

SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Emmerson v. Al-Molky*, 2019 NSSM 62

Date: 2019-11-13
Docket: SCCH 493034

ON APPEAL FROM AN ORDER
OF THE DIRECTOR OF RESIDENTIAL TENANCIES

Between:

Natasha Ann Emmerson

Appellant (Tenant)

- and -

Gerard Al-Molky

Respondent (Landlord)

REASONS FOR DECISION AND ORDER

Adjudicator: Eric K. Slone

Heard: In Halifax, Nova Scotia on November 12, 2019

Appearances: For the Tenant - self-represented

For the Landlord - self-represented

BY THE COURT:

[1] This is an appeal by the Tenant from a decision of the Director of Residential Tenancies dated October 1, 2019, which was issued following a hearing September 18, 2019. The order terminated the Tenant's tenancy in the building at 3662 Percy Street, Halifax, Nova Scotia as of October 31, 2019.

[2] The Tenant was evicted by the Landlord based on alleged breaches of the statutory duty to be of good behaviour. There were a number of incidents cited. Several of them concerned noise complaints by other tenants in the building. The most serious incident occurred when the Tenant fell asleep with a pot on the stove, causing a minor fire which necessitated the evacuation of the building and action by the Fire Department, including breaking down the door to her unit in order to evacuate her to safety.

[3] The Landlord also contends that the Tenant has a drinking problem, which may have contributed to the other incidents complained of.

[4] The Residential Tenancy Officer noted in his decision that landlords are in an awkward position when faced with disputes between tenants in their buildings. I agree that this presents tricky problems, but that does not mean that the legal system (when called upon to intervene) must resort to the most serious remedies in all cases.

[5] The Landlord here seemed to believe that he had almost no choice but to

evict the Tenant. He conceded that he personally likes her, and that she is in many respects a good tenant. He is rightly concerned about the potential for disaster if another fire were to occur.

[6] Still, we must not lose sight of certain facts. The Tenant is significantly hearing-impaired. She was only able to participate in the court hearing with the help of a sign language interpreter. This method was unavailable for the Residential Tenancies hearing, which was by telephone conference, and she was forced to have someone speak on her behalf, with results that may or may not have been satisfactory in terms of giving the Residential Tenancy Officer a proper sense of who the Tenant was, and what had occurred.

[7] Ms. Emmerson does speak but is very difficult to understand and her manner may be seen by some people as slightly off-putting.

[8] Although she did not argue for special treatment, she is clearly someone with a disability who is entitled to reasonable accommodation for that disability under the *Human Rights Act*, which in s.5 (1) (b) and (o) prohibits discrimination by landlords in the provision of “accommodation” (i.e. housing) on the basis of “physical or mental disability.” The definition of physical disability in s.3(1)(iii) expressly includes “*deafness, hardness of hearing or hearing impediment.*”

[9] In the Human Rights sphere generally, as exemplified by the seminal Supreme Court of Canada case *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 SCR 3 (known colloquially as

the *Meiorin* case), the obligation not to discriminate is not absolute but is to be balanced against the extent to which accommodating the disability (or other distinction) would create unreasonable hardship.

[10] In the situation here, assuming for the moment that the allegations against the Tenant are as a result (even partly) of her disability, to consider evicting her for those reasons the question for the court becomes this: whether it would be an unreasonable hardship for the Landlord to continue to accommodate the Tenant's disabilities and provide housing for her.

[11] The evidence persuades me that the Tenant has developed some insight into the way her behaviour has negatively affected other tenants in the building. She appears to have been shaken by the fire incident, and the threat of losing her home has made her willing to consider ways to change the situation.

[12] For example, she seems to appreciate that her habit of listening to loud music (in order to feel the vibrations) creates problems for others in the building. She is willing to start using headphones, which will minimize or eliminate that problem.

[13] As for her drinking, I am not persuaded that it has reached the level where she should be evicted for it. The fire incident was serious, no doubt, but in the final analysis it was an accident that is unlikely to be repeated.

[14] Although the fact of the fire speaks for itself, much of the evidence against the Tenant is hearsay. The Landlord is merely reciting what he has been

told, either verbally or in texts. I am concerned that the other tenants who have negative things to say have not appeared to support their allegations and potentially be cross-examined. The Tenant provided a signed statement for one of the tenants, Steven Kelly, who supports Ms. Emmerson and who believes that other tenants in the building are blameworthy.

[15] In short, I am not satisfied that the Tenant and her disability cannot be accommodated. Although the Landlord operates a private business, there is an element of public duty involved in providing housing, and the court (and Residential Tenancies) must be prepared to enforce the *Human Rights Act* if there is any sense that a tenant's disability is counting against her chances of remaining housed.

Conclusion

[16] I am satisfied that the Tenant's breaches of statutory duty are not serious enough to justify ending the tenancy, and I am also concerned that her physical disability is at least part of the reason that she is being considered to have breached her duty. As such, the possibility of reasonable accommodation must be considered and I believe it is appropriate that she be given another chance to remain in her tenancy, though not without some conditions.

[17] I believe that it is appropriate to consider that the Tenant is on a type of probation, where any repetition of her negative behaviour will be looked on more seriously. She must be prepared to meet the Landlord halfway. Reasonable accommodation is said to be a two-way street. The Tenant must look for

solutions, such as using headphones to listen to music, and must be extra careful to avoid situations like the fire from recurring. If there are any issues with the smoke detectors on her unit, this should be corrected immediately.

[18] The issue of repairs to the door to her unit, as well as needed painting repairs to the kitchen, were raised at the hearing but I believe are best left to be resolved elsewhere. The Tenant has offered to do some of the work herself, and it appears she has the skills to do so. This should be part of meeting the Landlord halfway. In the end, it is the Tenant who must live in the unit and she is answerable for damages done while she is a tenant.

ORDER

[19] The order of the Director of Residential Tenancies dated October 1, 2019 is accordingly set aside, subject to the reasons above.

Eric K. Slone, Adjudicator