C.A. No. 128870

NOVA SCOTIA COURT OF APPEAL

Cite as: Campbell v. Richard, 1996 NSCA 228
Hallett, Roscoe and Bateman, JJ.A.

BETWEEN:

SHIRLEY CAMPBELL	)	
	)	Appellant in person
Appellant	)	
	)	
- and -	)	
	)	
	)	Respondent in person
LAURA RICHARD	)	
	)	
Respondent	)	Appeal Heard:
	)	November 19, 1996
	)	
	)	
	)	Judgment Delivered:
	)	December 2, 1996
	)	
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	)	

THE COURT: Appeal dismissed per reasons for judgment of Hallett J.A.; Roscoe and Bateman JJ.A. concurring.

HALLETT J.A.:

This is an appeal from an Order of Nathanson J. made on May 14, 1996, approving a recommendation of the Halifax County Residential Tenancy Board dated April 23rd, 1996, respecting a residential landlord and tenant dispute.

The proceedings have a long history. The parties represented themselves throughout.

On August 22nd, 1994, the appellant landlord and the respondent made a verbal lease for the rental of a portion of the appellant's home to the tenant. The tenancy was month to month with rent of $325 per month payable on the 1st day of each month.

In October 1995 the dispute arose due to the presence of the tenant's boyfriend in the premises. When the tenancy was entered into the appellant had stipulated that the rented unit was to be occupied by only the tenant and that there could be no smoking or other toxic substances in the rental unit as the appellant suffered from an environmental illness.

The boyfriend was in the habit of smoking outside the back door of the residence. The smoke apparently infiltrated the part of the residence occupied by the appellant. On several occasions over a period of weeks the appellant demanded that the smoking stop; it did not.

On October 18th, 1995, the appellant made an application to the Board pursuant to the **Residential Tenancies Act**, R.S.N.S. 1989, c. 401 for an order "declaring the tenancy agreement terminated and giving the landlord vacant possession".

On October 20th, 1995, the tenant vacated the premises but did not turn in her key. The appellant was advised by a staff person at the Board that she could

not change the locks or have possession of the premises and that she should proceed with her application.

On November 1st the application was heard; the tenant did not appear. On November 6th Board member Herbert Desmond, who heard the application, rendered his decision in which he recites that the appellant testified that she told the tenant that she would have to leave.

In accordance with the procedure created under the **Residential Tenancies Act**, applications under the **Act** are to the Supreme Court. The applications are then referred to a residential tenancy board for a recommendation.

On November 6th, 1995, Mr. Desmond recommended to the Supreme Court that:

> "....that claims of the landlord, Shirley Campbell, be allowed and that the lease be terminated as of October 20, 1995 and the landlord be given vacant possession of the premises known as 3 Simcoe Place, Halifax, Nova Scotia."

Although nothing is in the record presented to us, in the ordinary course of proceedings this recommendation would have been approved by the Supreme Court pursuant to s. 16 of the **Act** and an order issued accordingly.

On November 12th, 1995, the appellant, pursuant to s. 14(1)(e) of the **Act** made a further application to the Board for damages. Section 14(1)(e) states:

> 14 (1) A landlord or tenant may, not more than one year after the termination of the tenancy, apply in the form prescribed by regulation to the county court of the district in which the premises are situated for an order
>
> .....
>
> (e) requiring the payment of money by the landlord or tenant;"

The application is now made to the Supreme Court as a result of the

County Court being merged into the Supreme Court.

In addition to the other damages claimed in the application, the appellant apparently expressed concern about the retroactive nature of the Board's recommendation of November 6th, 1995, in that the tenancy was terminated as of October 20th which she asserted resulted in her losing rent for the month of November which she claims she was entitled to by reason of the tenant not having given her notice to quit.

On January 31st, 1996, this application was heard by Board member John Howard Oxley.

