

COURT OF APPEAL FOR ONTARIO

CITATION: Art for Everyday Inc. v. Canarctic J.F.K. Inc., 2022 ONCA 747

DATE: 20221031

DOCKET: C70141

Simmons, Benotto and Favreau JJ.A.

BETWEEN

Art for Everyday Inc.

Applicant (Respondent)

and

Canarctic J.F.K. Inc.

Respondent (Appellant)

Peter Griffin and Mitchell Wine, for the appellant

Ian Cantor, for the respondent

Heard: October 24, 2022

On appeal from the judgment of Justice Andra Pollak of the Superior Court of Justice, dated December 1, 2021, with reasons at 2021 ONSC 7877.

REASONS FOR DECISION

[1] At the conclusion of the oral hearing, we dismissed this appeal for reasons to follow. These are our reasons.

[2] The appellant landlord appeals from a judgment declaring that the landlord's purported termination of a lease by letter dated July 14, 2020 was invalid and that its lease with the respondent tenant remains in full force and effect. Although not

set out in the formal judgment, in her reasons, the application judge also stated that, had it been necessary, she would have granted the tenant relief from forfeiture.

[3] We reject the appellant's argument that the application judge erred in finding its July 14, 2020 notice of termination invalid.

[4] Under the terms of the lease, the landlord was entitled to terminate the lease by notice following an event of default. Section 13.1 of the lease stipulates that an event of default occurs where “any Rent due is not paid within five (5) days after notice in writing from the Landlord to the Tenant.”

[5] In a June 20, 2020 email, the landlord notified the tenant that the tenant was in default of payment of the rent owing under the lease but did not stipulate the precise amount it claimed was then owing for arrears and interest. To trigger an event of default under s. 13.1 of the lease, at a minimum, notice in writing from the landlord to the tenant must include at least those particulars and demand that the tenant pay the arrears within a stipulated period of no less than five days.

[6] Because the landlord's June 20, 2020 email was the landlord's most recent notice of rent arrears to the tenant and did not include those requirements, we see no error in the application judge's conclusion that the landlord's July 14, 2020 notice of termination was invalid. If the landlord intended to rely on the tenant's then existing arrears to terminate the lease, the tenant was entitled to notice of the

precise amount the landlord claimed was owing and that the landlord was demanding payment.

[7] Further, in the circumstances of this case, we see no error in the application judge's conclusion that the landlord failed to provide the tenant with proper notice of default in writing because the landlord did not warn the tenant of its intention to terminate the lease if specified rental arrears were not paid by a particular date.

[8] Between May 8, 2020 and June 14, 2020, the landlord sent the tenant eight emails concerning rent arrears, sometimes specifying the quantum of arrears, sometimes not. However, the only specific consequence of non-payment to which the landlord ever referred was that interest was accruing on the outstanding arrears.

[9] Even assuming a landlord is not generally required to warn a tenant of an intention to terminate a lease when giving a notice in writing of default under the lease, we see no error in the application judge's conclusion that such a warning was required in this case. Because the landlord sent multiple emails to the tenant about rent arrears and warned the tenant only that interest was accruing on such arrears, we agree with the application judge that fairness required that the landlord warn the tenant before resorting to termination in this case.

[10] The application judge also ordered that the landlord pay the tenant costs on a partial indemnity basis in the amount of \$27,500. The appellant did not seek

leave to appeal costs and acknowledges that counsel had agreed on the quantum of costs that should be awarded. However, it asserts that the application judge erred by failing to give the parties an opportunity to address to whom costs should be awarded. Leave to appeal costs is denied. Among other reasons, it is not clear on the record before us that the landlord's position was made clear to the application judge.

[11] Costs of the appeal are to the respondent on a partial indemnity scale fixed in the agreed upon amount of \$20,000 inclusive of disbursements and HST.

“Janet Simmons J.A.”

“M.L. Benotto J.A.”

“L. Favreau J.A.”