Date: 20080123

Docket: T-1118-06

Citation: 2008 FC 71

Ottawa, Ontario, January 23, 2008

PRESENT: The Honourable Mr. Justice Hugessen

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Plaintiff

and

NAV CANADA

Defendant

<u>REASONS FOR ORDER AND ORDER</u>

BACKGROUND

[1] This is a motion for summary judgment brought by the Attorney General of Canada (the plaintiff), who seeks an order directing Nav Canada (the defendant) to surrender vacant possession of certain properties which had been subject to a lease agreement between the parties. In the alternative, the plaintiff seeks an order specifying which material facts are not in dispute. For its part, the defendant seeks an order directing the parties to submit the dispute for resolution by a rental officer pursuant to the *Residential Tenancies Act*, R.S.N.W.T. 1988, c. R-5 (the Act).

FACTS

[2] On March 10, 2005, the parties entered into a lease agreement regarding seven residential properties (the properties), in Norman Wells, Northwest Territories, owned in fee simple by Public Works and Government Services Canada. The lease agreement included terms which may be summarized (except where directly quoted) as follows:

> (1) The defendant would hold the properties from April 1, 2005 until April 30, 2005, and continue to hold the properties on a month to month basis until March 31, 2006.
>
> (2) "The residence(s) shall be used solely as residential and for the purposes incidental thereto for the employees of Nav Canada and shall not carry on or permit to be carried on therein any trade or business unless otherwise authorized in writing. The Lessees [sic] tenants must remain employees of the Lessee throughout the tenancy unless otherwise acceptable to the Lessor".
>
> (3) If the defendant held the properties beyond March 31, 2006, the lease would continue on a month to month basis.
>
> (4) The plaintiff had the right, "for whatever reason is deemed necessary" in its discretion, to terminate the agreement, "by a notice in writing giving the Tenant 30 days notice to vacate."
>
> (5) Any disputes arising out of the agreement were to be referred to the Federal Court of Canada.

[3] On October 6, 2005, the plaintiff gave written notice that it was terminating the agreement in respect of two properties of the defendant's choosing, effective March 31, 2006.

[4] The defendant returned vacant possession of only one property.

[5] On February 23, 2006, the plaintiff gave written notice that it was terminating the agreement in respect of two other properties of the defendant's choosing, effective May 31, 2006.

[6] On March 1, 2006, the plaintiff sent the defendant a reminder of the two notices of termination, along with notice of termination for the three remaining properties effective June 30, 2006.

[7] On March 13, 2006, the defendant informed the plaintiff that it would not vacate the remaining properties. Although attempts were made by the parties to come to a new lease arrangement, these attempts failed.

[8] In 2007, the defendant returned vacant possession of two more properties, but admits to retaining possession of the remaining four properties.

SUBMISSIONS

[9] The plaintiff submits that the defendant's statement of defence, in which it relies solely on the security of tenure provided by the Act, discloses no genuine issue for trial. In particular, the plaintiff claims that the Act does not apply to the lease agreement between the parties, since the trigger for the application of the Act is occupancy, and the defendant, as a corporation, is unable to occupy the properties as living accommodations. Furthermore, the plaintiff notes that the provision in the lease agreement that disputes be resolved by the Federal Court demonstrates that the parties had not intended the Act to apply.

[10] The defendant, on the other hand, argues that the nature of the premises or their intended use, not their occupation, triggers the application of the Act. In this case, the properties are intended, by the terms of the agreement, for residential use. Not only does the Act provide security of tenure, but also mandates that disputes are to be resolved by a rental officer. Therefore, the defendant requests an order directing the parties to submit the dispute to the rental officer.

RELEVANT LEGISLATION

[11] The following provisions of the Act are relevant:

> 1.(1) In this Act,
>
> "landlord" includes the owner, or other person permitting occupancy of rental premises, and his or her heirs, assigns, personal representatives and successors in title and a person, other than a tenant occupying rental premises, who is entitled to possession of a residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent;
>
> "rental premises" means a living accommodation or land for a mobile home used or intended for use as rental premises and includes a room in a boarding house or lodging house;
>
> "tenancy agreement" means an agreement between a landlord and a tenant for the right to occupy rental premises, whether written, oral or implied, including renewals of such an agreement;
>
> "tenant" means a person who pays rent in return for the right to occupy rental premises and his or her heirs, assigns and personal representatives.
>
> 6. (1) Subject to this section, this Act applies only to rental premises and to tenancy agreements, notwithstanding any other Act or any agreement or waiver to the contrary.
>
> 48. (1) No person shall terminate a tenancy agreement except in accordance with this Act.

[12] Although the Act provides several methods by which a party can terminate a tenancy agreement, at sections 50 to 63, it is not possible under the Act for a landlord to terminate a tenancy agreement in order to continue using the premises as rental premises.