On February 6th, 1996, he filed the following report:

"REPORT OF THE
Halifax County RESIDENTIAL TENANCIES BOARD

PURPOSE	This is an application by a landlord seeking an order requiring the payment of money by a tenant.
REFERRAL	The application was filed January 16th, 1996. Pursuant to subsection 2 of section 14 of the *Residential Tenancies Act*, the application was referred to the Halifax County Residential Tenancies Board for a report.
HEARING	A hearing of the Halifax County Board was held in Dartmouth, Nova Scotia, at 10:30 a.m. on Wednesday, January 31st, 1996, chaired by John Howard Oxley.
SERVICE	The applicant/landlord, in this case is Shirley Campbell, who was present at the hearing. The respondent/tenant, is Laura Richard, was also present at the hearing. The Board proceeded with the hearing.
RELATIONSHIP	The Board is satisfied that a landlord/tenant relationship existed between the parties, as established in a precedent case (SH 121407R). They entered into a verbal monthly term lease for occupancy commencing August 22nd 1994, with a monthly rental of $325.00 due on the first of each month. A security deposit of $162.50 was

paid on August 22nd, 1994, and is kept in a trust account at the Canada Trust branch on Argyle Street, Halifax, N.S. The landlord acknowledged that the tenant was not provided with a copy of the *Residential Tenancies Act*. The tenant vacated the premises on October 20th, 1995.

BOARD NOTE

The Board notes that considerable reference was made to the precedent case in testimony, but since this is already a matter of established fact, only those items relevant to the current claim were considered.

LANDLORD EVIDENCE

The landlord testified that:

a) the tenant had vacated without proper notice, thus creating rental arrears of $325.00 for the month of November, 1995.

b) because the landlord feared for the safety of her premises, and because the tenant had not returned her key, the landlord was forced to take time off work, and lost $475.90 in vacation time [see Exhibit 3503-C].

c) the landlord had to pay for a new lock (costing $55.82), for cleaning the apartment [photographs serialled 1-6 of Exhibit 3503-B show the condition of the premises] (costing $48.00 for labour and $8.49 for materials), and for photographing the evidence ($13.00 with tax).

d) the landlord had incurred expenses for bringing this claim totalling $59.98.

e) the way in which the apartment was constructed meant it was impossible for the landlord to proceed with her normal courses of activity (e.g. accessing the house fusebox) without infringing on the tenant's privacy.

EVIDENCE OF TENANT

The tenant (who exhibited signs of emotional distress while testifying) and her witness Sean Barry testified to the following:

a) that the premises were not clean when she moved in; she would have tried to clean it before leaving but felt intimidated by the landlord, which

is why the keys were not returned.

b) that once she had vacated the premises, no further action was required on her part.

c) that the landlord's problems were the direct result of the landlord's own behaviour.

d) that the cost of replacing the lock was too high; submitting an estimate of $35.60 in support [Exhibit 3503-D].

REBUTTAL OF TENANT

The tenant desired her postdated cheques back; she felt harassed by the landlord (because, eg. the landlord telephoned the tenant at her workplace to demand damage payments) and all she wants is to get the matter over with. There was no need for the landlord to take time off work, and the tenant does not consider that compensation is due in this case.

REBUTTAL OF LANDLORD

The landlord was unable to understand why the tenant felt threatened by the landlord; it was the latter who was continually under stress in this situation, and she had no confidence her property and possessions were safe. The landlord had no intention of harassing the tenant at any time. If the tenant had given proper notice and returned the keys, the landlord would have been satisfied.

FINDING OF FACT

The Board makes two initial observations:

a) that the participants in much of this case seem to require that their state of mind is relevant to the outcome. The Board is not gifted with psychiatric knowledge and declaims any capacity to determine such matters.

b) much of the problem with the tenancy stem from the physical configuration of the premises, which does not allow ordinary privacy or security for either landlord or tenant. The Board considers that offering such premises for rental amounted to an assumption by the landlord of the risks inherent in this configuration, since she made no constructive effort to alter it.

