Claim No: 347840

# IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
## ON APPEAL FROM AN ORDER OF THE DIRECTOR OF RESIDENTIAL TENANCIES

Cite as: McCrae v. Metlege, 2011 NSSM 54

BETWEEN:

DAN McCRAE

Tenant

- and -

STEVEN METLEGE Landlord

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## REASONS FOR DECISION

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on August 25, 2011 and September 14, 2011

Decision rendered on September 16, 2011

**APPEARANCES**

For the Tenant self-represented

For the Landlord self-represented

## REASONS FOR DECISION

[1] This is an appeal by the Tenant from a decision of the Director dated April 15, 2011, denying the Tenant his several monetary claims.

[2] The claims that were advanced on this appeal were essentially two:

a. The Tenant seeks a rent abatement as a result of what he claims to have been an unlawful rent increase, effective January 1, 2008.

b. The Tenant accuses the Landlord of having deliberately and improperly caused the Halifax Police on a number of occasions to ticket one of his vehicles which was parked on the property.

[3] The Tenant has been the long-time occupant of Unit 301 at 58 Manor Lane, which is on a cul-de-sac off Bayview near the Bedford Highway. His tenancy long predates the acquisition of the building by the Landlord in 2007.

[4] According to the Tenant, he received a $70.00 rent increase effective January 1, 2007, which he was planning to challenge at Residential Tenancies, on the ground that it was larger than the rent increase he had received for the previous year. It is difficult to see what kind of an argument he could have made, since there is no rent control in effect and the rent increase appears to have been done in a technically correct manner.

[5] Shortly thereafter, in early 2007, the building was bought by Steven Metlege who would have inherited the position of defending the rent increase had the matter come before a Residential Tenancy Officer. According to the

Tenant, he had discussions with Mr. Metlege and secured from him a commitment not to increase the rent for three years, in exchange for him withdrawing his challenge to the $70.00 increase. He says that he withdrew the application and called the office at Service Nova Scotia to advise them of the deal he had with his Landlord. He says he wanted it documented and relied on them to make a note in their file.

[6] The Landlord denies that he made such an agreement. He argues, persuasively in my opinion, that there would have been no incentive for him to do so. In fact, he says, he regarded the rents in the building to be too low and it was his plan all along to increase them across the board so that the building could be profitable.

[7] The Tenant produced no evidence of any such deal. If there is a note in any Residential Tenancies file, it is not before me. I have already noted that his application to Residential Tenancies would likely have had no merit in any event, as the rent increase had been regularly instituted. I therefore find it very unlikely that the Landlord would have given such a commitment. I am not accusing the Tenant of being deliberately untruthful; rather I am suggesting that his memory is imperfect and I believe he has a tendency to misconstrue statements and misread events.

[8] The reason all of this is relevant is because on the 6th of August 2007, the Landlord served the Tenant with a notice of a further rent increase to be effective January 1, 2008. Had there been an enforceable agreement as the Tenant alleged, it would have been open to the Director or a court to disallow the further increase, on the equitable ground of an estoppel.

[9] This is not the only complaint that the Tenant has with the 2008 increase. There are several arguments that he advanced:

a. He alleges that the increase was inordinately large, and amounted to a “constructive eviction,” namely an attempt to force him out despite the fact that he had tenure under the *Residential Tenancies Act.*

b. He alleges that the increase was discriminatory because it put a higher rent on his unit than for similarly sized units in the same building, or the mirror-image building next door also owned by the Landlord;

c. He argues that the Landlord served him with one notice of increase raising his rent to $650.00 per month, while having created a second notice raising it to $695.00 - which is the amount that he (with a $520.00 subsidy from Metro Regional Housing Authority) has been paying for almost four years now.

[10] Dealing with these arguments in turn, there is no real evidence of a constructive eviction. I note that in 2011 there is a significant amount of animosity between the Tenant and the Landlord, but there is no reason to believe that the Tenant was targeted back in 2007 when the notice of a rent increase was given. Nor is there any evidence that would suggest that the new rent was out of line with comparable rents in the marketplace. It is equally, if not more probable, that the Tenant had been getting an exceptionally good deal for many years and the jig, so to speak, was up.

