COURT OF APPEAL FOR ONTARIO

CITATION: Honsberger v. Grant Lake Forest Resources Ltd., 2019 ONCA 44
DATE: 20190125
DOCKET: C65196

2019 ONCA 44 (CanLII)

Feldman, Pepall and Pardu JJ.A.

BETWEEN

Floyd A. Honsberger

Applicant
(Respondent in Appeal)

and

Grant Lake Forest Resources Ltd.

Respondent
(Appellant)

BETWEEN

Danny Lacasse

Applicant
(Respondent in Appeal)

and

Grant Lake Forest Resources Ltd. and Facts Ltd.

Respondent
(Appellant)

BETWEEN

Trevor Laing

Applicant
(Respondent in Appeal)

and

Grant Lake Forest Resources Ltd.

Respondent
(Appellant)

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BETWEEN

Ivan Mousseau

Applicant
(Respondent in Appeal)

and

Grant Lake Forest Resources Ltd.

Respondent
(Appellant)

Paul A. Johnson, for the appellant Grant Lake Forest Resources Ltd.

Kenneth Hale, for the respondent Floyd A. Honsberger

Eli Fellman and Brian Blumenthal, for the Landlord and Tenant Board

Heard: October 18, 2018

On appeal from the order of the Divisional Court (Justice Kiteley, Justice Conway and Justice Mulligan), dated October 11, 2017, with reasons reported at 2017 ONSC 6091.

Pepall J.A.:

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Introduction

[1] This appeal addresses the effect of increases of rent by the landlord without notice under the *Residential Tenancies Act*, 2006, S.O. 2006, c.17 ("RTA") where the parties and the premises subject to both new and old tenancy agreements are the same.

Facts

[2] Algoma Central Railway owned land north of Sault Ste. Marie in northern Ontario. The land was divided into leased lots on which tenants constructed their own cottages. Algoma Central Railway sold one block of leased land to Algoma Timberlakes Corporation and another block to Michipicoten Forest Products. Michipicoten Forest Products sold its block to the appellant, Grant Lake Forest Resources Ltd., in January 2014.

[3] The respondents Floyd Honsberger, Danny Lacasse, Trevor Laing and Ivan Mousseau were tenants of Algoma Central Railway and/or Michipicoten Forest Products and are now tenants of the appellant ("the Tenants"). Each of the Tenants has built a cottage on their rental property. There are approximately 435 similarly tenanted sites on land previously owned by Algoma Central Railway.

[4] Each tenancy agreement provided for an initial fixed term of one year with 19 automatic one year renewals unless either party, at least 30 days prior to the

year-end, gave notice to the other terminating the agreement at the end of that year. The rent was fixed but could be increased annually by a percentage increase not greater than the annual percentage increase in the Consumer Price Index. Each tenancy agreement contained a clause that provided that at the end of the 20th year, the agreement would terminate without any right of further renewal.

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[5] When the 20 year agreements expired in 2008 and 2009, believing that the tenancy agreements did not fall within the scope of the RTA, the Tenants signed new tenancy agreements. The rents were increased significantly for each of the Tenants; for example, the annual rent for Mr. Honsberger went from $370.83 to $1,527.00, an increase of in excess of 411%. The Tenants were not served with any notices of rental increases pursuant to s. 116(1) of the RTA.

[6] The Tenants paid the new increased rent to the appellant for six to eight years.

[7] In 2010, in *Matthews v. Algoma Timberlakes Corp.*, 2010 ONCA 468, 102 O.R. (3d) 590, this court determined that leases for cottage sites owned by Algoma Timberlakes Corporation and adjacent to those in issue on this appeal were governed by the RTA and were therefore protected by its provisions.

[8] In light of that decision, in 2015 and 2016, the Tenants applied to the Landlord and Tenant Board (the “LTB”) for a rent abatement on the basis that the

rental increases were illegal. Because of the one year limitation period under s.136 of the RTA, they only sought repayment for the one year preceding the filing of their applications.

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Landlord and Tenant Board's Decisions

[9] The LTB dealt first with Mr. Honsberger's application. In a decision that was rendered on January 21, 2016, the LTB concluded that the lawful rent for Mr. Honsberger was $1,527.

[10] By interim order dated March 21, 2016, an interim stay of the decision was issued by Vice-Chair Charron of the LTB. She then issued a review order on April 29, 2016. Applying the *Matthews* decision, she noted that the rental property was subject to the RTA. She reproduced s. 38 of the RTA entitled "Deemed renewal where no notice," and observed that the tenancy agreement had not been renewed with the same terms and conditions, nor had the tenancy been terminated. She went on to state: "subsections 116(1) and (4) of the [RTA] prevent a landlord from increasing the rent for a rental unit without first giving at least 90 days' written notice of the increase…if notice is not given any increase is void based on the Court of Appeal decision *Price v. Turnbull's Grove Inc.* [2007 ONCA 408]."

