



I LIVE IN A DWELLING IN LOW-RENTAL HOUSING AND AM FREQUENTLY AWAY FROM HOME

You live in a dwelling in low-rental housing and are often away from home in order to visit your family and friends. Can the lessor ask for the resiliation of the lease due to the unoccupancy of the dwelling?

THE FACTS

Since April 1, 2002, the lessee had occupied a three-room dwelling in low-rental housing. The dwelling was located on the ground floor of a building comprised of fifteen dwellings. The parties were bound by a lease. On November 23, 2005, the lessor, acting through its lawyer, asked the lessee to provide a credible and valid explanation regarding her actual and permanent occupancy of the premises. At the same time, the lessor called upon the lessee to agree on the terms and conditions for surrendering the dwelling, alleging that there were signs indicating that the lessee was no longer using the dwelling as her habitual dwelling or principal residence.

THE ISSUE

Could the lessor ask for the resiliation of the lease on the ground that the lessee was not using the dwelling as a habitual dwelling or principal residence?

THE DECISION

The lessor did not prove the legal or factual basis for its application and the application was refused. The application to resiliate the lease was therefore dismissed.

THE GROUNDS

The lessor alleged that for several years, the lessee had not been using the dwelling as a habitual dwelling or principal residence. It further alleged that she had failed to respond to several notices asking her to meet with the lessor in order to prove her actual occupancy of the premises and, finally, that she admitted to being in the premises only very rarely. It argued that in so doing, the lessee had failed to use the dwelling for the prescribed purposes, had changed the destination of the premises, had diverted the premises from their intended use as a dwelling for a low-income family within the meaning of the *Act res-*

pecting the Société d'habitation du Québec and had deprived a household in need of subsidized housing.

The evidence showed that the lessee, as well as her automobile, were rarely present in the leased premises, namely the dwelling and the parking space, and that there were therefore signs that the dwelling was unoccupied.

Through her testimony, the lessee indicated that she still considered the dwelling to be her place of residence, even though she stated that she was home only thirteen or fourteen days a month. She was often away from her dwelling because she was visiting her daughter, mother or brother, or her friends. The lessee denied the lessor's allegation to the effect that she was using her dwelling only as a pied-à-terre. She was receiving disability benefits from the Régie des rentes rather than social assistance benefits and she owned a car, thereby allowing her to have a very active social life.

This did not allow the court to conclude that she had changed her domicile, that she no longer occupied her dwelling, that the dwelling had been allocated to her without right or under false pretenses or that her place of residence should be taken away on the ground that her occupancy of the premises was insufficient. The lessee was able to provide a valid explanation for the signs of unoccupancy reproached against her and, as for the rest, the evidence showed that her absences were due to personal factors related to her lifestyle. The lessee could not be faulted for living alone, wanting to see her relatives and friends, owning a car, travelling or wanting to act like a free and autonomous individual.

References

Office municipal d'habitation de Montréal v. Desrosiers, Régie du logement (Montréal) 31-060130-032 G, 2008/07/31, decision rendered by Éric Luc Moffatt.

R.S.Q., c. S-8, s. 51

The judgement discussed in this article was rendered based on the evidence submitted to the court. Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

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