Citation: *Doucet and Davies v. Stehelin*, 2009 YKTC 98 Date: 20090918
Docket: 09-T0046
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: Her Honour Chief Judge Ruddy

In the Matter of the *Landlord and Tenant Act*
R.S.Y.T. 2002, Chapter 131 and Amendments Thereto

Between:

Jason Doucet and Kama Davies

Tenants

And:

Bernard Stehelin and Amanda Stehelin

Landlord

Appearances:
Jason Doucet and Kama Davies — Appearing on own behalf
Graham E.C. Lang — Solicitor for the landlords

REASONS FOR DECISION

[1] On February 14, 2009, the Applicant Tenants, Jason Doucet and Kama Davies, entered into an agreement with the Respondent Landlords, Bernard and Amanda Stehelin, whereby the Tenants would rent half of the duplex owned by the Landlords for a period of one year, commencing March 1, 2009. There is a certain irony to the tenancy agreement having been entered into on Valentine's Day, when one considers that there is now clearly no love lost between the parties.

[2] What began as a dispute over parking resulted in irreparable damage to the relationship between the parties, prompting the Tenants to file an application on August 20, 2009 seeking:

1. Termination of the tenancy agreement on the grounds that the Landlord had committed a material breach of the tenancy agreement;

2. A rebate of a portion of the rent already paid;
3. Compensation for the costs of relocation; and
4. Return of the security deposit.

[3] The application was heard on the 28th of August, 2009, but, due to unfortunate time constraints, could not be fully resolved at that time. In addition, there was a lack of certainty at the hearing of the application as to the amount being sought by the Tenants with respect to relocation.

[4] However, given the Tenants impending move and the fact that an ongoing contractual relationship between the parties was clearly unsupportable, I did make an order, on August 28th, terminating the tenancy agreement effective September 1, 2009; directing the return of the security deposit to the Tenants; and requiring the Tenants to fill the oil tank upon departure as per the requirements of the tenancy agreement. I reserved on the issue of entitlement to either a rent 'rebate' or relocation compensation, indicating that should I find the Tenants to be entitled to some form of monetary compensation, the parties would be invited to return to court to argue the issue of quantum.

[5] This is my decision with respect to entitlement to compensation.

The Facts:

[6] The Tenants moved into the rental premises located at 107 Normandy Road on March 1, 2009. The Landlords, at all material times, were residing in the opposite side of the duplex at 109 Normandy Road.

[7] The tenancy agreement, filed as Exhibit 'A' to the Tenants' affidavit, specifies that the rent paid by the Tenants "includes payment for the following services and facilities: refrigerator, washer and dryer, and ***parking***" (emphasis added). The parking for the two units consists of one large piece of asphalt with

the division between the two being indicated by two survey pins sunk into the asphalt at either end of the driveway.

[8] Problems began in the second week of March over the issue of parking. It appears that not only do the Landlords park up to six personal and business vehicles on their half of the driveway, but they also run two businesses out of their home, resulting in the frequent parking of additional vehicles driven by customers and/or associates of the Landlords.

[9] As a result, the Tenants, on numerous occasions, found their own vehicles either blocked in their driveway or they were unable to access their half of the driveway to park their vehicles. They also learned of others using their driveway when they were not present. The Tenants' affidavit details a handful of specific instances in this regard, and when asked, at the hearing of the application, about the frequency of problems relating to parking, the Tenants clarified that problems arose on average of two to three times per week between March 1st and July 22nd.

[10] On March 31st, the Tenants and Landlords met to discuss the Tenants' concerns with respect to interference with their parking. The Landlords took the position that it was sufficient for the Tenants to simply knock on their door when an issue arose and they would see to moving whatever vehicles were impeding access. The Tenants indicated that this was not satisfactory. The Landlords then agreed to tell people not to block the Tenants access and to put up a notice or sign regarding parking. The Landlords also asked the Tenants to change their parking orientation to park on an angle as depicted in Exhibit 'H' of the Tenants' affidavit, in an attempt to minimize parking problems.

[11] The Landlords, however, did not follow up on this meeting. In particular, no notice or sign was posted immediately following the March 31st meeting.

