SMALL CLAIMS COURT OF NOVA SCOTIA

cite: *Colley v. Metro Regional HousingAuthority*, 2019 NSSM 24

SCCH No.487325

BETWEEN:

Martin Colley

Appellant

– and –

Metro Regional Housing Authority

Respondent

Adjudicator: Augustus Richardson, QC

Heard: June 17, 2019

Decision: June 24, 2019

Appearances: Billy Sparks, counsel; Kallen Haeenan, A/C, for the appellant
Curtis Coward and Ms AB for the Respondent

DECISION

[1] Is a tenant obligated to treat his landlord and its employees with courtesy and respect? If so, is a tenant's repeated and ongoing failure to conduct his or her relationship with a landlord or its employees with such courtesy and respect grounds for termination of a lease? These are some of the questions addressed in this matter.

[2] The tenant appellant Mr Colley appeals the decision of a Residential Tenancy Officer ("RTO") dated April 16, 2019. In that decision his tenancy agreement with the respondent landlord Metro Regional Housing Authority ("Metro Housing") for Unit 712 at 55 Crichton Avenue, Dartmouth was terminated effective May 31, 2019. The RTO found that Mr Colley's conduct had breached

Statutory Condition 3 (Good Behaviour) of s.9(1) of the *Residential Tenancies Act*, RSNS 1989, c. 401, as amended (the "Act"), which provides as follows:

> 3. Good Behaviour – A landlord or tenant shall conduct himself in such a manner as not to interfere with the possession or occupancy of the tenant or of the landlord and the other tenants, respectively.

[3] Mr Colley appealed that decision on the grounds that the RTO "erred in law and fact by not adequately considering the evidence presented by the tenant and by misapplying the law, specifically s.9(1)(3) of the *Residential Tenancies Act* to the evidence presented."

[4] The parties appeared before me on the appeal on June 17th, 2019. Mr Sparks, counsel for the appellant tenant, submitted that since residential tenancy appeals were treated as trials *de novo*, and since it had been the landlord's original application to terminate the lease, then the landlord should present its case first. The landlord objected on the grounds that it was an appeal and so the appellant should go first. I ruled that the landlord should present its case first. It was, in essence, the landlord's case originally, and it would be in the best position to know and to present the facts and evidence that it said justified the termination of the lease.

[5] On behalf of the respondent landlord I heard the testimony of

a. Curtis Coward, senior property manager;

b. Ms AB, a property manager;

c. Charlene Sampson, caretaker at Eastwood Manor, a seniors' residence apartment building operated by the Landlord (and the site of the tenant's unit);

d. John Kanne, resident building attendant at Eastwood; and

e. Elmer Lawson, a maintenance worker for the landlord.

[6] Mr Sparks elected not to call Mr Colley to give evidence on his behalf.

[7] While ordinarily irrelevant, the facts in this case require me to note that the tenant, Mr Coward and Ms AB are all African Nova Scotians. The relevance of that observation will become clear in these reasons. I have also chosen to anonymize Ms AB's name because of the particular facts recited hereafter.

The Facts

[8] The tenant and the landlord entered into a written lease on January 26, 2017 for unit 712 at the Eastwood Manor building at 55 Crichton Avenue. The landlord is a non-profit organization whose purpose includes providing residential units to those whose level of income is such that they would have difficulty finding places to live in the regular rental market. Rents are often subsidized or paid by various social service agencies. The landlord has six buildings with roughly 5,000 tenants. The Eastwood Manor building, with which we are concerned, contains 170 units. It is a seniors' building, with a condition of tenancy in the building being that the occupant be aged 58 or older. The tenant took possession of his unit on February 1, 2017.

[9] Mr Coward is the landlord's senior property manager. At the beginning of the tenancy he spoke to Mr Colley and explained the terms and conditions of the lease, including the provision regarding good behaviour. Mr Coward thought good behaviour was important given the age of the tenants in the building. He said that at the time Mr Colley was "in need of housing and thought it was a blessing to be with Metro Housing."

[10] However, it appears that within a few months problems with Mr Colley's behaviour began to develop. These problems were outlined by the landlord's witnesses.

[11] Mr Kanne is the building's resident building attendant. He is 76 going on 77. His role is not unlike that of a night watchman. He lives in the building. He is on call from 5:00 p.m. until 8:00 a.m. the next day, six days a week. On Saturdays he is on call 24 hours. While on call he will generally walk through the entire building to make sure that all is well. He will check the furnace room, the laundry and garbage rooms, the stairwells and hallways. If he encounters any problems he will call the landlord or the appropriate authority.

[12] A few months after Mr Colley moved in Mr Kanne, while on one of his rounds, encountered Mr Colley doing his laundry in the laundry room. Mr Colley accused Mr Kanne of "checking up on me," called him "a racist" and alleged he was "following him around" and said "you don't want to mess with me." Mr Colley told Mr Kanne "to go back to your own people," which shocked Mr Kanne. A similar incident happened some time later, when Mr Kanne (whose unit is opposite the laundry room) was entering his apartment. Mr Colley, who was in the laundry room, again accused him of checking up on him and told him he should not mess with him.

