

2002 CarswellOnt 8691  
Ontario Superior Court of Justice (Divisional Court)

Metro Capital Management Inc., Re

2002 CarswellOnt 8691, [2002] O.J. No. 5931

**Shelley Ball, Tenant/Appellant and Metro Capital Management Inc. -  
verified by court C.S. and Clayton Lockhurst, Landlord/Respondent**

Carnwath J., MacDougall J., Whalen J.

Heard: December 4, 2002  
Judgment: December 19, 2002  
Docket: Toronto No. 48/02

Proceedings: reversing *Metro Capital Management Inc., Re* (2001), 2001 CarswellOnt 9760 (Ont. L.T.B.)

Counsel: Shelley Ball, for herself  
David S. Strashin, for Landlord / Respondent

Subject: Property

**Headnote**

Real property --- Landlord and tenant — Residential tenancies — Termination of tenancy — By landlord for cause — Miscellaneous

Landlord served tenant with notice to terminate tenancy early — On form, landlord stated tenant seriously interfered with reasonable enjoyment of premises by landlord by harassing building staff and office employees to point of inhibiting them from performing their daily duties — Landlord obtained order for termination of tenancy — Tribunal found that tenant substantially interfered with landlord's reasonable enjoyment of residential complex — Tenant appealed — Appeal allowed; order set aside — Notice by landlord under s. 64 of Tenant Protection Act, 1997, in addition to being formal notice to terminate tenancy early, is also notice to comply — As tenant has option to comply, particulars of allegations are essential to make notice meaningful — Particulars should include dates and times of alleged offensive conduct, with detailed description of alleged conduct engaged in by tenant — Where landlord alleges tenant is harassing its employees, notice must clearly set out sufficient details for tenant to be put on notice that particular acts complained of are alleged by landlord to be acts of harassment as compared to legitimate inquiries of rightfully assertive tenant — Notice served by landlord to tenant was seriously deficient in failing to provide details about reasons for notice — Notice did not comply with requirements of Act and was therefore invalid — Tribunal erred in failing to find notice served on tenant was invalid for lacking in required details.

APPEAL by tenant from decision reported at *Metro Capital Management Inc., Re* (2001), 2001 CarswellOnt 9760 (Ont. L.T.B.), ordering termination of residential tenancy.

**MacDougall J.:**

- 1 The appellant appeals the order of Mr. Guy Savoie, Member, Ontario Rental Housing Tribunal, dated December 10, 2001, ordering the tenancy between the landlord and the tenant (appellant) terminated.
- 2 The member found that the appellant "substantially interfered with the Landlord's reasonable enjoyment of the residential complex".
- 3 Section 43 of the *Tenant Protection Act*, 1997, S.O. 1997, c. 24, requires, in part, that:

(1) Where this Act permits a landlord or tenant to terminate a tenancy by notice, the notice shall be in a form approved by the Tribunal; and

(2) If the notice is given by a landlord, it *shall* also set out the reasons and details respecting the termination and inform the tenant that...

4 Section 64 of the *Act* provides:

64.(1) A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant

#### Notice

(2) A notice of termination under subsection (1) shall,

(a) provide a termination date not earlier than the 20<sup>th</sup> day after the notice is given;

(b) set out the grounds for termination; and

(c) require the tenant, within seven days, to stop the conduct or activity or correct the omission set out in the notice.

#### Notice void if tenant complies

(3) The notice of termination under subsection (1) is void if the tenant, within seven days after receiving the notice, stops the conduct or activity or corrects the omission.

5 The landlord served the appellant, who has been a tenant in the building since 1981, with "Notice to Terminate a Tenancy Early" Form N5, a form approved by the Tribunal.

6 In Part "A" of the form, "Reasons for this Notice", the landlord marked off box #2 "You, your guest or other occupant of the rental unit has substantially interfered with the reasonable enjoyment of the residential complex and the landlord or other tenants or has interfered with another lawful right, privilege or interest of the landlord or other tenants."

7 In Part "B" of the form, "Details About the Reasons for this Notice", the landlord wrote:

The tenant has seriously interfered with the reasonable enjoyment of the premises by the landlord by harassing building staff and office employees to the point of inhibiting them from performing their daily duties.

8 The landlord provided us with further particulars of the allegations.

9 We find that this Notice to Terminate a Tenancy Early served by the landlord to the appellant was seriously deficient in failing to provide the details about the reasons for the notice. The notice does not comply with the requirements of the *Act* and is therefore invalid. In reviewing the sufficiency of the details in a Form N5, it is necessary to consider the context of the notice.

10 There are several purposes for requiring the landlord to provide the reasons and *details*:

The tenant needs to know the specific allegations against her in order to

1) be in a position to know the case that must be met;

2) to decide whether to dispute the allegations made against her before the Tribunal; or

3) to stop the conduct or activity or correct the omission within seven days and thereby void the notice.

11 A notice by a landlord under section 64 of the *Act*, in addition to being a formal Notice to Terminate a Tenancy Early, is also a "notice to comply". Accordingly, as the tenant has the option "to comply", particulars of the allegations are essential to make the notice meaningful.

12 Particulars should include dates and times of the alleged offensive conduct, together with a detailed description of the alleged conduct engaged in by the tenant.

13 In the circumstances of this case, according to the materials, there were problems in the building relating to hot water. Where a landlord alleges a tenant of "harrassing its employees", it is particularly important that the notice clearly sets out sufficient details for a tenant to be put on notice that the particular acts complained of are alleged by the landlord to be "acts of harrassment" as compared to legitimate inquiries of a "rightfully assertive tenant".

14 The Member of the Tribunal erred in failing to find that the Notice served on the Tenant was invalid for lacking in the required details.

15 The appeal is allowed and the order of Guy Savoie issued December 10, 2001, is set aside.

16 We are not prepared to give costs to the appellant. The appellant did not file a Dispute to the Notice and did not testify or call evidence at the hearing. Having taken this position, we find that an award of costs to the appellant would not be appropriate in the circumstances.

*NOTE:* At this point, this is not a "unanimous decision".

*Appeal allowed; order set aside.*