

2010 ONCA 676
Ontario Court of Appeal

Slapsys v. Abrams

2010 CarswellOnt 7831, 2010 ONCA 676, [2010] O.J. No. 4452,
194 A.C.W.S. (3d) 969, 268 O.A.C. 395, 325 D.L.R. (4th) 681

**Edward Slapsys c/o 1406393 Ontario Inc., Landlord (Respondent
in Appeal) and Jason Abrams, Tenant (Appellant in Appeal)**

Goudge J.A., Karakatsanis J.A., Lang J.A.

Heard: October 5, 2010
Judgment: October 19, 2010
Docket: CA C51279

Proceedings: affirming *Slapsys v. Abrams* (2009), 2009 CarswellOnt 9506 (Ont. Div. Ct.); affirming *Slapsys v. Abrams* (2008), 2008 CarswellOnt 9593 (Ont. L.T.B.)

Counsel: Karen Andrews, for Appellant
Douglas H. Levitt, for Respondent

Subject: Property; Civil Practice and Procedure

Related Abridgment Classifications

For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Real property

V Landlord and tenant

V.20 Residential tenancies

V.20.k Termination of tenancy

V.20.k.ii By landlord for own occupation

Headnote

Real property --- Landlord and tenant — Residential tenancies — Termination of tenancy — By landlord for own occupation

Corporation as landlord — Section 48 of Residential Tenancies Act, 2006 is available to permit tenancy to be terminated for personal use of sole shareholder of corporate owner of rental premises.

Table of Authorities

Statutes considered:

Residential Tenancies Act, 2006, S.O. 2006, c. 17

s. 1 — considered

s. 2(1) "landlord" — considered

s. 2(1) "landlord" (a) — considered

s. 48 — considered

s. 202 — considered

APPEAL from judgment reported at *Slapsys v. Abrams* (2009), 2009 CarswellOnt 9506 (Ont. Div. Ct.), dismissing tenant's appeal from decision of Landlord and Tenant Board allowing landlord to evict tenant on ground that landlord required premises for his own residential occupation.

Per curiam:

1 This is an appeal from an order of the Divisional Court that affirmed the decision of the Landlord and Tenant Board allowing the tenant's landlord to evict him on the ground the landlord required the premises for his own residential occupation.

2 The main issue in this appeal is whether s. 48 of the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17, permits a sole shareholder of a corporation as "landlord" to evict a tenant of a residential unit owned by that corporation, if the shareholder requires possession for personal occupancy.

3 The respondent is the sole shareholder and officer of the corporation that owns the property, which is comprised of commercial space and two residential units. He carries out all of the responsibilities of the landlord including the maintenance, repair and communication with tenants. The tenant occupies one of the residential units and pays his rent to the corporation.

4 The Divisional Court concluded that the Board did not err in ordering the eviction of the tenant:

Whether a sole shareholder can require possession of a rental property owned by a corporation for own use should be determined on a case-by-case basis. The consideration of the matter should include the nature of the shareholding and the discretion granted in s. 202 of the [Act].

5 Section 48 of the Act provides in part that "[a] landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation by, (a) the landlord...."

6 The appellant argues that a sole shareholder of a corporation cannot be a "landlord" for the purpose of s. 48 because the corporation and its shareholder are distinct legal entities, the corporation is the landlord and the language of the section contemplates occupancy by a landlord who is a natural person. He submits that express authority is required to displace the fundamental principle of corporate law that the corporation and its shareholders are distinct legal entities.

7 The definition of "landlord" in the Act, however, is not restricted to the owner of a rental unit and it clearly contemplates that there may be more than one "landlord". Section 2 of the Act provides in part:

"landlord" includes,

(a) the owner of a rental unit *or any other person who permits occupancy of a rental unit*, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit....

[emphasis added]

8 Where the premises are owned by a corporation, the issue is whether the sole shareholder and officer of that corporation may also come within the definition of "landlord" as a "person who permits occupancy of a rental unit". In this case, the sole shareholder and officer is clearly the directing mind of the corporate owner and is therefore a "landlord" within the definition of the Act as the person who permits occupancy of the unit. Whether another individual is "a person

who permits occupancy of a rental unit" will depend upon the facts, including particularly whether the person has the ultimate authority to permit occupancy.

9 In addition, we do not accept the appellant's submission that the Divisional Court erred in concluding that the Board may rely upon s. 202 of the Act in an application under s. 48 to support its decision.

10 Section 202 provides:

In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so,

- (a) may disregard the outward form of a transaction or the separate corporate existence of participants; and
- (b) may have regard to the pattern of activities relating to the residential complex or the rental unit.

11 The appellant argues that in the context of remedial tenant protection legislation, this discretion should not be used to defeat tenants' rights but should be used only to pierce the corporate veil in instances that it is necessary to do so for the protection of tenants.

12 Section 48 is clearly an exception to the regime that protects against no fault eviction. While the legislation has a tenant protection focus, s. 48 is designed to strike a balance between the protection of tenants and the rights of landlords. Section 1 of the Act sets out a number of purposes of the Act, including "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 and responsibilities of residential landlords and tenants".

13 Furthermore, by its language, s. 202 obligates the Board to ascertain the true substance of transactions, activities and the good faith of the parties when making findings on an application. It allows the Board to disregard the separate corporate existence of the parties to the transaction in doing so. These are matters that are relevant to an enquiry under s.48. As a result, we are satisfied that s. 202 is relevant to the determination of an application under s. 48 of the Act.

14 For these reasons, we are satisfied that s. 48 is available to permit a tenancy to be terminated for the personal use of the sole shareholder of the corporate owner of rental premises. Accordingly, we do not give effect to this ground of appeal.

15 The appellant further submits that, in any event, the landlord was precluded by issue estoppel from seeking the tenant's eviction. The landlord had a previous unsuccessful application by the landlord under s. 48. However, the Divisional Court was correct in holding that the change in circumstances that the landlord's family was expecting an additional child was evidence upon which the Board could conclude that issue estoppel did not apply.

16 Finally, we see no reason to disturb the Divisional Court's conclusion that there was evidence upon which the Board could conclude as it did on the issue of good faith.

17 The appeal is dismissed. Costs to the respondent are fixed at \$6,123.20 inclusive of disbursements and applicable taxes.

Appeal dismissed.