[11] The Vice-Chair held that the increases in rent starting in 2008 and following were illegal, as no 90-day notice of rent increase had been given as

required by s. 116(1). She found the lawful rent to be $370.83 and ordered repayment of the excess rent collected by the landlord in the one year prior to the application plus $45 for costs.

[12] The three other respondents received similar results in their applications, with only the amount of overpayment varying slightly.

[13] The appellant appealed to the Divisional Court.

Divisional Court Decision

[14] The Divisional Court heard the four appeals together. The Court concluded that the decisions of the LTB were reasonable, and that its finding that the rent increases were void warranted deference. Accordingly, the Divisional Court dismissed the appeals.

[15] The appellant was granted leave to appeal from that dismissal.

Issues on Appeal

[16] The appellant's primary argument is that no notices of rental increases were required because s. 120(1) of the RTA prohibits rent increases "during the term of a tenancy". Counsel submits that the new tenancy agreements were entered into when the old agreements had already expired, thus constituting a new term of tenancy. The appellant also advances other grounds relating to the LTB's reliance on s.38 (1) of the LTA, freedom of contract, and the inadequacy of

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the Divisional Court's reasons. For the following reasons, I would not give effect to any of these grounds and would therefore dismiss the appeal.

Analysis

(1) Standard of Review

[17] When this court considers a decision of the Divisional Court reviewing a decision of an administrative tribunal, it "steps into the shoes" of the Divisional Court and asks whether the Divisional Court identified the appropriate standard of review and applied it correctly: see *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 55, at paras. 45-47; *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, at para. 27. Where an administrative tribunal interprets or applies its home statute, the standard of review is presumptively reasonableness: *Onyskiw* at para. 28; *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Assn.*, 2011 SCC 61, [2011] 3 S.C.R. 654, at para. 39.

[18] Determining whether notices of rental increases were required under s. 116(1) of the RTA is one of the LTB's core functions. The Divisional Court properly identified and applied a reasonableness standard of review. Indeed, the appellant does not argue to the contrary.

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(2) Purpose of the Act

[19] As stated by the Supreme Court in *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26, citing E.A. Driedger, *Construction of Statutes*, 2nd ed. (Toronto: Butterworths, 1983), at p. 87, "the words of an Act … [are to] be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament." This court has described the RTA as remedial legislation having a "tenant protection focus": *Metropolitan Toronto Housing Authority v. Godwin*, 161 O.A.C. 57, at para. 19. As remedial legislation, the Act must receive "such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit:" *Price v. Turnbull's Grove Inc.*, 2007 ONCA 408, 85 O.R. (3d) 641, at para. 26. See also the *Legislation Act* 2006, c. 21, Schedule F, s. 64 (1); *North York General Hospital Foundation v. Armstrong* (2004), 69 O.R. (3d) 603 (Div. Ct.), aff'd (2005), 258 D.L.R. (4th) 85 (Ont. C.A.).

(3) Statutory Provisions

[20] Section 1 of the RTA describes its purpose: "to provide protection for residential tenants from unlawful rent increases and unlawful evictions, to establish a framework for the regulation of residential rents, to balance the rights

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and responsibilities of residential landlords and tenants and to provide for the adjudication of disputes and for other processes to informally resolve disputes."

[21] Section 3(1) states that apart from Part V.1 (which applies to non-profit co-operatives), the RTA applies "despite any agreement or waiver to the contrary". Section 110 of the RTA provides that no landlord shall increase the rent charged to a tenant for a rental unit, except in accordance with Part VII of the Act, and s.111 provides that a landlord shall not charge more than the lawful rent permitted under the Act.

[22] Section 113 states that, subject to s.111, the lawful rent for the first rental period for a new tenant under a new tenancy agreement is the rent first charged to the tenant. Thus, new tenancies with new tenants are explicitly exempted from the rental increase provisions of the Act.

[23] Part VII of the Act encompasses section 116. That section requires that notice be given prior to a rental increase. Specifically, it states:

> 116(1) A landlord shall not increase the rent charged to a tenant for a rental unit without first giving the tenant at least 90 days written notice of the landlord's intention to do so.
>
> (2) Subsection (1) applies even if the rent charged is increased in accordance with an order under s. 126.
>
> (3) The notice shall be in a form approved by the Board and shall set out the landlord's intention to increase the rent and the amount of the new rent.

