

**SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS
COURT OF APPEALS**

Ronald and Julie Munro v. Sault Tribe of Chippewa Indians Housing Authority

APP-07-05

Decided January 9, 2009

BEFORE: GABLE*, HARPER, KRONK, JUSTIN and NOLAN, Appellate Judges.

ORDER AND OPINION

Justin and Nolan**, Appellate Judges, who are joined by Appellate Judges Harper and Kronk.

DISCUSSION

I. Factual and Procedural Background

This matter comes before the Appellate Court as a result of an appeal filed by the Appellants, Ronald and Julie Munro. The Appellants seek relief from an Order issued by the tribal court that obligated them to pay the Appellee the sum of \$127.76.

The record discloses that a dispute arose amongst the parties while the Appellants were terminating their leasehold but at the same time purchasing a dwelling from the Appellee. It is not contested that the Appellants were always in good standing.

The underlining issue relates to how much notice the Appellants were entitled to receive from the Appellee when terminating the rental agreement between the parties. Appellants argued that they were entitled to 30 days to vacate the premises, as indicated in the lease agreement. However, Appellee asserted that Appellants were only entitled to 14 days notice to vacate their premises which was apparently based upon an unpublished "internal policy." Obviously this "internal policy" contradicted the notice provisions in that the lease and the record is bereft any publication of the so-called "internal policy." At trial there was no testimony that the parties had modified the terms of the lease. The record discloses that most likely any discussion of the 14 day notice took place (if at all) literally months after the Appellants vacated the premises.

In the appeal filed December 7, 2007, the Appellants based their appeal on the following: (1) the tribal court's apparent inconsistency in recognizing that the Appellees attempted to enforce a 14-day unpublished notice requirement but then finding against the Appellants; (2) that

* Although Judge Gable heard oral argument in this matter, she unfortunately walked on on July 18, 2008 before being able to participate in this opinion. Accordingly, only appellate judges Harper, Justin, Kronk and Nolan participated in this opinion.

** Former Appellate Judge Nolan assisted Judge Justin in writing this opinion, as it was written before the resolution to reappoint her to this Court failed. However, as the final vote on this opinion occurred after the resolution failed, Judge Nolan did not participate in the final vote on this opinion.

the lease agreement between the parties should be the complete and full understanding of the rights and obligations of the parties, and not an unpublished notice requirement; and, (3) that, if this Court agrees there was no operable 14 day time limit, the Appellants' \$175.00 security deposit should be returned.

Prior to ruling upon the issues raised by Appellant, the Court must consider the first Motion to Dismiss filed by the Appellee.

II. Appellee's Motion to Dismiss

The Appellee prior to scheduled oral argument in this matter properly filed a Motion to Dismiss based upon the Appellee's assertion that Appellant's brief was not timely filed. This Court denies the Appellee's Motion to Dismiss because Appellants' brief was timely filed and would state as the record discloses that the Appellants' brief filed with the Court on June 5, 2008 was timely. *See* Tribal Code Section 82.113 for calculation of time per the Tribal Code. In the future, the Court hopes that a review of the Tribal Code prior to filing a Motion to Dismiss occurs.

Second, this Court disagrees that the scheduling order issued by this Court creates an affirmative duty to submit a brief. The Court wishes to clarify that parties are not required to submit briefs under Tribal Code Section 82, which governs appeals to this Court. As already explained above, Tribal Code Section 82.125(2) provides that this Court may address issues raised on appeal "either by brief **or** orally" (emphasis added). Additionally, Tribal Code Section 82.120 provides that "[p]arties are encouraged, **but not required**, to file written briefs concerning the issue on appeal, in order to assist the Court of Appeals in its review." (emphasis added). The Tribal Code is therefore clear on this point – although encouraged to do so, parties to an appeal are not required to submit briefs in an appeal, as this Court may consider issues raised either in a brief or at oral argument. Tribal Code Section 82.125(2). A review of the scheduling order should be taken to mean that if a brief is to be filed by either party, it should do so by the stated deadline.

III. Stipulation as to Damage Amount

Pursuant to a Stipulation on the record, it is agreed by both parties that the sum of \$87.00 is an appropriate sum for damage to a door on the leased premises. The Court will therefore begin with the stipulation that Appellants owe Appellee \$87.00.

IV. Effect of the Contract between the Parties

It is clear the appropriate notice provision is and was contained within the lease that had been executed between the parties and never subsequently modified. The lease stated with regards to Notice.

