

Wrona v. Toronto Community Housing Corp.

Between
Andrew Wrona, Appellant, and
Toronto Community Housing Corporation, Respondent

[2007] O.J. No. 423

Court File No. 374/06

Ontario Superior Court of Justice
Divisional Court - Toronto, Ontario

J.D. Carnwath, J.R.R. Jennings and L.K. Ferrier JJ.

Oral judgment: January 24, 2007.

(9 paras.)

Landlord and tenant law -- The premises -- Access to premises by landlord -- The tenant was awarded a \$1,000 abatement of rent plus costs as the notice delivered to the tenant was deficient -- By failing to consider the legitimacy of the notice of entry, the Ontario Rental Housing Tribunal had erred in law and further erred in law by holding that in the face of the defect in the notice, a consent to entry could operate as a waiver of the requirement of notice.

Statutes, Regulations and Rules Cited:

Tenant Protection Act, s. 21(2), s. 32(1)(3), s. 35(1)(b), s. 196

Counsel:

Andrew Wrona in Person

Catherine Clark, for the Respondent

The judgment of the Court was delivered by

1 J.R.R. JENNINGS J. (orally):-- Mr. Wrona, the tenant, applied to the Ontario Rental Housing Tribunal for an abatement of his rent under s. 35(1)(b) of the **Tenant Protection Act** (the "TPA").

2 Under s. 32(1)(3) of the TPA as a condition to obtaining abatement, Mr. Wrona had to establish that the landlord's agents had illegally entered his apartment. The Tribunal found as a fact that on the day in question, May 11, 2006, Mr. Wrona had permitted the agents to enter his apartment to carry out an annual inspection of smoke detector equipment. Accordingly, the Tribunal found there was no illegal entry.

3 In order to obtain entry, the landlord was required to give Mr. Wrona written notice pursuant to s. 21 of the TPA. Section 21(2) of the TPA states in part that the notice "... shall specify the reason for entry, the date of entry and a time of entry between the hours of 8:00 a.m. and 8:00 p.m." In our opinion, a common sense reading of the language of ss. 2 requires the notice to specify a time of entry within the twelve hour window, not as was done here, a nine hour period within the window during which an entry would be made.

4 In that regard, we agree with the finding of Member Graham of the Tribunal in his Decision in file #TNT-04362, a proceeding between these same parties that:

"I do not accept that a landlord is required to specify the exact hour and minute of a required entry into a rental unit and although the hours of entry set out in this notice are clearly between 8:00 a.m. and 8:00 p.m., I do not find that a six-hour entry period complies with the requirement that the Landlord specify a time of entry between 8:00 a.m. and 8:00 p.m."

5 We therefore find that the notice delivered by the Landlord was deficient.

6 The notice provisions are drawn to protect the rights of the tenant and pursuant to s. 2(1) of the TPA, they cannot be waived. In our opinion, by failing to consider the legitimacy of the notice, the Tribunal erred in law and further erred in law in holding that in the face of the defect in the notice, a consent to entry could operate as a waiver of the requirement for notice.

7 Accordingly, the decision of the Tribunal is set aside.

8 Pursuant to the power given to us by s. 196 of the TPA, we therefore order as follows:

- (i) an abatement of rent in favour of the tenant in the sum of \$ 1,000.00;
- (ii) costs of the hearing today;
- (iii) costs of the hearing before the Tribunal.

9 Ms. Clark, I think the tenant is probably entitled also to the costs before the Tribunal. What do you have to say about what the costs should be? For the hearing below and of today, there will be \$519.10 disbursements, plus \$25.00 of the hearing fee, which totals \$544.10.

J.D. CARNWATH J.
J.R.R. JENNINGS J.
L.K. FERRIER J.

cp/s/qlqqs