

NOVA SCOTIA COURT OF APPEAL

**Cite as: Farnell v. Harnacek, 1998 NSCA 193  
Freeman, Roscoe and Bateman, JJ.A.**

**BETWEEN:**

WINNIFRED FARNELL

Appellant

- and -

RUDOLPH HARNACEK

Respondent

)  
)  
) Appellant appeared  
) in person  
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) Eugene Y.S. Tan  
) for the Respondent  
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) Appeal Heard:  
) November 17, 1998  
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) Judgment Delivered:  
) November 17, 1998  
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**THE COURT:**

The appeal is dismissed with costs; the appellant shall deliver vacant possession of the premises on or before January 31, 1999; the appellant shall pay the outstanding arrears in the amount of \$3,700.00 and shall continue paying \$400.00 per month from now until the vacating date as per oral reasons for judgment of Roscoe, J.A.; Freeman and Bateman, JJ.A., concurring.

The reasons for judgment of the Court were delivered orally by:

**ROSCOE, J.A.:**

This is an appeal from an order of Justice John Davison dated December 23, 1997, by which he approved the recommendations contained in a report by the Residential Tenancies Board and dismissed an objection filed by the appellant tenant. The appellant was ordered to pay rental arrears of \$3,200.00 owing as of October 31, 1997, plus \$400.00 per month for each additional month of occupancy. The order also provided that the appellant vacate the rented premises on or before January 31, 1998. The appeal was originally set for hearing in June, 1998 but was adjourned to this date at the appellant's request.

By consent between the parties, the order of Justice Davison was stayed pending the determination of the appeal on the condition that the tenant pay \$400.00 per month rent.

The appellant has been a tenant of the respondent landlord's premises, by verbal month to month lease, since 1975. The rent, originally \$165.00, had increased periodically over the years to the amount of \$500.00 in 1995. On August 22, 1995 the landlord gave notice of a further rent increase to \$550.00 effective December 1, 1995. The tenant paid the increased rent until April 1, 1997. From then until January, 1998, no rent was paid.

Upon hearing a complaint by the landlord, on September 9, 1997, the Board found that the tenant was six months in arrears of rent for the months of April, 1997 to September, 1997 in the amount of \$3,300.00. The matter was adjourned to October 31, 1997 to determine the question of vacant possession. In the meantime, the tenant filed a

Notice of Objection in the Supreme Court. On October 6, 1997, the Objection was heard by Justice David Gruchy, who remitted the matter to the Board to hear the tenant's counter-complaint.

At its second hearing, held on October 31, 1997, the Residential Tenancies Board heard the tenant's evidence in support of her counter-complaint, wherein she alleged that the landlord increased the rent in retaliation against her, and had harassed her on numerous occasions from 1991 to 1993. She also submitted that she should receive a credit against the rent for cleaning she did of common areas and that the last increase was not yet in effect because of the improper notice.

The Board found that the notice of the last rental increase was not proper since only three month's notice had been given, when the required notice period was four months. As a result, the Board allowed a rebate of \$50.00 a month for the months of December, 1994 to March, 1997 (16 months). It was also determined that the tenant was then eight months in arrears (  $\$500.00 \times 8 = \$4,000.00$  ), less the credit of \$800.00, so that the total owing was \$3,200.00. The Board rejected the evidence of the tenant that the landlord retaliated against her and that she had been harassed. The Board recommended to the court that the tenant pay the arrears and that she vacate the premises on or before November 20, 1997.

The tenant's second Notice of Objection was heard by Justice Davison on December 22, 1997. In his reasons for decision, dated December 23, 1997, he adopted the findings made by the Board and dismissed the Notice of Objection. He stated that there was evidence to support the findings of fact made by the Board and therefore there was no reason to interfere with the recommendation of the Board. Justice Davison ordered the

tenant to pay rent at the rate of \$400.00 per month until giving up possession of the premises on January 31, 1998.

On appeal, the tenant submits that the learned Supreme Court judge erred in law:

- “in defining the intent of the Tenant’s Notice of Objection”;
- by failing to review the exhibits relating to the tenant’s complaints of harassment and retaliation;
- by accepting erroneous findings of Justice Gruchy relating to the amount of arrears;
- by not accepting her submission that the Board had not allowed her a sufficient opportunity to pay the arrears;
- by accepting the Board’s findings on the issues of harassment and retaliation;
- by not requesting a supplemental report from the Board;
- by not finding that the Board had erred in law in its findings of credibility;
- in failing to find that the appellant’s right to quiet enjoyment of the premises had been breached, thus entitling her to a reduction of rent; and
- in upholding the Board’s recommendation that the appellant vacate the premises.

In **Hancock v. Fuchs** (1994), 132 N.S.R. (2d) 357, Chipman, J.A. stated at p. 358, para. [2]:

By virtue of s. 15(5) of the **Residential Tenancies Act**, R.S.N.S.

1989, c. 401, the evidence at a hearing before the Board is not recorded. The Supreme Court nevertheless has jurisdiction over the factual issues before the Board by virtue of s. 16(5) of the **Act**. A finding of fact made by a Residential Tenancies Board and adopted by a judge of the Supreme Court pursuant to the legislative scheme governing residential tenancies will not therefore be disturbed by this court, unless it is manifestly erroneous. In applying the requisite test, this court is necessarily confined to the record and the report of the Board and any additional record before the Supreme Court pursuant to s. 16(5). An error of law on the part of the Board which is adopted by the Supreme Court may, however, be corrected by this court.

We have examined the record and considered the arguments and submissions of the parties. We are satisfied that Justice Davison properly considered the record and made no manifest error in adopting the findings of fact made by the Board, including the finding that there was no proven retaliation or harassment at a relevant period of time. We also conclude that he did not commit any error in law or procedure. We find no merit to the appellant's grounds of appeal or arguments.

Accordingly, we dismiss the appeal with costs in the amount of \$1,000.00 payable by the appellant to the respondent. The appellant shall deliver vacant possession of the premises on or before January 31, 1999 and shall pay the outstanding arrears in the amount of \$3,700.00. The appellant shall also continue to pay rent at the rate of \$400.00 per month from now until the date the appellant vacates the premises.

Roscoe, J.A.

Concurred in:

Freeman, J.A.

Bateman, J.A.