

*Case Name:*

**Goodliff v. Woodcock**

**Between**

**Laura Goodliff, plaintiff, and  
Michael Woodcock and Eva Woodcock, defendants**

[2004] O.J. No. 4701

135 A.C.W.S. (3d) 152

Lindsay Court File No. 0095/03SR

Ontario Superior Court of Justice

**R. Scott J.**

Heard: October 28, 2004.

Judgment: November 17, 2004.

(31 paras.)

*Landlord and tenant law -- The premises -- Defective or dangerous premises -- Tort law -- Negligence -- Causation -- Damages -- For torts -- Affecting property -- Personal property -- Cost of repair or replacement.*

Action by the plaintiff, Goodliff, against the defendants, the Woodcocks, for damages as a result of a fire that destroyed a three-unit dwelling occupied by the Woodcocks as owners, and Goodliff as tenant. The cause of the fire was found to be accidental. Goodliff had no contents insurance and sought damages. Goodliff claimed that Woodcock had promised to pay her \$1,000 for her contents if she did not mention to the insurance adjuster or the fire department about a faulty heater in her apartment that she had complained about numerous times to Woodcock. Woodcock denied this conversation. Woodcock argued that Goodliff's claim was statute barred by the Fire Prevention Act as the cause of fire could not be determined. Goodliff argued that Woodcock's duties under the Residential Tenancies Act to keep the premises in a good state of repair overrode the Fire Prevention Act.

HELD: Action dismissed. The evidence of Woodcock was preferred as more credible. The fire could not on a balance of probabilities be traced to a particular cause. There was no evidence that

the cause of the fire was the failure of Woodcock to keep the premises in a good state of repair. Goodliff did not have a cause of action in contract or negligence on the facts.

**Statutes, Regulations and Rules Cited:**

The Fire Prevention Act, s. 76.

The Residential Tenancies Act, ss. 3, 8(1).

**Counsel:**

Yaroslav Mikitchook, Counsel for the Plaintiff

Martin P. Forget, Counsel for the Defendants

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REASONS FOR JUDGMENT

R. SCOTT J.:--

BACKGROUND

1 This action proceeded by way of the Simplified Rules. This action is for damages as a result of a fire that completely destroyed a three unit dwelling occupied by the defendants as owners and the plaintiff as tenant. The cause of the fire was found to be accidental and unknown. The plaintiff had no contents insurance at the relevant time and she now seeks damages against the defendants.

2 Only two witnesses testified at the trial, the plaintiff and one of the defendants, Mr. Woodcock. Their affidavits together with certain documents and photographs and the pleadings were also part of the trial.

FACTS

3 The plaintiff, now 31, is a Registered Nurse. In the fall of 2002, the plaintiff purchased a cottage property beside the defendants' house and was having it renovated including structural changes, which precluded the plaintiff from moving in for what was originally anticipated to be for a few weeks to a month.

4 The defendants were retired from the greenhouse business and had only recently moved into their home on a full-time basis. This home contained two apartments in addition to the quarters occupied by the defendants. Of the two apartments, both of which were empty and had been for some time, one of the apartments was full size including a fully operational kitchen. The smaller unit of approximately six hundred square feet in size, contained a kitchen that was not equipped with a standard stove/oven and therefore cooking was limited to 120-volt appliances such as a microwave oven, a toaster and an electric frying pan. The rent was agreed upon at \$400.00 per month, which included some furnishings (2 couches, coffee tables etc.). Both apartments were above the defendants' quarters. The plaintiff moved into the apartment in the middle of November 2002 together with her two cats, her dog and some of her belongings.

5 During her stay, the plaintiff experienced a number of problems with the accommodations.

**6** For example, the bathroom heater had a fan that did not operate properly. The plaintiff brought this to the attention of the defendant, Mr. Woodcock, and, as he remembers, it was agreed that the boyfriend of the plaintiff who was a handyman would fix it. In any event, the plaintiff complained to the defendant, Mr. Woodcock, on several occasions at the beginning of the tenancy and then did not bring it up again.

**7** As well, early on in the tenancy, the plaintiff had tripped a circuit breaker for her apartment after plugging in multiple 120-volt cooking appliances. The breaker was re-set and, the defendant, Mr. Woodcock, instructed the plaintiff not to plug in more than one appliance at any given time and, although the circuit was tripped on other occasions, the plaintiff adapted quickly to such advice.

**8** The plaintiff also had problems with squirrels living in the ceiling and the defendant landlord was notified but did little to remedy the problem.

**9** Further, during extreme cold periods, a ceramic heater was necessary to thaw certain water pipes that had become frozen.

