit termination of the tenancy unless the conduct involved is a ground for termination according to the Act. Proof of insurance and payment by pre-authorized debit are not grounds for termination under the Act even though the Landlord had argued that it fell under a substantial interference provided for under s. 64 (1) of the Act".

[9] It is my respectful view that the Tribunal erred in regarding pre-authorized direct debit as "a form of negotiable instrument". It is neither negotiable nor an instrument and its use is not prohibited by section 119 of the Act.

[10] As well, it is my respectful view that the Tribunal erred in declining jurisdiction. The refusals of the respondent to arrange for pre-authorized direct debit and to provide proof of insurance coverage were in breach of consensual provisions of the tenancy agreement to which he was a party and, in the language of section 64 (1) of the Act, his refusals substantially interfered with the appellant's lawful rights acquired by it as a result of the agreement. Accordingly, the Act authorized the appellant to give notice of termination of the respondent's tenancy and, subsequently, to apply to the Tribunal.

[11] This interpretation of the Act is in accordance with the language of the Act and reflects the very wide jurisdiction which the Legislature has conferred on the Tribunal, particularly with respect to matters relating to the obligations of landlords and tenants and security of tenure.

[12] I am persuaded, therefore, that the Tribunal did have jurisdiction to grant the order sought and that it erred in holding that it did not.

MATLOW J.

STAYSHYN J.

BELLEGHEM J.

Released:

COURT FILE NO.: 04-212DV
Hamilton
DATE: 20051011

**ONTARIO
SUPERIOR COURT OF JUSTICE**

DIVISIONAL COURT

**JUSTICES STAYSHYN, MATLOW,
BELLEGHEM**

B E T W E E N:

**STANBAR PROPERTIES LIMITED v JOSEPH
ROOKE**

REASONS FOR JUDGMENT

MATLOW J

Released: November 9, 2005