The Board finds that:

1) By the landlord's action in securing the termination of the tenancy in the preceding case, she extinguished any right to rents owing for the month in question. The tenants did not give valid Notice to Quit according to Section 10(1)(b)(ii) of the *Residential Tenancies Act* but the practical effects of this are moot.
2) The landlord has already been found to be holding a security deposit of $161.18 representing principal and interest.
3) Because the configuration of the apartment was the proximate cause of the landlord's taking vacation time to secure the premises, the Board considers that the vacation time expenses claimed are not valid, as well as costs for processing the case, such as the $13 for the photographic evidence and the $59.98 in general expenses are not, in the Board's opinion, a valid claim for damages. These costs are considered to be the cost to the landlord of doing business which is ultra vires to the Board.
5) While it might have been possible for the landlord to obtain a deadbolt for less than the price she actually did so, the Board is satisfied that the amount claimed of $55.82 is valid, as are the charges of $43.00 and $8.49 for cleaning and materials, and that the tenant in fact owes these to the landlord, for a total of $107.31.
6) Assessment of harassment ultimately depends on evaluating the mental state of the harassee. In the present circumstances, the Board does not consider the efforts of the landlord to recover amounts which she believed were due her to represent harassment.
7) Since a security deposit of $161.18 is in the landlord's possession, the total damages of $107.31 should be recovered from that amount, leaving a balance of $54.50.

RECOMMENDATION The Board recommends to the Court that the claim of the landlord, Shirley Campbell, for allowable damages of $107.31 be satisfied from the security deposit already in the landlord's possession."

On February 14, 1996, the appellant, as was her right under the **Act**, filed,

in the Supreme Court, a notice of objection to Mr. Oxley's recommendation. In her notice of objection she stated:

> "During my presentation at the hearing, Mr. Oxley stopped me part way through my presentation and advised me that he was not recording any of my information as he felt the information I was presenting was already on file as a result of my previous complaint. Not wanting to upset Mr. Oxley, I cut my presentation to only new information. In doing so, I assumed Mr. Oxley had access to "notes to files" from my many conversations with staff from the Department of Housing and Consumer Affairs. It is obvious from his report, that Mr. Oxley did not have a good understanding of how things transpired in my situation and thus did not have access to all the facts in this case. Mr. Oxley's report contains errors as well as fails to present the key issue in my presentation ie. the tenant left without giving any notice and retained a key to the premises knowing that I would not be able to take over possession without having to file a notice to quit. In having to file a notice to quit, I was not put in possession until late November, just about one month from the day that the tenant abandoned the premises. The day following the tenant's abandonment of the premises, I called Housing & Consumer Affairs and was told that I could not change the locks and that I should follow through with the Notice to Quit in order to bring resolution to this issue. I believe I did all that I was told to do to return security to myself, my daughter and to my property. When issued her notice for this hearing, the Tennant was advised by the staff who delivered the notice, about my dilemma and yet she still did not make any effort to correct this situation. Surely this is willful neglect on her part that created unnecessary financial losses for me? As opposed to addressing this crucial issue at the hearing or in his report, Mr. Oxley preferred to address the issue of the tenant's emotional state and his limits in assessing the psychological state of the participants. These I suggest, should have been left to the private thoughts of Mr. Oxley and not reported as facts in this official report.
>
> Having been forced to issue a five day notice to bring resolution to this unpleasant situation, I do not believe the law states that I must "extinguish any right to rents owing for the month in question". As stated by Mr. Oxley, "the Tennant did not give valid Notice to Quit". Surely she, (not I), must be held responsible for any losses that her willful neglect caused?"

On March 11th, 1996, Justice Nathanson considered her objection. A transcript of that proceeding has been made part of the record which we have

reviewed.

Justice Nathanson heard representations from both the appellant and the tenant. It would appear from the transcript that he agreed with Mr. Oxley's determination that the appellant's action in seeking to terminate the tenancy by her application which had been filed on October 18th, 1995, and heard by Mr. Desmond on November 1st, 1995, extinguished any right she had to rent for the month of November, 1995.

It also seems clear from the transcript that Justice Nathanson intended to order that Mr. Oxley would convene a further hearing to allow the appellant to adduce evidence before Mr. Oxley on two questions: (i) her claim for $475.90 for the lost vacation time due to the appellant's wish to guard her premises after the tenant had vacated but had not returned her key to the appellant; and (ii) the appellant's claim for costs she incurred in bringing the legal proceedings, particularly disbursements, including fees paid to the Board and to the Court. However, the Order made by Justice Nathanson on March 11th, 1996, following the hearing did not reflect this intention. The operative part of the Order stated:

> "IT IS ORDERED THAT this matter be referred back to the Tenancy Officer for a supplemental report relating to all evidence as to alleged damages suffered by the Landlord with respect to loss of time from work and costs of the hearing(s)."