**10** As is not unusual, the short tenancy that was planned turned into months as the renovations became more complex.

**11** On January 27, 2003 the plaintiff arose and made some tea, unplugged whatever appliance she had used, crated her dog which was her usual practice, and left for work sometime around 7:30 in the morning. The plaintiff remembers that the heater and fan was on in the bathroom as were the electric baseboard heaters through the apartment, which heated the premises.

**12** Sometime during the morning, the defendant, Mr. Woodcock, heard a loud thump above him emanating from the plaintiff's apartment. About one-half hour later, the defendant, Mr. Woodcock, smelled smoke and, believing it to be his fireplace adjusted the damper to no avail. He went up and checked the larger empty apartment and found it to have smoke within it. He then checked the smaller apartment of the plaintiff and was met by a wall of heavy black smoke. He and his wife exited the dwelling quickly and went to the neighbour's home to telephone the fire department. The entire home and contents were a complete loss. The plaintiff lost her two cats and dog. The defendant's lost one of their two pets.

**13** While the fire department was on the scene fighting the fire, the plaintiff returned home, someone at work having told her that the house was on fire. She testified that upon her arrival at the fire scene, she spoke initially with the defendant, Mr. Woodcock, and it was agreed that if she would not mention the electrical problem with the heater then he would cover her losses as he had \$1,000,000 in liability insurance. She states that she then spoke with a representative of the fire department about the well being of her pets and was told that the pets had died in the fire. The plaintiff indicated that she was questioned by the fire department representative during the investigation of the cause of the fire and that she gave no reasons. She was also questioned by an insurance adjuster, two days later, and gave a written statement, which provided no reasons for the cause of the fire. She testified that she said nothing because of her compensation agreement with the defendant, Mr. Woodcock.

**14** The defendant, Mr. Woodcock, testified that he did not speak to her when she first arrived, as she was understandably concerned about the well being of her pets and she had discussions directly with a member or members of the fire department. He testified that it never crossed his mind the

insurance details of the plaintiff or the lack thereof. He denied that he had entered into any agreement at this instance or otherwise to defraud his insurance company. He was questioned by an investigator with the fire department and separately by an insurance adjuster and could offer no help as to the cause of the fire.

**15** Following its investigation, the fire department prepared a Fire Occurrence Report which was filed by both of the parties at the outset of the trial and which listed the cause of the fire as "unknown".

**16** The defendant, Mr. Woodcock, testified that a short time after the fire he had a conversation with the plaintiff about his insurance coverage. He indicated that his insurance adjuster had asked him to obtain a list of the contents that the plaintiff lost in the fire and that he had asked the plaintiff to prepare same and had told her that the adjuster would find out from the defendants' insurance company if she was covered by their policy. Some time later when confronted by the plaintiff on this matter, the defendant, Mr. Woodcock, advised her that they had denied her any coverage under the defendant's policy.

**17** The defendant, Mr. Woodcock also testified that following the fire, a neighbour, Wendy Raffo, approached him and the other neighbours for a donation of clothes and money for the plaintiff. This defendant testified he gave to Wendy Raffo \$2,000.00 in cash on the condition that the donation remained anonymous. He testified that he never spoke with the plaintiff about the donation at any time.

**18** The plaintiff tells a somewhat different version. The plaintiff, in her filed affidavit in this action, swore at paragraph 25 the following:

"25. Subsequent to the fire, Michael Woodcock approached me to discuss my loss. His concern at the time, that I may speak to the fire investigator about the electric heater in the washroom and he promised me to pay for my property loss from the insurance proceeds he was going to get and shortly thereafter he gave me \$1,000 cash to help me purchase the most necessary items which I had lost." (emphasis added)

**19** In her testimony at trial, the plaintiff testified that he gave the \$1,000 to her neighbour, Wendy Raffo, in an envelope and Wendy Raffo in turn handed her the envelope unopened and advised the plaintiff that the source of the envelope was the defendant, Mr. Woodcock. Upon receipt of the money, the plaintiff then thanked the defendant, Mr. Woodcock for his donation.

#### CREDIBILITY

**20** I had the ability of observe the plaintiff and the defendant, Mr. Woodcock testify during the course of this trial both on important issues as well as less significant issues. The plaintiff on a number of occasions gave inconsistent testimony to her earlier affidavit and pleadings. I also found that certain of her testimony, particularly her recollection of her attending the fire scene, not to be reasonable given the circumstances. I would have thought that the well-being of her pets would have been of paramount importance to her. Overall the plaintiff's testimony and materials on critical issues were not helpful to the court and, as a result, where the plaintiff's recollection of the events differed from that of the defendant, Mr. Woodcock, I have chosen the evidence of the defendant, Mr. Woodcock.