[13] Mr Coward testified that he set up a meeting with himself, Mr Colley and Mr Kanne in an attempt to resolve things between the latter two. However, Mr Colley became so irrate during the meeting that Mr Coward had to ask Mr Kanne to leave. Mr Coward then attempted to persuade Mr Colley that no one was following him; that Mr Kanne was not a racist; and that it was important to conduct oneself with courtesy and respect for others.

[14] Mr Coward testified that this meeting was not the only time he had spoken to Mr Colley about his behaviour when dealing with other tenants or with

employees of the landlord. He told him a number of times that as a tenant he had to show some respect or courtesy with relating to them. His message did not take.

[15] Ms Sampson is the building's caretaker. She testified that her first contact with Mr Colley was over some furniture that he had put out for disposal without following the building's guidelines. He had responded in such an abusive fashion that she called Ms AB about it. On another occasion she knocked on the Mr Colley's door to ask whether he had seen or picked up some bags she had misplaced. He told her to "go fuck herself" and called her "an asshole." She responded in kind, and acknowledged during her testimony that her conduct had not been appropriate. She also testified that other tenants had complained to her about Mr Colley, either because he was knocking on their doors to offer to sell them things, or make offers to wash them while they were in their bath tubs.

[16] Ms AB is a property manager for Metro Housing. She works out of an office at a different location. She testified that in early December 2018 she had received a phone call from Ms Sampson. The latter had complained that she had advised Mr Colley that he had not followed the building rules regarding discarded furniture (in terms of where and how it was to be left for refuse pickup). Mr Colley had become belligerent with her. Ms AB told Ms Sampson that she would call Mr Colley and she did. He answered the phone and she identified herself as a property manager with Metro Housing. He said "what the fuck do you want" and "I don't give a fuck who you are" and then hung up on her. She called him back and he answered. She testified that he continued to be "very aggressive and inappropriate, using foul language."

[17] Ms AB testified that her office received a number of complaints from other tenants to the effect that Mr Colley would knock on their door to ask for money or cigarettes, and would be belligerent or verbally abusive when refused. She explained that the same thing happened with respect to the landlord's maintenance staff.

[18] Mr Lawson is one of the landlord's maintenance workers. His calls take him to any one of the landlord's five buildings. When he is given a work order he generally has (and needs) some time to respond. On one occasion he received a work order to attend for some maintenance work at Mr Colley's apartment between 9:00 and 11:00 a.m. This was after Mr Colley had been placed on a list of tenants who, because of their conduct, always required the attendance of two employees. (It was a short list—no more than five or six out of 5,000 tenants.) He and a co-worker arrived at 10:30 a.m., to be met by Mr Colley demanding "where the fuck have you guys been." Nor was this the first time. Mr Lawson testified that there had been other occasions when Mr Colley had been "more bullying than threatening" in his conduct.

[19] Ms AB decided to seek the authorization of the landlord's Board to commence eviction proceedings against Mr Colley. She received the Board's eviction authorization on January 16, 2019. However, she did not commence eviction proceedings at that point. She testified that she instead sent a warning letter to Mr Colley on January 25th, 2019. The letter advised him that if he continued in his ways he could be subject to eviction. Counsel for Mr Colley suggested in cross examination that this "warning" was not made in good faith, inasmuch as on December 11, 2018 Ms AB had already reported to the Landlord's Board that Mr Colley's conduct was sufficiently bad to warrant eviction. In that report she recommended to the Landlord's Board a "social eviction:"

> "Documentation attached. Tenant has displayed disrespectful behaviour to other tenants and MRHA staff since being housed in January 2017. Despite numerous warnings, the tenant refuses to refrain from abusive behaviour:" Ex. D3.

[20] Counsel put to Ms AB that she had already decided to evict Mr Colley on December 11th, 2018. She responded by saying that what had been intended was a mediated settlement. I note that Ex. D3 was entered by appellant's counsel during his cross examination of Ms AB, but that the "documentation attached" was not in fact attached.

[21] I pause here as well to note that on balance I am satisfied that the point of Ms AB' testimony was this: she felt eviction was warranted, and wanted the Board (which was the only one with authority to authorize eviction proceedings) to authorize her to take that step if necessary—but that she wanted to give Mr Colley another chance—and another warning—to correct his behaviour before that step was taken. But Mr Colley did not take that opportunity.

[22] As a result Ms AB decided to proceed with eviction, which brings us to her second direct contact with Mr Colley. Ms AB testified that on February 22, 2019 she served him, on the seventh floor, with the landlord's notice of a hearing before the Residential Tenancy Office for an order of eviction. She testified that he seemed surprised. She then went down to the first floor. Mr Colley caught up with her in the lobby, and started to yell at her. She testified that he said she "was just a whitewashed whore," that she "was catering to white people and was probably fucking them," and that she could "go fuck yourself." Ms AB testified with some emotion that she had never been spoken to like that in her life. There were other tenants within earshot of Mr Colley's yelling. She told him that if he continued like this she would call the police, and he responded that "I don't give a fuck what you do ... go fuck yourself ... suck my dick you bitch" several times. He then left the building, continuing all the while to yell that she could "suck my dick."

