SCCH 393484

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Allen v. Black,* 2012 NSSM 27

Between:

Crystal Allen and Peter Leask

APPELLANT

-and-

Terry Black **RESPONDENT**

DECISION AND ORDER

Adjudicator: David T.R. Parker

Heard: May 31, 2012

Decision: June 1, 2012

This matter came before the Small Claims Court on May 31st 2012. Both parties appeared and were heard. The Director's Order that is being appealed is dated May 8, 2012 and being file number 201201252.

The appellants were tenants and had entered into a lease with the respondent on August 17, 2010. The effective date of the year-to-year lease was September 1, 2010. The monthly rental was $1575.00 the tenants vacated the premises on June 30, 2011.

The respondent landlord holds a security deposit of $801.53 at the time of the hearing in May of 2012.

In January of 2011 the appellant contacted the respondent and advised the respondent that the appellant was expecting a child and they would like to end their lease on June 30, 2011. At that time there were two additional people sharing the leased premises with the appellants.

The respondent put a ‘for rent’ sign up on the property in the hope of renting the property for when the appellants left on June 30, 2011.

Apparently there was some tension between the appellants and respondent concerning disturbances in the apartment building and other matters which were not specified at the hearing. Neither the appellants nor the respondent were able to find renters for the apartment. Matters came to a head in May of 2011 between the parties and the appellant Crystal Allen e-mailed the respondent advising the respondent if they did not find a tenant to sublet that she will find a loophole out of the lease. She said she would be leaving work on medical leave and there is absolutely no way that we can keep the apartment. In May the appellants notified the respondent with notice that they would be leaving the premises on June 30, 2011 and provided a copy of the medical report form which form stated that "after examination of the

patient, have you determined that there is a significant deterioration of health?" Beside the question there was a "yes" box that was checked and beside it the doctor had written "PT is pregnant with twins"

The appellant was seeking to escape their obligations under the lease pursuant to section 10C of the Residential Tenancies Act.

The residential tenancy officer upon his review of the evidence and testimony was "not satisfied that the tenant suffered a significant deterioration of health (pregnant with twins).

What happened was that in June 2011 the appellant met with the respondent and gave the respondent $787.50 and saying to the respondent that he could keep the security deposit as the other part of rent owing. The appellant in his testimony said to the court that he had heard from other sources that if he did not do it this way he would never get his security deposit back. At any rate the appellants moved out and moved into a new home that they had purchased.

The application that was made to the residential tenancy board and subsequent hearing and decision of May 11, 2012 happened some several months after the appellants had left the premises. The hearing resulted in an Order for the appellants/tenant's to pay $3419.97 which included the remaining half of June 2011's rent plus the remaining months left on the leased being July 2011 and August 2011 some late payment charges and damage to the stair tread in the apartment less security cost of $801.53.

With respect to this matter the main focus was on the applicability of Section 10C of the Residential Tenancies Act. The Act states where the tenant has sought a significant deterioration in health that, in the opinion of a medical practitioner, results in the inability of the tenant to continue the lease or where the residential premises are rendered inaccessible to the tenant the tenant may terminate the test. The Act requires "a certificate of qualified medical practitioner evidence the significant deterioration of health". The Act also requires one months Notice to Quit. The Notice to Quit was provided to the respondent in this case. The residential tenancy officer did not find sufficient evidence to conclude that the appellant fit within the ambit and scope of Act.

What are the facts? The appellant Crystal Allen was pregnant in June of 2011 and was expecting twins. Her expected delivery date was September 23, 2011. The premises in which the appellant resided had some stairs as to the inside of the premises. The appellant Crystal Allen and her partner did experience rest from the noise from other tenants from time to time. These of themselves would not qualify to terminate the tenancy under the Act. Simply checking off "yes" in a form provided by Nova Scotia and Municipal Relations and saying the tenant is pregnant with twins may not be sufficient to show that there was a significant deterioration of health. However on that point it is understandable why the doctor who completed the form did not find it necessary to say anything further.