The decision to ask for a supplemental report is authorized by s. 16(5)(a) and (e) of the **Act**.

On April 23rd, 1996, Mr. Oxley, without reconvening a hearing, wrote the following report:

"REPORT OF THE
Halifax County RESIDENTIAL TENANCIES BOARD

PURPOSE This is an order of Supreme Court requiring a

supplemental report relating to all evidence as to alleged damages by the landlord with respect to loss of time from work and costs of the hearing.

REFERRAL

The report was ordered March 11th, 1996 pursuant to subsection 5(d) of section 15 of the *Residential Tenancies Act*.

HEARING

A report of the Halifax County Board was written in Halifax, Nova Scotia, at 2:30 p.m. on April 20th 1996 by John Howard Oxley.

SERVICE

The applicant in this case is Shirley Campbell, who was present at the original hearing. The respondent is Laura Richard, who was present at the original hearing.

RELATIONSHIP

The Board is satisfied that a landlord/tenant relationship existed between the parties, as established in a precedent case (SH 121407R). They entered into a verbal monthly term lease for occupancy commencing August 22 1994, with a monthly rental of $325.00 due on the first of each month. A security deposit of $162.50 was paid on August 22nd 1994, and is kept in a trust account at the Canada Trust branch on Argyle Street, Halifax. The landlord acknowledged that the tenant was not provided with a copy of the *Residential Tenancies Act*. The tenant vacated the premises on October 20th, 1995.

RECONSIDERATION OF EVIDENCE OF LANDLORD

The Board reconsidered the two aspects of the hearing to which its attention was directed:

The Board does not mean to dispute the evidence offered by the landlord into the loss of vacation time from her work. Clearly the landlord did suffer such a loss. The Board's decision to dismiss this portion of the claim was based on two considerations, which it considered cumulatively crucial:

a) To the extent that the landlord took this time off to guard her possessions from apprehended interference by the tenant [a position which the evidence nowhere suggests was prima facie justified], the main cause of this was the way in which the rented premises were constructed,

which did not provide a secure barrier between the landlord's and tenant's dwelling spaces. The Board believes this was entirely under control of the landlord [and indeed raises real questions as to the degree to which the relevant Statutory Conditions of Section (9) of the *Residential Tenancies Act* were in fact complied with]. By this reasoning, the ultimate cause of the landlord's having to take time off was a condition of the landlord's own devising, and it would not be appropriate to penalize the tenant for this.

b) The Board now goes further, and remarks that the landlord at no time offered any evidence that her property or possessions were in any danger from the tenant, and that nothing in the demeanour of the tenant or her male companion seemed to justify this in the Board's opinion. Again, this means that the landlord incurred vacation loss expenses needlessly for reasons which were not the tenant's fault; again, the Board does not consider an award to compensate for this loss appropriate in this case.

c) The Board does not, moreover, consider that the landlord had to take vacation time in order to deal with this complaint, and that other alternatives, such as contacting the police or arranging with neighbours or a house watching service to have the property watched, could have been resorted to for less cost to the landlord, even were the costs to be valid, which in this case the Board specifically denies.

d) In regards to reimbursing the landlord for any costs of the hearing, while the Board does not reject the evidence supplied by the landlord, it does not consider such an award appropriate. The Board does not consider that any provision of the *Residential Tenancies Act* justifies any such award. Moreover, the Board has been consistent in rejecting claims for hearing costs on any landlord's part. It is the practice of the Board to view these expenses by landlords as "the cost of doing business" which does not fall under the jurisdiction of the Residential Tenancies Act.

FINDING OF FACT

In the light of the above reasoning, and having reconsidered the evidence, the Board sees no reason to vary the recommendation originally

made.

