

CLAIM NO. 220318
Date: 20040521

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Pickford v. Zewdie, 2004 NSSM 38

BETWEEN:

Name Charles Pickford Appellant/Applicant

Name Lesianu Zewdie Respondent/Respondent

DECISION

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on August 22, 2007.

Appearances:

Charles Pickford, Appellant/Applicant, on his own behalf;
Lesianu Zewdie, Respondent/Respondent, on his own behalf

[1] This application by the Appellant Mr. Pickford, a tenant, for leave to file a Notice of Appeal of a Residential Tenancies Order dated October 21, 2003 came on before me on May 18, 2004 .

[2] The application was made necessary because the Tenant filed his appeal of the Residential Tenancies Order on May 6, 2004, more than six months after the Order of the Residential Tenancies Officer appealed from. This is well outside the ten day appeal period provided for under s. 17C(2) of the *Residential Tenancies Act*, R.S.N.S. 1989 c. 401, as amended. However, adjudicators of the Small Claims Court do have the power in the appropriate circumstances, to extend the time for filing the notice of appeal: *McNeil v. Meech* (2003) N.S.S.C. 108.

- [3] To understand the application, it is necessary to set out some of the background.
- [4] The Landlord Lesianu Zewdie made an application on September 9, 2003 for an order terminating the tenancy of Mr. Charles Pickford. The application was necessary because Mr. Pickford had security of tenure.
- [5] The Landlord sought termination of the tenancy on the basis that he required possession of the residential premises for the purpose of residence by himself.
- [6] The hearing took place on October 14, 2003. Mr. Zewdie and Mr. Pickford were both present. Following the hearing, the Residential Tenancies Officer issued a decision, dated October 21, 2003, as follows:
- “The lease agreement between the parties shall terminate on April 20, 2004 at which time the tenant shall deliver up possession of the premises known as 6182 Quinpool Road, Halifax, Nova Scotia.”
- [7] The decision, immediately below the signature of the Residential Tenancies Officer, has the following highlighted notice:
- “An Appeal may be filed within ten (10) days of this Order at the Small Claims Court for your area. If no appeal is filed, this Order may be made an Order of the Small Claims Court.”
- [8] No appeal was filed.
- [9] Mr. Pickford continued in occupancy of the premises after April 20, 2004. He also stopped payment of rent.
- [10] On or about April 30, 2004 the Landlord applied for and obtained an Order from the Sheriff requiring Mr. Pickford to deliver vacant possession of the property.
- [11] On or about May 5, 2004 Mr. Pickford obtained an Order from the Honourable Justice Moir in Chambers staying the effect of the Residential Tenancies Order dated October 21, 2003 until May 11, 2004 “pending an appeal and application for stay.”
- [12] Mr. Pickford then filed a Notice of Application For Extension of Time For Filing a Residential Tenancy Appeal on May 6, 2004.

- [13] Such notices are supposed to be served on the respondent (in this case the Landlord).
- [14] The matter first came on before me on May 11, 2004. At that time, Mr. Pickford said that he had not been able to serve Mr. Zewdie because Mr. Zewdie was avoiding personal service. I accordingly issued an Order For Substitute Service and set a date of June 1, 2004 for the hearing of the application for an extension.
- [15] The Order, dated May 13, 2004, was served on the Landlord, who then made an application for an early hearing of the application to extend the time for appeal. That application came on before me on May 18, 2004. Both Mr. Zewdie and Mr. Pickford were present, although Mr. Pickford came into Court about five minutes after the hearing commenced. He admitted that he had been served with the notice by the Landlord on Saturday, May 15.
- [16] Both Mr. Zewdie and Mr. Pickford were anxious to explain why each of them was a bad landlord or tenant, respectively, and why the lease ought to be terminated or maintained in place. I indicated, however, that none of that was relevant to the application for an extension and I attempted to restrict their evidence to that application.
- [17] Dealing with Mr. Pickford's application, in my opinion, if Mr. Pickford was to be granted the relief he sought, he had to provide some reasonable explanation for why it took him as long as it did to file his Notice of Appeal. He also had to establish that he did not delay in his attempt to appeal the decision any longer than was appropriate or reasonable in the circumstances.
- [18] Mr. Pickford offered several reasons for his failure to file the Notice of Appeal for more than six months after the decision appealed from.
- [19] First, he stated that he suffered from environmental illness and the building in which the appeal office is located is a "sick building" that was dangerous for him to enter.
- [20] I found this evidence difficult to credit.
- [21] First, it was clear on his evidence, as well as that of the Landlord, that Mr. Pickford lives in a small second storey apartment with somewhere in the vicinity of forty to fifty cats. Living in close proximity with so many animals does not suggest a person with environmental allergies or illnesses.

- [22] Second, the “sick building” in question according to Mr. Pickford was the Nova Scotia Access building in which the original hearing took place. However, the decision makes clear that the appeal office is the Small Claims office. There was no evidence from Mr. Pickford that the building in which the Halifax Small Claims Court office is located was a “sick building.”
- [23] Third, and in any event, Mr. Pickford admitted that the original tenancy hearing (which he attended) took place in the Nova Scotia Access building. He stated, however, that he had become so sick as a result that he had “spent most of the winter in bed.” This, of course, amounts to an admission that he did not spend the entire time in bed, which calls into question why he did not move to file an appeal the first time he was out of bed.
- [24] Fourth, even if I accepted Mr. Pickford’s evidence concerning the impact of his environmental illness on his ability to be physically present in any building in order to file his Notice of Appeal (which I do not), there remained the question of why he did not get an agent to file an appeal for him. For example, he gave evidence that he had a friend who helped him work in the backyard of the premises and it certainly seemed to me that that person could have filed a notice of appeal on his behalf.
- [25] When I asked Mr. Pickford whether he had made any effort to have an agent file the appeal for him, he replied that he did not know that it could be done. When I then asked him whether he thought to use the phone and to make inquiries of the Tenancies Board or the Small Claims Court clerk, as to what he could do in such a circumstance, he stated that he had a cell phone whose time was limited and was used by him only for emergency calls.
- [26] I did not accept this as an adequate excuse. I could not accept that Mr. Pickford could not make a twenty-five cent phone call to determine whether an appeal could be filed by an agent. To accept such an excuse would be to make a mockery of the appeal process. The fact that the processes of the Small Claims Court are informal does not mean that they can be ignored without reasonable excuse. To permit a tenant to act as Mr. Pickford has would be to prejudice those who do follow the rules and who, like the Landlord in this case, rely on those rules in good faith to guide their own actions.
- [27] I accordingly dismiss the application of Mr. Pickford to extend the time for his appeal. I was not satisfied that he had made any effort (let alone reasonable efforts) to have the appeal filed in time, or to file the appeal as soon as was reasonably

possible after the elapse of the appeal period. Indeed, given that he had waited until after the date for the eviction set out in the Order appealed from; and given that he stopped paying rent about that time; I had some suspicion that his appeal was merely an attempt to punish Mr. Zewdie, a person for whom he truly appears to have some animus.

[28] In view of my decision, the Order of the Tenancies Board dated October 21, 2003 remains in effect.

[29] I accordingly order the Tenant Charles Pickford to deliver vacant possession of the premises known as 6182 Quinpool Road, Halifax, Nova Scotia on or before Friday, May 28, 2004.

Dated at Halifax, Nova Scotia this
21st day of May 2004

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ADJUDICATOR

W. Augustus Richardson

Original Court File
Copy Claimant(s)
Copy Defendant(s)