I understand Mr. Thompson's comments in the case ***Arnaout v. Ferla*** SCCH 219174 wherein he said:

"I am not obliged, in my view, to accept the check in the box or indeed any other doctor's statement or certificate. In my opinion, the proper construction of section 10C is that the certificate and "evidences" the significant deterioration in health. In many cases, the doctor's statement will, of course, provide compelling evidence, but I conclude from reading of this section and the Act as a whole that is was not the intention of the legislature to delegate to the medical profession the decision whether a lease be terminated because of ill health.

The intention of the legislature, in my opinion, is to provide tenants who suffer a significant deterioration in their health an opportunity on short notice to move out of premises which they can no longer use because of significant deterioration. The purpose of the legislation was not to give tenants the right to terminate lease if they could convince their doctor to check the box in a pre-printed form."

I note here that the form provided by Service Nova Scotia and Municipal Relations in addition to the above inquiry about the doctor determining there is a significant deterioration of health also asked the doctor for his or her opinion on whether they believed that patient's condition relates to their living accommodations? In the event the doctor checks "yes" then to provide evidence of that. In this particular case the doctor wrote the patient will have to get a larger space to accommodate her twins.

I do not believe that I am differing greatly from Mr. Thompson's statement and with great deference as he is beyond reproach in his expertise of the law in this area having I believe spent many years dealing with residential

appeals before they were migrated to the Small Claims Court. Now of course as a Small Claims Court Adjudicator his knowledge and stature in this area continues to grow. Saying that my view may not be different in actuality from Mr. Thompson's view and I will attempt to clarify the law. I do not believe that is necessary to go behind a doctor’s comment that there has been a significant deterioration of health. That is for a doctor to determine on their examination of the patient. But the Act requires that that deterioration results in the inability of the tenant to continue the lease or render the residential premises inaccessible to the tenant. That is why the separate question is asked of the doctor. Does the doctor in the Physician's Medical Condition Report provide sufficient evidence to support other evidence available to an independent adjudicator or residential tenancy officer as the case may be, to show the deterioration in health result in the inability of the tenant to continue the lease or render the residential premises accessible to the tenant?

In the form provided to the landlord the doctor said the patient [the appellant Crystal Allen] will have to get a larger space to accommodate her twins. This in my view is not sufficient to meet the standard required by the Act.

This appeal is a trial de novo that is it starts again right from the beginning and this court is allowed to determine its own procedure. The appellant provided a letter to the court from Lynn McLeod MD., FRCSCS which provides a more complete explanation of the doctor's opinion as to the health situation of the appellant Crystal Allen as well as conditions in the appellant’s life which she must avoid due to her health condition. The doctor's letter states:

"As this was a high risk pregnancy, it was necessary for Crystal to avoid any stress during this time in order to prevent her from going into preterm labor. Restrictions such as going up and down stairs was also indicated as this could cause undue stress to her condition."
We know from the evidence that there were stairs in the premises. We also know that there were some stressors on the appellants when living in the premises. The explanation by the doctor in her letter fits within the requirements of the Act.

I shall vary the Order of the Director of Residential Tenancies requiring the tenant to pay the remaining portion of rent for June 2011. I shall allow the NSF charge the evidence indicated there was one charge for late payment in June 2011. I shall not allow the other July and August 2011 NSF charges as there would be no rental at that time. There is an agreement that there was damage caused by the appellant's dog in the amount of $230.00 and I will allow that. There was no evidence as to garbage cleanup costs so that will not play a factor and I will allow the deposit to be returned.

Dated at Halifax this 1st day of June 2012

It is therefore ordered that the appellants shall pay the respondent the following sums:

$787.50

$ 14.00 late charges for June's rent payment

$230.00 damages for dog construction of stair tread

less $801.53 security deposit

$229.97

Dated at Halifax June 1, 2012