RECOMMENDATION The Board recommends to the Court that it denies additional claims of the landlord, Shirley Campbell, for damages with respect to the loss of time from work or costs of the Hearing."

On May 14th, 1996, Justice Nathanson made the following Order:

> "UPON READING the Report and Recommendations of the Halifax County Residential Tenancies Board dated the 23rd Day of April 1996 A.D., with respect to the residential premises described as 3 Simcoe Place, Halifax, Nova Scotia.
>
> IT IS ORDERED that the recommendations contained in the report of the Halifax County Residential Tenancies Board as attached hereto, be approved and made an order of the Supreme Court of Nova Scotia."

On June 10th, 1996 the appellant filed a notice of appeal from Justice Nathanson's decision in which she states:

> 1. TAKE NOTICE that the Appellant appeals the judgment of the Honourable Justice H.S. Nathanson of the Supreme Court of Nova Scotia being his decision delivered the 14th day of May, 1996 in proceedings in the Supreme Court bearing No. 1996 - S.H. 124133R wherein he did accept the recommendations of the Halifax County Residential Tenancies Board dated the 23rd Day of April 1996 A.D. to deny additional claims of the Landlord for damages with respect to the loss of time from work and costs of the hearing(s).

AND the grounds of the appeal are:

> 1. That by accepting the May 14, 1996 [sic April 23, 1996] recommendations of the Halifax County Residential Tenancies Board, in which the applicant was not given the opportunity to provide any supplemental information, the learned Supreme Court Justice has denied the applicant the opportunity to a fair hearing on the

alleged damages she suffered with respect to loss of time from work and the costs of the hearing(s). In his March 11th, 1996 order, Judge Nathanson ordered a "supplemental report" relating to these issues on the grounds that in the initial hearing the applicant had been denied her right to present all of the facts relating to these expenses. Mr. Oxley's April 23rd supplemental report was limited to his review of existing reports and still did not give the applicant any opportunity to present her information on these issues.

2. Given that the Mr. John Howard Oxley presided over the initial tenancy board hearing on this issue and that he was the subject of the applicants Feb. 14, 1996 official objection on grounds that she was denied the rights to a fair hearing on this matter, it is the position of the applicant that Mr. Oxley is now not able to give an objective report on this issue and thus his supplementary report is at least in appearance biased against the applicant.

3. Such other grounds as may appear from the reading of the transcript and perusal of the file.

AND THAT the applicant will ask that the judgment appealed from be reversed as follows: that the recommendation of the April 23rd, 1996 Halifax County Residential Tenancy Board be denied and that the Halifax County Residential Tenancy Board to order to hold a subsequent hearing in respect to the alleged damages suffered by the Landlord with respect to loss of time from work and the cost of the hearing(s) and that Mr. Oxley not be permitted to preside over any further reviews/hearings in this case."

Disposition of the Appeal

Section 16(5) of the **Residential Tenancies Act** is relevant to the appeal from Justice Nathanson's Order of May 14th, 1996. Section 16(5) states:

"16 (5) After a period of seven business days has expired from the date of the report and whether or not a notice of objection to the recommendations of the board has been filed, a county court judge may himself or upon the application of the landlord or tenant

> (a) set a date for a hearing and give directions respecting notice of that hearing;
>
> (b) adopt the report in whole or in part;
>
> (c) vary or reverse the report and any finding therein;
>
> (d) require a supplemental report from the board;
>
> (e) decide any question or issue referred to the board on the evidence taken before the board as disclosed by its report, with or without any additional evidence;
>
> (f) make an order
>
> (i) declaring the tenancy to be terminated,
>
> (ii) setting aside a notice to quit,
>
> (iii) directing that the landlord or tenant be put into possession of the residential premises,
>
> (iv) directing the tenant to pay the rent in trust to the board and directing the board as to the disposition of the same,
>
> (v) requiring the payment of money by the landlord or tenant,
>
> (vi) requiring the landlord or tenant to perform any act or cease and desist from any act."

