

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Travis v. Peters, 2011 NSSM 67

Between:

David Travis

APPLICANT

- and -

Glenn and Michelle Peters

RESPONDENT

DECISION AND ORDER

Adjudicator: David T.R. Parker

Heard:

Decision: November 4, 2011

Parker: this is an appeal from a decision of the Order of the Director of Residential Tenancies dated November 21, 2011 and being file number 201103638

This matter came before the Small Claims Court by way of an application for an extension of time for filing a residential tenancy appeal.

There are number of decisions with respect to extension of time which I have been

referred to and the decision of Patrick L Casey QC nicely sets out the considerations for such an extension.

The case that I am referring to is the following:

Classic Property Management Ltd. v. Greenwood [2010] N.S.J. No. 509

In that case the law was referred to in paragraphs 10 through 16 and for purposes of this decision I refer to those paragraphs.

"THE LAW

10 The law concerning Applications for Extension of Time is set out by the Nova Scotia Court of Appeal in the case of Sun v. Lu, [2008 NSCA 77](#), and I quote from paragraph 6 of that case as follows:

- "This Court's test for granting an extension historically involves three steps:

- 1.

The appeal has sufficient merit, on the basis that it is arguable that the Trial Judge made a clear error in his perception and evaluation of the evidence;

- 2.

There was a bona fide intention to appeal while the right to appeal existed;

- 3.

A reasonable excuse for the delay in launching the appeal is advanced."

11 Paragraph 8 of the decision clarifies that the test is flexible and involves some degree of judicial discretion. I quote as follows:

- "8.

In recent years, however, we have viewed this three pronged approach as more of a guide as opposed to a rigid test; the ultimate goal being a just result in circumstances of each case."

12 In *Doug Boehner Trucking and Excavating Ltd. v. W. Eric Whebby Ltd.* [2007 NSCA 26](#), The Honourable Justice Saunders further elaborates on the discretionary element of the test as follows:

- "15.

The granting of an extension to file an appeal pursuant to Civil Procedure Rule 62.31(7)(e) is discretionary. The objective must always be to do justice between the parties. The test is simple: does justice require that the Application succeed? In making that determination my assessment should be flexible and take into account all relevant circumstances."

13 The authority of the Small Claims Court of Nova Scotia to grant Extensions of Time to Appeal decisions of this nature is not specifically set out in the governing statute, however, this Court has received some direction from the Supreme Court of Nova Scotia on this point, in particular, that the power to grant such extensions can be found in Section 29(1)(a)(iii) by reference to the remedial powers set out in that section.

14 Section 29(1) provides as follows:

- "29(1) Subject to the provisions of this Act, not later than sixty days after the hearing of the claim of the claimant and any defence or counterclaim of the defendant, the adjudicator may

- (a)

make an order

- (i)

dismissing the claim, defence or counterclaim,

- (ii)

requiring a party to pay money or deliver specific personal property in a total amount or value not exceeding twenty-five thousand dollars, and any pre-judgment interest as prescribed by the regulations, or

- (iii)

for any remedy authorized or directed by an Act of the Legislature in respect of matters or things that are to be determined pursuant to this Act;"

15 I refer to the decision of The Honourable Justice Scanlan in the case of McNeil v. Meech, [2003 NSSC 108](#).

16 The ultimate determination is one of seeing that there is justice between the parties and ensuring that there is no denial of natural justice."

Analysis:

In this particular case the applicant was under the understanding that he had to bring the matter before the Small Claims Court. He did not care for the decision of the Director following the residential tenancy board hearing and as result he started the claim in the Small Claims Court. Much of the claim in the Small Claims Court deals with The Director's Order. On realizing the applicant had exceeded the time for filing an appeal he proceeded to file an application for an extension of time for filing the appeal of the residential tenancy matter. This was done on January 25, 2012. I accept the fact that the applicant was confused and he obviously was taking fairly quick procedures to have himself heard with respect to the matter between himself and his tenants.

The only difficulty I was having in listening to the application was whether there was an arguable case. It would seem from the decision that the applicant failed to bring information to support his claim against the tenants/respondents. There is a distinction between an arguable case and whether the applicant simply did not bring sufficient evidence to prove this case. This is a very fine distinction and it should be ignored for two reasons.

The first reason is as noted above; the court must be concerned with whether there is justice between the two parties. The second reason is from Patrick Casey's decision:

"The Court must be satisfied that there is some evidence available upon which a different decision might be made on appeal."

If the applicant gets the information before the court which he can do in an appeal to the Small Claims Court as it is a trial de novo, then there may be merit in listing to the appeal.

For these reasons I shall grant an extension to the appeal and I shall also order the applicant to have his Notice of Appeal filed with the court and served on the respondent's and the Director of Residential Tenancies by March 5, 2012. A hearing is set down for Thursday, March 12, 2012 at 6 PM at the Courthouse on Spring Garden Road, Halifax Nova Scotia.

Dated this 23rd of February 2012