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> (4) An increase in rent is void if the landlord has not given the notice required by this section, and the landlord must give a new notice before the landlord can take the increase.

[24] According to s.120(1) of the RTA, "No landlord may increase the rent charged to a tenant, or to an assignee under section 95, *during the term of the tenancy* by more than the guideline …" [emphasis added] subject to certain inapplicable exceptions. The guideline is established by the Minister of Municipal Affairs and Housing each calendar year and shall not be more than 2.5%. Under s.119, a landlord may only increase the rent once every 12 months.

[25] Section 38 (1) of Part VII of the RTA is entitled 'Deemed renewal where no notice'. That subsection provides:

> If a tenancy agreement for a fixed term ends and has not been renewed or terminated, the landlord and tenant shall be deemed to have renewed it as a monthly tenancy agreement containing the same terms and conditions that are in the expired tenancy agreement and subject to any increases in rent charged in accordance with this Act.

(4) Grounds of Appeal

[26] As mentioned, the crux of the appellant's argument is that when the Tenants entered into the new one-year tenancy agreements, the term of the tenancies was severed, and thus the rental increase and notice provisions of the RTA were inapplicable, and the new rent lawful.

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[27] There are strong factors weighing against the appellant's interpretation of the RTA.

[28] First, s. 113 of the RTA expressly permits the establishment of a new rental rate with a new tenant. Recognition of a similar carve-out for an existing relationship involving the same tenant, the same landlord, and the same premises would undermine the purpose of the Act. A renewing tenant is not a new tenant. Put differently, the appellant's proposed statutory interpretation is inconsistent with the scheme of the RTA's rent control provisions considered as a whole. The structure and purpose of the Act would be undercut if at the commencement of each year, a landlord could increase the rent simply by entering into a new tenancy agreement. A tenancy agreement involving the same parties and the same premises requires the landlord to give 90 days' notice of an increase pursuant to the clear provisions of the RTA. This conclusion is also consistent with this court's decisions in *Matthews and Nanne v. 3011650 Nova Scotia Limited (Michipicoten Forest Resources)*, 2015 ONCA 391.

[29] Second, the words "during the term of their tenancy" found in s. 120(1) must be read in context. The language in this section addresses the amount that a landlord may charge; it does not detract from or limit the Part VII provisions of the RTA, including the notice requirement. Any increase in rent required notice under s. 116 of the Act. Additionally, the increase could not exceed the annual guideline amount.

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[30] Third, the appellant did not advance the s. 120(1) argument before either the LTB or the Divisional Court. Entirely new issues should typically not be entertained on appeal: *Orr v. Metropolitan Toronto Condominium Corp. No. 1056*, 2014 ONCA 855, at para. 87.

[31] As for the appellant's argument that the LTB inappropriately relied on s. 38(1) of the Act, the Divisional Court recognized that s. 38(1) was inapplicable to this case but agreed with the LTB that the landlord was required to give 90 days' notice of an increase pursuant to Part VII of the Act. I agree with that determination and would not give effect to this ground of appeal. The Divisional Court did not err in determining that the decisions of the LTB were reasonable.

[32] There is also no basis for the appellant's remaining arguments. As is clear from the RTA and particularly s. 3 of the Act, the parties' freedom to contract is expressly made subject to the RTA's application. The Divisional Court did not err in refusing to validate rental increases that, despite their origin in contract, were constrained by the provisions of the RTA that required written notice. See also *1086891 Ontario Limited v. Barber*, 284 D.L.R. (4th) 568 (Div. Ct.).

[33] Lastly, the reasons of the Divisional Court were sufficient. The reasons were responsive to the live issues in the case and afforded meaningful appellate review. See *R. v. Sheppard*, 2002 SCC 26, [2002] 1 S.C.R. 869, at para. 24; *Diamond Auto Collision Inc. v. The Economical Insurance Group*, 2007 ONCA

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487, 227 O.A.C. 51, at para. 11; *Dovbush v. Mouzitchka*, 2016 ONCA 381, 131 O.R. (3d) 474, at paras. 21-22; see also *R. v. R.E.M.*, 2008 SCC 51, [2008] 3 S.C.R. 3, at paras. 10-35 and 55.

[34] Turning to costs, as agreed, there will be no costs order in favour of or against the LTB. The appellant shall pay the costs of Mr. Honsberger fixed in the amount of $10,000, inclusive of disbursements and HST. This costs award encompasses the costs of the leave to appeal motion that was reserved to this panel.

Released: “K.F.” January 25, 2019

“S.E. Pepall J.A.”
“I agree. K. Feldman J.A.”
“I agree. G. Pardu J.A.”

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