[11] I also note that the rent has remained stable for three years and counting, and there is nothing to indicate that it is high by any objective standard.

[12] The allegation of discrimination is also unsupported by any evidence. There was no good evidence of what other tenants are paying. I am unwilling to accept the Tenant's bald assertions that similar sized units are paying less. Again, there would be no reason for the Landlord to treat the Tenant differently unless he were improperly targeting him. I accept that this Tenant has numerous disabilities, which could be a basis for a discrimination complaint if there were any evidence that the Tenant was being treated differently from other tenants who do not suffer from these disabilities. However, there is insufficient evidence for me to draw any inferences of discrimination.

[13] The issue of the two notices of rent increase is more troubling. The Tenant produced the notice that he says was served upon him, dated August 6, 2007, purporting to raise his rent to $650.00 effective the following January 1, 2008. At the hearing before the Residential Tenancy Officer, the Landlord produced his copy of a notice that looks very similar, except that it raises the rent to $695.00.

[14] I asked the Landlord at the hearing if he could explain the two documents. He insisted that the $695.00 notice was the one that he gave the Tenant, and had no explanation for the $650.00 notice.

[15] The Tenant theorized that the Landlord forged the $695.00 document at a later date, when he learned that the Tenant was going to receive a large rent subsidy from Metro Regional Housing Authority. In fact, sometime in late 2007 the Landlord entered into an arrangement with MRHA whereby that agency

would pay $520.00 per month directly, and the Tenant would be responsible for the other $175.00 personally.

[16] A witness from MRHA testified and produced a notice which he says was sent to both the Landlord and the Tenant in December 2007, setting out the arrangements. On this document the rent is clearly shown as $695.00. The Tenant does not recall receiving this document.

[17] I was quite unsatisfied with the Landlord's lack of an explanation for how these two documents came into existence. The Tenant's theory - that he was seeking to take advantage of MRHA - is not outlandish, although I have insufficient evidence to make such a finding. The Tenant alluded to the fact that this has become, or may become, a police matter, which may well be a better forum for geting at the truth behind these curious documents.

[18] More to the point, for my purposes it was made clear at the hearing that MRHA is not challenging the rent of $695.00 because that agency believes it made a straightforward contract with the Landlord to pay its portion of the rent based on that amount. I also find that the Tenant knew, or ought to have known, as early as 2008 that this was the rent being paid, and his attempt to challenge it is about three years too late to be considered. While there is no statute of limitations *per se* on his claim, I believe that the delay is inordinate and any claim based on it fails on the equitable ground of *laches.* The Tenant says that he made, or tried to make other complaints to Residential Tenancies over the years, but there is no evidence of that and the only complaint before me is the one that he commenced in March of 2011.

[19] The last claim by the Tenant concerns parking tickets. The Tenant received several tickets (he says totalling $280.00) for parking illegally on private property. He claims that he had a designated parking spot, and that the Landlord targeted him because he was late with rent payments and/or because of personal animosity.

[20] The Landlord's evidence is that at some point in December 2007, the Tenant started parking a second vehicle along the private driveway where it could have interfered with snow removal. He says that the Tenant was warned that he had no right to park there. Furthermore, the Landlord says that his superintendents called the police to ticket the truck before they even knew who owned it.

[21] The Tenant went to great lengths to show that the Landlord was the one who ordered his vehicle ticketed. Be that as it may, the fact is that the tickets were issued alleging an offence against the parking bylaw, and it was ultimately up to a court to decide if the owner was guilty. The Tenant says that he could not attend court because of one of his disabilities. While I accept that there is factual legitimacy to this statement, still I am in no position legally to hold the Landlord responsible for tickets issued by the Halifax police and convictions properly entered on the bylaw offences. The Tenant could have found a way to have someone attend in court on his behalf to challenge the tickets, if he indeed had a defence. It is far from clear to me that he would have succeeded, as he appears to have been parking in a spot that was not his to use. I therefore reject this claim.

[22] Other claims before the Residential Tenancy Officer, involving repairs to the apartment, appear to have been resolved and were not advanced before me, so I have nothing to say about them.

[23] In the result, the appeal is dismissed in its entirety and the order of the Residential Tenancy Officer is upheld in all respects.

Eric K. Slone, Adjudicator