The Position of the Parties

[23] On behalf of the respondent landlord Mr Coward argued that the appellant had been given plenty of chances to reform his way. Mr Coward had counselled him. Community counselling had been offered.

[24] Mr Coward submitted that a tenant had a basic obligation to conduct him- or herself with courtesy and respect when dealing with other tenants or with the landlord and its employees. This was particularly important given the nature and age of the other tenants in the building. Moreover, it was unreasonable of Mr Colley to berate the landlord's employees if they did not respond immediately to

his requests for repair. Mr Colley was one of only six or so tenants out of the landlord's roster of 5,000-odd tenants whose conduct was such that two employees were required on any maintenance call to the unit. Mr Colley had been repeatedly warned and counselled about his behaviour. He had been offered but had refused the services of a community relations worker. He was foul-mouthed and abusive when dealing with anyone—tenant or employee—who met with his disapproval. His time was up.

[25] Counsel for Mr Colley submitted that Statutory Condition 3 was only intended to cover threats to the physical safety of people and property. Common courtesy did not fall within its scope. Moreover, Mr Colley had never physically assaulted anyone. Nor had he ever issued threats of physical violence. Rude or disrespectful behaviour was not grounds for termination of a lease. Nor had Mr Colley received progressive notice that his conduct had to stop on pain of eviction. He submitted that Mr Colley's comments to Ms AB could not be used by the landlord as grounds for termination because they had been made after the landlord had already decided to evict him; and because it was a spontaneous reaction to the stress of being suddenly handed an eviction notice. Moreover, the landlord was a non-profit. It owed a duty to its tenants, who were in economic straits, not to evict them just because they were impolite. The appeal should be allowed.

Analysis and Decision

[26] I was not persuaded that Statutory Condition 3 had to be interpreted in such a way as to exclude the expectation that tenants (or landlords for that matter) conduct their relations with each other with courtesy and respect. A tenant's unit may be his or her castle, but the right to do and say and conduct themselves as they please ends once they exit their unit door. To repeat, Statutory Condition 3 states:

> 3. Good Behaviour – A landlord or tenant shall conduct himself in such a manner as not to interfere with the possession or occupancy of the tenant or of the landlord and the other tenants, respectively.

[27] The introductory words to the condition—"good behaviour"—inform the interpretation of what types of conduct would "interfere" with the possession or occupancy of residential rental units. In ordinary course "good behaviour" extends beyond merely refraining from threatening to commit physical or property damage. It extends to the niceties of social discourse and conduct. And in my view it extends to obscene or racial epithets, or overbearingly discourteous conduct, at least when conducted on a repeated basis. Surely, on the facts of this case, a tenant who knocks on the doors of aged tenants demanding money or cigarettes and becomes verbally abusive when denied is interfering with the latter's "possession or occupancy." Surely the same can be said of a tenant (or a landlord) who repeatedly swears at staff or accuses them of being racists.

[28] I note too that Mr Colley did not testify on his own behalf. He was of course entitled to remain silent. It did mean, however, that there was nothing to contradict the landlord's evidence that Mr Colley's conduct had been ongoing and (with the possible exception of the incident with Ms Sampson) unprovoked. It also means that there was no support for counsel's submission that Mr Colley had not been warned to temper his conduct. The landlord's evidence was that Mr Colley had been warned many times. Counselling had been offered and refused. The only conclusion I can reach—and I do—is that Mr Colley was warned, repeatedly, and that despite such warnings he continued to conduct himself in the way that he did.

[29] In coming to this conclusion I have taken notice of the comments made by Mr Colley to Ms AB on the day she handed him the eviction notice. I accept that his conduct after being handed the notice cannot serves *as grounds* for termination, since that decision had already been made. However, it can serve as evidence corroborating the testimony of the landlord's witnesses as to Mr Colley's conduct *prior* to that decision. The landlord's evidence was that it had decided to evict him because of his foul language and bullying conduct towards others (employees and fellow tenants). His conduct towards Ms AB that day corroborates the evidence supporting that decision in the most emphatic of ways.

[30] As for counsel's submission that the landlord was a non-profit with a duty to the poor, I note that the duty, if it exists, is owed to all of its tenants, not just Mr Colley. He cannot expect his rights to be preferred to those of all the other tenants, or to those of the landlord's employees.

[31] I accordingly dismiss the appeal of the RTO's decision, though I modify the order to the extent of ruling that Mr Colley's tenancy is terminated, and he must deliver up vacant possession of Unit 712, 55 Crichton Avenue, Dartmouth, on or before Wednesday, July 31, 2019. I do that in order to give him at least a month's notice to deliver up possession of the unit.

DATED at Halifax, Nova Scotia
this 24th day of June, 2019.

Augustus Richardson, QC
Adjudicator