**21** Mr. Forget, the solicitor for the defendants submits that should I prefer the evidence of the plaintiff that she agreed to conspire with the defendant, Mr. Woodcock, to defraud his insurance company (a position that I do not hold), then such an alleged contract as between the parties is not enforceable in law. In support of his position, Mr. Forget, relies on *Menard v. Genereux* (1982), 39 O.R. (2d) 55 (HCJ). I would agree with the defendants' position were I to have found that such an agreement actually existed.

**22** The defendants argue that the plaintiff's action in negligence is statute barred by S. 76 of The Fire Prevention Act S.O. 1997, C. 4, as the cause of the fire could not be determined. The relevant provision of the Act reads as follows:

"No action shall be brought against any person in whose house or building or on whose land any fire accidentally begins, nor shall any recompense be made by that person for any damage suffered thereby but no agreement between a landlord and tenant is defeated or made void by this Act." (emphasis added)

**23** The defendants rely upon the following authorities to support their position; *Neff et al. v. St. Catharines Marine Limited* [1998] O.J. 253 (C.A.), *Dudzinski v. Coles* [1988] O.J. No. 1582 (QL) (Ont. Dist. Ct.) and *Fontaine v. British Columbia (Official Administrator)* [1998] 1 S.C.R. 424.

**24** Particularly, in the case of *Neff et al. v. St. Catherines Marine Limited*, supra, Justice Carthy wrote at page 255 thereof "in providing a meaning for word "accidentally" as found in 576 of The Fire Prevention Act", the following:

"On the authorities, it is my view that an accidental fire is not one that is proved to have been accidental, rather it is one that cannot on the balance of probabilities be traced to a particular cause."

**25** In the case before me, it was speculated that the cause of the fire was the heater or some other electrical problem. As well, it could have been caused for any number of reasons. The inescapable conclusion is that the cause of the fire "cannot on the balance of probabilities be traced to a particular cause" as confirmed by the Fire Occurrence Report, which listed the cause of the fire as "unknown".

**26** Mr. Mikitchook, the solicitor for the plaintiff submits that the case of *Vlastakis v. National Frontier Insurance Co.*, 44 C.C.L.I. (3d) 141 (S.C.J), supports the plaintiff's position that S. 76 of the Fire Prevention Act does not apply. In that case, it was found that on the facts, there was a cause of fire and as such, the Act had no application.

**27** The plaintiff further argues that the combination of S. 3(1)(2) and S. 8(1) of The Residential Tenancies Act, 2000 of Ontario overrides S. 76 of The Fire Prevention Act as it requires the landlord to maintain for the tenant "premises in a good state of repair and fit for habitation during the tenancy, failing which the landlord is liable for any damages suffered by the tenant." The plaintiff submits that as there was a fire it follows that the premises were not in "a good state of repair". The relevant sections of The Residential Tenancies Act, 2000 are as follows:

3(1) Notwithstanding another Act or agreement, declaration, waiver or statement to the contrary, this Act applies where the relationship of landlord and tenant exists in respect of residential premises.

3(2) Notwithstanding another Act or agreement, declaration, waiver or statement to the contrary, this Act applies to residential premises and residential complexes and to rental agreements, whether made before or after this Act comes into force.

8(1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of the landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenants that the following statutory conditions governing the residential premises apply:

- a) The Landlord shall maintain the premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.
- b) Paragraph (a) applies regardless of whether, when the landlord and tenant entered into the rental agreement, the tenant had knowledge of a state of non-repair, unfitness for habitation or contravention of a law respecting health, safety or housing in the premises.

**28** With due respect to counsel for the plaintiff, I find no merit in this submission. There exists no evidence on the balance of probabilities to find that the cause of the fire was as a result of the landlord not keeping the premises in a good state of repair and fit for habitation. At best, the problems that the tenant experienced during her tenancy could be submitted to the Director of Residential Tenancies pursuant to the provisions of The Residential Tenancies Act, 2000 for a hearing to determine if such inconveniences could be the subject of an order for the abatement of rent. There is nothing to join or tie these inconveniences to the cause or source of the fire on a balance of probabilities and as such, The Residential Tenancies Act, 2000 is not applicable.

**29** Simply, the plaintiff should have maintained insurance on her contents, as the plaintiff does not have a cause of action against the defendants in either negligence or contract given the facts of this particular case.

**30** Should the parties be unable to resolve the issue of costs, I would ask that they, through counsel, speak with the Trial Coordinator to arrange a conference call with me.

**31** Action dismissed.

R. SCOTT J.

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