Justice Nathanson's Order of March 11th, 1996, did not order the Board to convene a further hearing. Therefore, the Board cannot be faulted for failing to do so. That aside, I am satisfied that a further hearing in which the appellant could again have had an opportunity to make her submissions on these two items of her claim would not have altered the recommendation of Mr. Oxley that he could see no

reason to vary his recommendation made on February 5th, 1996. I have reached this conclusion because, to the extent that it could be said the initial recommendation turned on questions of fact, the information the appellant says she was prevented from presenting to him following Justice Nathanson's Order of March 11th, 1996, was, in fact, before Mr. Oxley when he rendered his decision of February 5th, 1996. Mr. Oxley would have been aware that the appellant testified that she told the tenant to vacate as this is contained in Mr. Desmond's decision. Mr. Oxley was aware that the tenant vacated the premises but did not return the key to the appellant. He was aware that there was no secure structure between the premises occupied by the respective parties.

The only evidence he may not have had before him, and this is only speculation on my part as there is no record, is the evidence relating to the situation that led the appellant to telling the tenant to vacate (the smoking problem).

Whether or not the tenant breached the verbal lease became a moot issue when the appellant ordered her to vacate and the tenant did vacate prior to the end of October. The appellant seemed to think that the tenant was required to give her notice to quit whereas the opposite is the correct situation; the appellant would have been required to give the tenant notice to quit for having breached the lease.

Under the circumstances the tenant was not liable for the November rent. There was no additional evidence that could have been relevant to this issue that would have resulted in a different decision with respect to the entitlement to the November rent.

With respect to her claim for compensation for lost vacation time while guarding her own living quarters, I agree with Mr. Oxley's report. The evidence supports Mr. Oxley's conclusion that the appellant's perception that her premises

and possessions were not safe after the tenant vacated the premises were the result of the appellant's renting premises that gave the tenant access to the premises occupied by the landlord. The appellant had created the situation. Furthermore, Mr. Oxley had an opportunity to assess the demeanour of both the appellant and the tenant at the hearing on January 31st, 1996, as they both testified. In Mr. Oxley's supplemental report he concluded that the appellant had no valid reason to fear that her premises or her possessions were in danger from the tenant. Obviously, this assessment was based on the first hearing and it is unlikely that it would have changed on a further hearing. Having had an opportunity to observe both the appellant and the tenant during argument before this Court, I sense that Mr. Oxley was correct in concluding that the appellant had nothing to fear from the tenant.

With respect to the claim for costs of the proceedings and, specifically, the claim to recover out of pocket disbursements for Board and Court fees, Mr. Oxley was of the opinion in his first report that such costs are simply the costs of a landlord doing business. In his supplemental report Mr. Oxley stated that the Board does not consider any provision of the **Residential Tenancies Act** justifies awards for costs and that the Board has been consistent in rejecting claims for hearing costs on any landlord's part. A further hearing before Mr. Oxley would not have altered the **Act** nor the Board's policy nor his views on this issue.

To reiterate, the initial recommendations of Mr. Oxley with respect to these two claims would not have been different had the appellant been given a further opportunity to adduce evidence. A review of Mr. Oxley's decision of February 5th, 1996, clearly shows that he had before him the facts relevant to all the appellant's claims. In his report of February 5th, 1996, Mr. Oxley rejected the appellant's claim for November rent. It is clear from the report of Mr. Desmond that

the appellant had testified that she told the tenant that she would have to leave the premises. The tenant left on October 20th, 1995. Mr. Oxley was aware of this decision because in dealing with the claim for November rent he stated in his decision of February 5th, 1996:

> "1) By the landlord's action in securing the termination of the tenancy in the preceding case, she extinguished any right to rents owing for the month in question."

In Mr. Oxley's February 5th, 1996, decision he allowed the appellant's claim for the expense of a new lock and for cleaning the rented premises for a total sum of $107.31.

For the reasons previously referred to, he recommended the dismissal of her claim for lost vacation time while she guarded her premises after the tenant vacated and dismissed her claim for costs of the proceeding.

