

1993

S.H. No. 93-3263

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

GLORIA BENJAMIN,

Plaintiff

- and -

AULDEN and JEANETTE POTTIE,

Defendant

D E C I S I O N

HEARD: at Halifax, Nova Scotia before The Honourable Justice Walter
R. E. Goodfellow on October 17, 1994

DECISION: October 17, 1994 (Orally)

WRITTEN RELEASE

OF ORAL: October 18, 1994

COUNSEL: James P. Boudreau
Solicitor for the Plaintiff

Mark T. Knox
Solicitor for the Defendant

GOODFELLOW, J.: (Orally)

BACKGROUND

The parties proceeded by way of an Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS

1. The Defendants are husband and wife.
2. The Defendants each signed the Lease with Plaintiff, but, on separate occasions.
3. Mrs. Pottie received a copy of the Lease and the *Residential Tenancies Act*. (Her liability is not at issue in these proceedings.)
4. The Plaintiff or the Plaintiff's agent does not recall whether a copy of the *Act* and Lease was left with Mr. Pottie.
5. Mr. Pottie does not recall whether a copy of the Lease or *Act* was left with him.
6. Mr. Pottie stated the following at discovery examination:

'Q. And were you provided with a copy of the lease?

A. I don't think so. I don't remember.

Q. You don't remember?

A. No.

Q. Your wife has indicated that she believes she was.

A. She was, yes.

Q. And she's also indicated that she received a copy of the *Act*.

A. Possibly, I don't know. I wasn't there.

Q. Do you recall receiving a copy of the *Act*?

A. No.

Q. 'No', you don't recall, or 'No', you didn't?

A. I don't believe I did.

Q. Can you say with certainty today, Mr. Pottie, whether you received a copy of the Act from the Benjamins or reviewed the Act that had been provided to your wife?

A. I can't say for certain. But I'm sure -- all I did was sign it, and he took the papers with him. Like, I don't know. I figured she had a set, anyway, so ---

Q. You figured she had a set, anyway?

A. Yes. I didn't concern myself. I just put my 'John Henry' on it and ---

7. Plaintiff has not breached terms of the Lease of the *Residential Tenancies Act* in any way.
8. Defendants occupied the leased premises for 23 months.
9. At issue is whether Mr. Pottie is now entitled to take advantage of Section 7(3) of the *Residential Tenancies Act* which states:

Where a landlord fails to provide a copy or reproduction of this *Act* in accordance with subsection (1) or a copy of a written lease in accordance with subsection (2), the tenant

- (a) at any time before the tenant receives a copy or reproduction of this *Act* or the written lease from the landlord; or
- (b) within one month after the tenant receives a copy or reproduction of this *Act* or the written lease from the landlord,

may give notice to the landlord that the tenant will quit and deliver up the premises on a specified day within a period of three months from the day the notice is given."

ISSUE

1. Does the Supreme Court of Nova Scotia have jurisdiction to entertain a suit for a

claim for rent?

2. Does the **Residential Tenancies Act** apply?
3. Is the landlord entitled to any recovery, and if so, in what amount?

Issue 1. Does the Supreme Court of Nova Scotia have jurisdiction to entertain a suit for a claim for rent?

Yes. **Keeping v. Gerard and Gerard** (1986), 75 N.S.R. (2d) 168.

Issue 2. Does the *Residential Tenancies Act* apply?

As indicated by Palmeter, CJCC, as he then was, in **Keeping v. Gerard and Gerard**, *supra*, the *Residential Tenancies Act* provides a summary procedure for settlement of disputes between landlords and tenants, but does not oust the jurisdiction of the court. Nevertheless, the obligations between landlord and tenant are governed by the *Residential Tenancies Act*, and in this case it is clear that the landlord has not established, on a balance of probabilities, compliance with the *Act* in that she has been unable to establish a copy of the lease was provided to Mr. Pottie. Both Mr. and Mrs. Pottie acknowledge signing the lease, and Mrs. Pottie acknowledges receiving a copy of the *Residential Tenancies Act*. The landlord being unable to establish compliance with the *Act* by delivery of a copy to the tenant, Aulden Pottie, Mr. Pottie is entitled to the remedies provided under s. 7(3) of the *Residential Tenancies Act*, and he chose to give notice. The *Act* requires the notice to be on a specified day within a period of three months from the day the notice was given, and is silent as to the extent of the notice. Its provision must be interpreted to require

"reasonable notice" which is to be determined by the factual situation, and here where the tenants occupied the premises for part of the month of June and had occupied the premises for close to two years prior to giving notice, these circumstances warrant a reasonable notice of one month.

Issue 3. Is the landlord entitled to any recovery, and if so, in what amount?

Yes. The landlord shall be entitled to payment of the rent for the months of June and July less the security deposit of \$312 plus interest upon the security deposit. Ms. Benjamin is to have judgment for this amount plus costs and disbursements taxed in the amount of \$150.

A handwritten signature in black ink, appearing to read "Walter Elmer Johnson". The signature is written in a cursive style with a large, looping initial "W".

J.