In the Court of Appeal of the Northwest Territories

Citation: Lloyd v. Northwest Territories (Commissioner), 2009 NWTCA 02

Date: 2009 02 05
Docket: A1-AP2007000004
Registry: Yellowknife

Between:

Charlene Lloyd and Eric Bungay

Respondents (Applicants)

\- and -

The Commissioner of the Northwest Territories

Appellant (Respondent)

The Court:

The Honourable Mr. Justice Ronald Berger
The Honourable Mr. Justice Clifton O'Brien
The Honourable Madam Justice Patricia Rowbotham

Memorandum of Judgment

Appeal from the Order of the
The Honourable Mr. Justice J.E. Richard
Dated the 29th day of January , 2007
Filed the 31st day of January, 2007

Memorandum of Judgment

The Court:

[1] The issue in this appeal is whether the ***Residential Tenancies Act***, R.S.N.W.T. 1988, c. R-5 (the "RTA") applies to the lease between the Appellant and the Respondents dated October 20, 2004 as subsequently amended. The lease was entered into pursuant to the ***Commissioner's Land Act***, R.S.N.W.T. 1988, c. C-11 (the "CLA") and provides for a thirty year term.

[2] The Respondents sought an order under s. 30 of the RTA directing that the Appellant undertake arsenic remediation on the land leased by the Respondents. Section 30 provides:

> 30. (1) A landlord shall
>
> (a) provide and maintain the rental premises, the residential complex and all services and facilities provided by the landlord, whether or not included in a written tenancy agreement, in a good state of repair and fit for habitation during the tenancy; and
>
> (b) ensure that the rental premises, the residential complex and all services and facilities provided by the landlord comply with all health, safety and maintenance and occupancy standards required by law.

(2) Any substantial reduction in the provision of services and facilities shall be deemed to be a breach of subsection (1).

(3) Subsection (1) applies even where a tenant had knowledge of any state of non-repair before the tenant entered into the tenancy agreement.

(4) Where, on the application of a tenant, a rental officer determines that the landlord has breached an obligation imposed by this section, the rental officer may make an order

> (a) requiring the landlord to comply with the landlord's obligation;
> (b) requiring the landlord to not breach the landlord's obligation again;
> (c) authorizing any repair or other action to be taken by the tenant to remedy the effects of the landlord's

breach and requiring the landlord to pay any reasonable expenses associated with the repair or action;

(d) requiring the landlord to compensate the tenant for loss that has been or will be suffered as a direct result of the breach; or

(e) terminating the tenancy on a date specified in the order and ordering the tenant to vacate the rental premises on that date.

(5) A tenant shall give reasonable notice to the landlord of any substantial breach of the obligation imposed by subsection (1) that comes to the attention of the tenant.

(6) A landlord shall, within 10 days, remedy any breach referred to in subsection (5)."

[3] Pursuant to Clause 35 of lease, the Respondents covenanted to complete the environmental remediation of their leased lot. Clause 35 reads as follows:

"The **Lessee** covenants that on or before September 30, 2006, the **Lessee** shall complete the environmental remediation of the Land in a manner which complies with the recommendations contained in the report entitled 'Arsenic Remediation and Risk Management Strategies for the Con and Rycon Trailer Courts, Yellowknife, Northwest Territories', attached as Schedule 'B' to this **Lease** in accordance with all applicable laws, including **Environmental Protection Laws**, and to the reasonable satisfaction of the **Deputy Minister**, failing which the **Deputy Minister** shall be entitled, without first complying with sections 8 and 9 herein to:

(a) either terminate this Lease on written notice to the **Lessee**; or

(b) undertake such remediation, or to complete such portions thereof as shall not have been completed by the **Lessee**, and all reasonable amounts, costs and expenses incurred by the **Deputy Minister** to do so shall be paid by the **Lessee** to the **Commissioner** within sixty (60) days of written demand therefore.

The **Lessee** shall be deemed to have completed its obligations

> under this section only when the **Lessee** has received written acknowledgement from the **Deputy Minister** that such remediation has been completed to the satisfaction of the **Deputy Minister**."
> [emphasis in original]

[4] The rental officer dismissed the Respondents' application acceding to the Appellant's position that the rental officer's jurisdiction is limited to matters governed by the RTA and that the rental officer lacked jurisdiction to order the relief sought by the Respondents.

[5] On appeal, Richard J. set aside the rental officer's decision and directed the rental officer to consider the Respondents' application on its merits.

[6] On a without prejudice basis, the Appellant has completed the remediation notwithstanding the Clause 35 covenant. The resolution of the extant issue on appeal will determine who will bear the cost of the remediation.

[7] Sub-section 6(1) of the RTA states that the Act "applies only to rental premises and to tenancy agreements, notwithstanding any other Act or any agreement or waiver to the contrary." It follows that the question to be decided is whether the arrangement between the parties deals with either "rental premises" or a "tenancy agreement" so as to engage the provisions of the RTA.

[8] The central factual underpinning is that the Respondents, prior to the execution of the lease and with the knowledge of the Appellant, had placed a mobile home on the land in question. Mobile home is defined in s. 1.(1) of the RTA as follows:

> "'mobile home' means a dwelling that is designed to be made mobile, and constructed or manufactured to provide a permanent residence for one or more persons, but does not include a travel trailer or tent trailer or trailer otherwise designed."

[9] "Tenancy Agreement" is defined in s. 1.(1) of the RTA to mean:

> "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."

[10] Rental premises is defined in s. 1.(1) as follows:

> "'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."

[emphasis added]

[11] We note the circular reference to “rental premises” in the latter definition. Mindful of the object and purpose of the legislation, the thrust of the enactment, insofar as the instant dispute is concerned, is to “land for a mobile home used or intended for use” as living accommodation.

[12] The issue is whether the lease provides the Respondents with “land for a mobile home”. Is it a lease of “land” *simpliciter* or is it a lease of “land for a mobile home”? The lease is silent as to whether the land will be used as a mobile home site. It does require that the land be used for residential purposes. A module home or “stick-built” home might well be placed on the land.

[13] We agree with the Appellant that the phrase “land for a mobile home” in the definition of “rental premises” is to be interpreted as referring to a mobile home site or pad where the parties to the lease would objectively expect that the lessor will have “landlord”-like rights and responsibilities and the lessee will have “tenant”-like rights and responsibilities. That is because the rights, obligations and expectations of a lessor who provides a mobile home pad, utility hook-ups and other services to mobile home owners, is similar to those of landlords and tenants of living accommodation, but not otherwise. It is noteworthy that there are no common areas, services or facilities provided by the Appellant pursuant to the lease. The Respondents arrange for their own water and power supply and waste water, sewage and garbage disposal. No utility hook-ups are provided by the Appellant.

[14] We conclude that the lease is not one of land “for a mobile home”. The appeal is allowed. The decision of the rental officer is restored.

Appeal heard on January 20, 2009

Memorandum filed at Yellowknife, Northwest Territories
this day of February, 2009

Berger J.A.

as authorized: O’Brien J.A.

as authorized: Rowbotham -J.A.

Appearances:

D. Proctor
for the Appellant (Applicant)

A. Marshall
for the Respondents (Respondents)

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