

<u>CASE NO.</u>	<u>VOL. NO.</u>	<u>PAGE</u>
CANASIA INDUSTRIES LTD.	- and -	CHRISTOPHER MAY
Appellant		Respondent
C.A. No. 158917	Halifax	CHIPMAN, J.A.

[Cite as Canasia Industries Ltd. v. Christopher May, 2000 NSCA 21]

APPEAL HEARD: January 21, 2000

JUDGMENT DELIVERED: February 1, 2000

SUBJECT: LANDLORD TENANT - RESIDENTIAL TENANCIES

SUMMARY: The landlord and tenant had engaged in protracted proceedings before the Residential Tenancies Board, which had already reached the Supreme Court on one previous occasion. When the matter was returned to the Residential Tenancies Board the parties arrived at a settlement, the terms of which were incorporated into an order of the Board. The landlord then made a fresh application to the Director of Residential Tenancies for payment of money from the tenant for advertising costs incurred in finding a new tenant after the tenant left the premises. The question before the Tenancy Officer was whether the terms of the previous settlement embraced this claim. The Tenancy Officer held that it did. The landlord appealed to the Board, which held that the earlier settlement did not embrace this claim and allowed the landlord's claim for costs. The tenant appealed to the Supreme Court. The Supreme Court judge held that the Board erred in law in concluding that the claim was not covered by the terms of the settlement. The Court also clarified the order giving effect to the settlement with respect to costs, but held that the issue of whether the security deposit was taken into account in arriving at the settlement was not before the Court. The landlord appealed to the Nova Scotia Court of Appeal and the tenant filed a notice of contention which was, in effect, a cross-appeal.

ISSUES:

- (1) Whether the Supreme Court was correct in holding that the Residential Tenancies Board erred in law in finding that it was still open for the landlord to pursue the claim for advertising.
- (2) Whether the Supreme Court erred in clarifying the order giving effect to the settlement.

(3) Whether the security deposit was included in the settlement.

RESULT:

The Court of Appeal held that the trial judge was correct in finding that the Residential Tenancies Board erred in law respecting the scope of the settlement. The appeal was dismissed. The Court of Appeal also held that the Supreme Court erred in clarifying the previous order by ordering that the sheriff's costs were not to be recovered by the landlord. As to the tenant's notice of contention, the Court of Appeal held that the Supreme Court judge correctly refused to decide this issue, but that it was clear in any event from the history of the proceedings and the terms of the settlement that the security deposit had already been taken into account. The appeal and the notice of contention were both dismissed without costs.

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