[12] A second meeting was held on July 19th. In the intervening period, the relationship between the parties had deteriorated significantly. On July 18th, Ms. Davies approached Ms. Stehelin clearly angry about the lack of response to a message she had left requesting a meeting. Ms. Stehelin indicated that Ms. Davies' manner frightened her young children who were present. Similarly, at the meeting on July 19th, Mr. Stehelin clearly lost his temper with the Tenants, as indicated in his apology letter dated July 20th, and filed as Exhibit 'C' to the Tenants' affidavit.

[13] The July 19th meeting appears to have been equally unproductive in resolving the dispute between the parties. The Landlords maintained their position that any parking issues would be adequately addressed by the Tenants simply knocking on their door when a problem arose. The Landlords then announced an intention to renovate, advising the Tenants they would have to leave by September 1st. In so doing, the Landlords took the position that there had been a verbal agreement at the time the tenancy agreement was signed allowing for termination upon one month's notice. The Tenants deny any such verbal agreement. The Landlords followed up with a notice of termination in the form of a letter dated July 20th and filed as Exhibit 'F' to the Tenants' affidavit.

[14] The Landlords did eventually put up a notice on their door dated July 22nd, advising others not to block the Tenants' access to their driveway. (See Exhibit 'H' to the Tenants' affidavit).

[15] On July 25th, the Tenants left a cheque in the Landlords' mailbox for August rent before leaving on vacation. The Landlords did not receive the cheque, and, by letter dated August 4th and filed as Exhibit 'I' to the Tenants' affidavit, served the Tenants with 14 days notice of termination of the tenancy agreement for substantial breach. The Tenants provided a replacement cheque to the Landlords.

[16] Ultimately, the matters were brought to this court for resolution.

Issues:

1. Was the Landlords' 14 day notice of termination dated August 4, 2009 a valid termination for substantial breach pursuant to section 93(1)(b) of the *Landlord and Tenant Act*, R.S.Y. 2002, c. 131?

2. Did the Landlords fail to meet their obligations under the tenancy agreement and the *Landlord and Tenant Act*?

3. If so, are the Tenants' entitled to compensation?

1. The Validity of the 14 Day Notice

[17] The first of these issues can be dealt with expeditiously. Indeed, counsel for the Landlords effectively abandoned this particular argument during the hearing of the application. However, for the purposes of clarity, I would state that I find as a fact that the Tenants left a cheque in the Landlords' mailbox for August rent on July 25, 2009. I also find as a fact that the Landlord, for whatever reason, did not recover the cheque from the mailbox. Nonetheless, I am satisfied that the Tenants' took appropriate steps to comply with their obligation to pay rent when it is due. Accordingly, I am not satisfied that the Tenants were in substantial breach of the tenancy agreement and would find that the 14 day notice dated August 4, 2009 was not a valid termination of the tenancy agreement pursuant to section 93(1)(b).

2. Did the Landlords Fail to Meet their Obligations?

[18] The Tenants take the position that the Landlords did not meet their obligations under the tenancy agreement or the *Landlord and Tenant Act*, and, as a result, effectively forced the Tenants out.

[19] Counsel for the Landlords argues that the Tenants must establish that the Landlords were in substantial breach, which is defined in section 93(2)(b) as

including “a series of breaches of a residential tenancy agreement, the cumulative effect of which is substantial”. Counsel concedes that section 93 provides a mechanism for landlords to terminate a tenancy for substantial breach rather than tenants, but suggests that a tenant seeking to terminate a tenancy ought to, by analogy, meet the same test.

[20] Counsel further argues that this test has not been met in this case and asks that I consider that the Landlords made all reasonable attempts to alleviate the problem; that it is the property layout rather than the Landlords which effectively creates the problem; that the instances of problems with parking were minimal, the cumulative effect of which is insufficient to establish a substantial breach; and that this is really a case of a breakdown in the relationship between the parties such that I ought to find that the tenancy agreement was effectively terminated by mutual consent of the parties.

[21] In my view, it is section 76 of the *Landlord and Tenant Act* which is applicable in this particular case. Section 76 sets out the obligations of landlords, including s. 76(a)(ii) and (f) requiring the landlord:

> (a) … to provide and maintain in a good, safe, healthy, and tenantable state of repair
>
> (ii) the services and facilities agreed to be provided by the landlord under a written or unwritten tenancy agreement; and
>
> …
>
> (f) not to interfere unreasonably with the enjoyment of the rented premises for all usual purposes by the tenant and members of the tenant’s household.