[13] The Act also provides that, in order to resolve disputes which arise under the Act, the landlord or tenant are to apply to a rental officer, or in certain cases, the Supreme Court.

ANALYSIS

[14] The test for summary judgment under the *Federal Courts Rules*, S.O.R./98-106, is whether or not there is a genuine issue for trial. That means an issue of fact. Where there is no issue of fact but the case raises only one or more questions of law, the Court may, and normally should, resolve that or those questions and render judgment accordingly (see Rule 216(2)).

[15] Given the very large area of common ground between the parties in the present case the only question is whether the Act applies to the lease agreement between the parties. If the Act does not apply, the defendant's statement of defence discloses no genuine issue for trial, as it rests entirely on the security of tenure provided in the Act. If the Act does apply, then a rental officer, rather than this Court, is the appropriate forum for the resolution of the dispute.

[16] Subsection 6(1) of the Act states that it applies to “rental premises and to tenancy agreements”. Therefore, the Court must determine if the properties are “rental premises”, and if the lease agreement is a “tenancy agreement”, as defined by the Act.

[17] The lease agreement between the parties states that the properties are to be used only for residential purposes. It is clear, therefore, that the properties are “rental premises”, defined in the Act as “a living accommodation or land for a mobile home used or intended for use as rental premises [.]”.

[18] This leaves the question of whether the lease agreement is a “tenancy agreement”, which is defined in the Act as “an agreement between a landlord and a tenant for the right to occupy rental premises”. It is fairly clear that the plaintiff falls within the definition of “landlord”, as owner of the properties. It is equally clear, however, in my opinion, that the defendant, a corporate body, is not a “tenant”, defined as “a person who pays rent in return for the right to occupy rental premises”. In my opinion, the defendant does not fall within this definition, because, although it pays rent, it does not, and cannot, occupy rental premises which are defined as “living accommodation”. Rather, the defendant is paying for the right to provide the rental premises to its employees.

[19] I find support for my view in the decision of the Northwest Territories Supreme Court in *Northwest Territories Housing Corp. v. Yellowknife Syndicate*, [1990] N.W.T.R. 269, [1990] N.W.T.J. No. 170, in which the question was whether the Act was “applicable respecting a lease granted by an apartment complex owner to a corporation for use by tenants of the corporation as

living accommodation"? (para. 1). The Court determined that, on a literal and a liberal interpretation of the Act, it was not, because the corporation rented the complex in order to rent the premises in the complex to others. According to the Court:

> Examining the [Act] as a whole […], it is apparent that it is intended to provide more effective and less cumbersome legislative means to enable tenants to assert and protect their legal rights against landlords where the tenants have the right to occupy rented living accommodations. […] Bearing in mind the usual disparity of bargaining power and financial resources between such tenants and their landlords, the Act is evidently intended to restore the balance of power through the public employment of a rental officer to try and mediate and, if necessary, to adjudicate disputes between them. By the same token, *the Act was not intended to apply to what are essentially commercial leasehold transactions between freely-contracting equals under which the lessee, usually a substantial corporation, does not occupy the premises for purposes of its own residential living accommodation* [emphasis added] (para. 18).

[20] Therefore, in my opinion, although the individuals who reside in the properties might in other circumstances be protected by the Act, the defendant cannot claim such protection as it is not a "tenant" as defined and as a consequence the lease agreement is not a "tenancy agreement". I would conclude that there is no genuine issue for trial. The lease agreement between the parties having come to an end, both by having been terminated according to its terms, and the end of the term established in the agreement itself, I would grant the order sought by the plaintiff.

[21] I would emphasize that I reach this conclusion solely on my reading and construction of the Act itself. I do not accept plaintiff's contention that the Act cannot apply simply because the parties did not intend that it should do so. The Act is clearly a legislative expression of public policy and it

is not permissible for persons to contract out of the obligations it imposes by simple private agreement.

[22] The plaintiff is entitled to its costs to be assessed.

ORDER

THIS COURT ORDERS that

1. The plaintiff's motion for summary judgment is allowed.

2. Letting Agreement No. 71337 entered into between Public Works and Government Services Canada and Nav Canada is terminated.

3. The defendant shall deliver vacant possession of the properties located at 6 Woodland Drive, 8, 18 and 20 Sahcho Avenue in the Town of Norman Wells in the Northwest Territories to Public Works and Government Services Canada within 30 days of the date of this Order, unless otherwise agreed to by the parties.

4. The plaintiff is awarded costs to be assessed.

"James K. Hugessen"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1118-06
STYLE OF CAUSE:	THE ATTORNEY GENERAL OF CANADA v. NAV CANADA

MOTION IN WRITING PURSUANT TO RULE 369

REASONS FOR ORDER AND ORDER:	HUGESSEN J.
DATED:	January 23, 2008

WRITTEN SUBMISSIONS BY:

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KATHERINE R. PETERSON, Q.C.	FOR THE DEFENDANT

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