XIII. TERMINATION OF THE LEASE

- (A). This Lease may be terminated by the Tenant at any time by giving (30) day written notice in the manner specified by Section XI. IF Management does not receive this notice, the Tenant will forfeit fifty percent (50%) of the Security Deposit before any other deductions. Tenant will have ten (10) days from the date of the termination notice to revoke it; after the tenth day the notice will be final.
- (C). If Management should elect to terminate this Lease, the notice of termination to the Tenant shall state the reason for the termination in writing. Management will provide a Seven-Day Notice to Quit for failure to make payments due under the Lease. 30-day Notice to Quit for threats to health or safety, for utility shut-off or for damage to the dwelling unit. Management will provide 30-day Notice to Quit for termination of the Lease for other lease or policy violations. Management will file an eviction action in tribal court after such notice. Management may also request an emergency, ex-parte order removing the tenant from the unit in cases of utility shut-off or health or safety emergency.

A review of the record shows no evidence that there had been any contemporaneous discussion between the parties regarding the 14-day notice until after the Appellants vacated their leasehold.

The trial court has the obligation to make specific findings of fact, which are supported by the evidentiary record. With regards to the notice term the trial court stated, "I guess what I don't know from the testimony today whether or not the transfer policy was ever provided to the defendants and were aware in a transfer situation they had to ahh... move in 14 days." The trial court is not to guess or to speculate whether or not a fact had been established. This Court would reference the trial court's duty when making findings of fact. To do less would be counter to the trial process. Strangely enough, after stating that he did not know whether or not the transfer policy/14-day notice provision, the trial court judge ruled that the defendants received the notice and held that the 14-day notice provision was binding on the parties.

The amount of money owed by Appellants is a question of fact. In reviewing the tribal court's findings of fact, the Court applies the "clearly erroneous" standard of review. Tribal Code Section 82.124(1). As explained in *Rex Smith v. Sault Ste. Marie Tribe of Chippewa Indians*, "[i]n applying the clearly erroneous standard of review, the Court will determine whether it is left with a "definite and firm conviction" that the trial court made an error in its findings of fact." APP-08-02, 3 (August 4, 2008). Upon review, this Court finds that the record

in this matter was scant at best and appeared that the exhibits referred to by Appellee were not maintained with the file.¹ See Tribal Code Section 81.215.

Based upon the record before this Court, it seems elementary that the rights and obligations existing between the Appellant and the Appellee were memorialized in the lease. This Court notes that any mention of a 14-day move out provision does not appear in the record until approximately three months after the Appellants had vacated the premises. There is no evidence in the record that the “14-day” notice requirement was made known to the Appellants prior to the operative events. Based on the record there is no evidence to show that the parties had agreed upon anything other than the leasehold arrangement, which was in writing and executed by both parties.

Given there is no evidence in the record that either the Appellants were aware of the 14-day move out requirement nor that the lease agreement between the Appellants and Appellee was changed to reflect a 14-day move out period, the Court must conclude that the 14-day move out period asserted by Appellee was not binding on the Appellants. With that being the case, it appears that the applicable time period should have been 30 days, which would have given the Appellants enough time to move out and not obligated them to further expense.

Therefore, given the 14-day move out provision did not apply in this matter, the Court finds that the tribal court’s conclusion that it did and subsequent Order directing Appellants to compensate Appellee was clearly erroneous, given this Court is left with the definite and firm conviction that the tribal court erred.

Further, while not necessarily raised directly in the appeal, this Court also notes that the judgment that was prepared by the Trial Court was not consistent with its holding in that there was no provision in the judgment for costs to be awarded to the Appellants which clearly the Court indicated it was entitled to. Since neither party had brought that to the Trial Court’s attention upon receiving the judgment, this issue has been abandoned.

CONCLUSION AND ORDER

This Court reverses the trial court based on reasoning found herein and would direct the Appellee to return to the Appellants the security deposit less the stipulated damage figure of \$87.00. Accordingly, Appellee is ordered to pay Appellants \$88.00 within 30 days of the release of this opinion.

¹ The Court was particularly troubled that the record did not include any evidence that Appellants were ever given notice of the 14-day move out requirement until several months after vacating the premises. Counsel for Appellee is encouraged in the future to ensure that the record below is adequately developed and that any materials relied upon at oral argument are included in the record below. This is important given that this Court may not consider facts not in evidence below. Tribal Code Section 82.125(4).