[22] Section 76(3) allows for the enforcement of these obligations as follows:

> The obligations imposed under this section may be enforced by summary application to a judge, and the judge may

(a) terminate the tenancy agreement on any terms and conditions as the judge sees fit.

[23] The tenancy agreement makes it clear that the Landlords were to provide parking to the Tenants. The Tenants access to parking was clearly interfered with by the Landlords' customers and associates and, at times, by the Landlords themselves on numerous occasions over several months, which I find to be unreasonable interference as set out in section 76(f).

[24] The Landlords make much of the fact that no prior tenants had even complained about the issue of parking and all had been content to adopt the practice of simply knocking on the Landlords' door when an issue arose and requesting that the Landlords address it. With the greatest of respect, the fact that prior tenants may have been more tolerant of interference with their right to parking does not in any way absolve the Landlords of their responsibility to provide parking to these Tenants and not to interfere with their use and enjoyment of that parking unreasonably.

[25] The Landlords were clearly put on notice at the March 31st meeting that the Tenants were not prepared to accept the interference with their access to parking and were not satisfied that knocking on the Landlords' door would sufficiently address the problem. Nor am I satisfied that the Landlords took all steps to attempt to address the problem in a timely fashion. The Landlords did make a commitment to tell people not to impede the Tenants access to parking and to post a sign or notice advising people of same, at the March 31st meeting; and, yet, the Landlords failed to follow through on that commitment until July 22nd, almost four months later, and well beyond any hope of salvaging the relationship between the parties.

[26] Ironically, it appears that the problems with parking did, in fact, drop dramatically following the posting of the notice with only one or two minor incidents in August rather than the two to three times per week experienced

before the notice. I infer from this information that had the notice been posted immediately after the March 31st meeting, this matter may well have been resolved without need of court intervention.

[27] Before concluding this issue, some attention must be paid to the configuration of the property. Counsel for the Landlords is quite right in his assertion that the layout of the property is a significant contributing factor to the problems with parking. As the duplex is located at a bend of the road, the division between the two driveways comes out from the building on an angle rather than a straight line. Without the lines superimposed on the photographs filed as Exhibit 'B' and 'D' to the Tenants' affidavit, the division would not be readily apparent. As a result, I accept that the configuration of the property is a contributing factor to the parking problem; however, I also accept that once made aware of the problem, it was the Landlords' responsibility to take steps to more clearly delineate the division. The Landlords failed to do so.

[28] In the end, I conclude that the Landlords were obliged to provide the Tenants with access to parking as part of the tenancy agreement; that the Landlords interfered unreasonably with the Tenants' access to parking; and that the Landlords failed to take timely steps to address the parking problem. Accordingly, I am satisfied the Landlords in this case failed to meet their obligations under the tenancy agreement and the *Act.*

3. Are the Tenants Entitled to Compensation?

[29] As quoted above, section 76(3) allows a judge to terminate a tenancy on 'any terms and conditions as the judge sees fit'. I am satisfied that this would include terms requiring the payment of monetary compensation. Having so concluded, the question then is whether I am of the view that a term requiring payment of compensation to the Tenants is appropriate in this particular case.

[30] The Tenants use and enjoyment of the rental property was clearly adversely affected as a result of the parking problem and further exacerbated by the Landlords' failure to respond to the parking problem in a reasonably timely fashion. I am of the view that in these circumstances the Tenant is indeed entitled to some financial compensation for the Landlords failure to meet their obligations to the Tenants and for the termination of the tenancy, resulting from that failure. I will direct the Clerk of the Court to set this matter down for a hearing on the issue of quantum.

[31] However, before concluding, one final point must be made. While I am satisfied, as noted above, that the Landlords failed to meet their legal obligations, and I am equally satisfied that this resulted in frustration for the Tenants, I am not satisfied that it was in any way appropriate for Ms. Davies to confront Ms. Stehelin, in an aggressive and angry manner, in the presence of Ms. Stehelin's small children. Disputes of this nature, no matter how difficult and no matter how frustrating, ought never to be played out in front of children.

Ruddy C.J.T.C.