In summary, a further hearing would only have provided the appellant with an opportunity to make the same submissions she made at the first hearing before Mr. Oxley. There would be no evidence that would alter the fact that there was no secure barrier between the rented premises and that area of the house occupied by the appellant. There could be no evidence that would have altered the fact that the appellant told the tenant to get out and commenced proceedings under the **Residential Tenancies Act** to achieve that end. There could be no evidence that would have altered Mr Oxley's application of the Board policy not to award landlord's costs.

Therefore, had Justice Nathanson's Order required Mr. Oxley to convene a further hearing, the evidence would not have altered Mr. Oxley's recommendations.

That aside, there was no such order. It cannot be said that Mr. Oxley

acted unfairly in simply doing what the Court ordered.

I reject the appellant's submission that Mr. Oxley had an appearance of bias in rendering his April 23rd, 1996, Supplemental Report. Nathanson J. had referred the matter back to him for a supplemental report; this was an option open to Justice Nathanson pursuant to s. 16(5)(b) of the **Act**. Mr. Oxley had no choice but to deal with it. There is no evidence that Mr. Oxley had a bias towards the appellant nor would a reasonable person, apprised of the facts, and looking objectively at the situation conclude that Mr. Oxley had a bias.

The appellant's claim for compensation was first heard over a period of two hours by Mr. Oxley on January 31st, 1996. All her claims were considered. On April 20th, 1996, he gave further consideration, as directed by the Court, to two of those claims.

I have asked myself whether it was fair to the appellant that Justice Nathanson adopted the supplemental report without the parties being given an opportunity to file a notice of objection to that report. Obviously, the appellant would have objected as she understood Mr. Oxley was required to convene a further hearing with respect to the two claims in question.

The **Act** does not require the Board to make a supplemental report available to the parties as is required by s. 16(3) with respect to the filing of the initial recommendation of the Board. There is nothing in the Regulations enacted pursuant to the **Act** that imposes such a requirement. Nor does the Supreme Court's Practice Memorandum 16, relating to Notices of Objection filed under the **Act**, contain such a requirement.

It would appear that Justice Nathanson in convening the hearing on March 11th, 1996, was acting pursuant to subparagraph (a) of Section 16(5). And in

remitting the matter to the Board for a supplemental report was exercising the authority conferred on him by subsection (d) of Section 16(5). In adopting the supplemental report, he was exercising the authority conferred on him by subparagraph (b) of Section 16(5).

Section 16 does not make any provision for a landlord or a tenant to have an opportunity to file a notice of objection to a supplemental report ordered by the Supreme Court.

Under Section 16(5) a judge can adopt a report on his own motion even if a notice of objection is filed. Therefore, there was no requirement that the Board or the Court give notice to either the landlord or the tenant of the filing of the Supplemental Report prior to the Court making a final determination as to whether the Court would adopt the report, in whole or in part, vary or reverse the report, or make any of the orders specified in paragraph 16(5)(f).

Justice Nathanson, therefore, did not exceed his statutory authority nor did he err in approving the recommendation contained in the April 23rd, 1996, supplemental report which, by inference, incorporated the recommendations in the February 5th, 1996, report.

In my opinion, the appellant had a fair opportunity to put the issues that concerned her before Mr. Oxley at the hearing on January 31st, 1996. He dealt with her submissions in his report of February 5th, 1996. There was no relevant information she could have adduced, that could have altered his recommendation, had Mr. Oxley convened a subsequent hearing respecting the two issues remitted to him. Considering all the circumstances of this matter, the fact that neither Mr. Oxley nor Justice Nathanson convened further hearings, did not result in an unfairness to the appellant that would cause this Court to set aside Justice

Nathanson's Order of May 14th, 1996, nor to order a further hearing by a Residential Tenancies Board differently constituted. The two claims in question cannot be sustained for the reasons stated by Mr. Oxley in his reports. A further hearing would have accomplished nothing as the two claims are not sustainable in law.

I would dismiss the appeal from Justice Nathanson's Order of May 14th, 1996, without costs

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Hallett, J.A.

Concurred in:

Roscoe, J.A.

Bateman, J.A.

C.A. No. 128870

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

SHIRLEY CAMPBELL

Appellant

- and -

LAURA RICHARD

Respondent

REASONS FOR JUDGMENT BY:

HALLETT, J.A.