

2019

S.C.C. No. 485365

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *McNeil v. Jellow*, 2019 NSSM 76

BETWEEN:

Ann Cavell McNeil

Appellant

and

Sharron Jellow and Darryl McNeil

Respondent

Residential Tenancies Appeal from Directors Order #201900039

DECISION

BEFORE: A. Robert Sampson, Q.C., Adjudicator

DATE OF HEARING: Hearing held at Sydney, Nova Scotia on May 8th and July 16th and September 18, 2019

FINAL DECISION RENDERED: Decision and Order – October 4, 2019

APPEARANCES:

For the Appellant: Self-Represented – Ann Cavell McNeil

For the Respondent: Self-Represented – Darryl McNeil (left hearing shortly after Commencement).

BY THE COURT

1. This decision is further to a preliminary decision and order rendered by this court dated July 23, 2019. The opening text of that decision provides a summary of the origins of this matter before the court. It is an appeal arising from a determination and Order of the Director - Residential Tenancies dated February 14, 2019 (file # 201900039). This Appeal was filed on February 21, 2019 and the matter was first brought before the Small Claims Court on May 8th, 2019. At that time the Appellant was present along with one of the named Respondents, Mr. Darryl McNeil. It was determined that the second named Respondent, Sharron Jellow, had not been properly served with the Notice of Appeal so the matter was adjourned to permit the Appellant time to complete this required task.

2. The matter was again before the court on July 8, 2019 and it was again determined, through somewhat of a mix-up relative to directions the Appellant appeared to have received from court staff, that once again proper service had not been effected upon Ms. Jellow. This led to a further adjournment together with an order setting forth the means of service. An appropriate Affidavit of Service was provided to the court as well as the court's own verification through Canada Post that notice of the new hearing date of September 18, 2019 had been accepted/picked up by Ms. Jellow.

3. Along with the court Order referenced above, the court also rendered a written decision providing the background to the matter based on documents and representations made to the court during the July 8th, 2019 attendance. The court clearly stated that given that proper service had not yet been completed it was not in a position to render any formal decision on the matters of appeal before it (see para. 16). The court further confirmed in paragraph 17 of its decision that in spite of the representations made by the parties, because Ms. Jellow had not been properly served notice and therefore not present to hear any of the information exchanged between the parties nor the opportunity to provide evidence or cross-examine any witnesses, it was made clear that it would be "necessary that there be a fresh start by all parties".

4. The Appellant and one of the Respondents appeared before me on the scheduled hearing date of September 8, 2019. Ms. Jellow was not present. The court was satisfied through the information filed with the court that Ms. Jellow had been personally served with the required notice and therefore the matter would proceed. As noted in the court's preliminary decision, in appeals before it arising from a decision of the Residential Tenancies Board, it is essential to allow for a fresh trial on the original issues/claim presented. The Notice of Appeal does not present "new" issues but rather a request to review the original issues set forth in the original application. For that reason the court is provided with a copy of the file material from the original Residential Tenancies hearing for review and determination.

REVIEW OF EVIDENCE

5. At the outset the court inquired with the parties as to whether they knew if Ms. Jellow was intending to appear. Mr. McNeil advised that he and Ms. Jellow were no longer residing together and he did not know. The parties had been previously advised as to the general procedure in dealing with matters of this nature. The parties, who were not represented by counsel, were placed under oath

at the outset as is the practice of this court when dealing with self-represented parties and each were advised that any comments made would be considered made under oath.

6. The Appellant commenced with “her side of the story”. Her original claim and thus the matters on appeal was that she was seeking an order for eviction and reimbursement from the Respondent of several bills associated with the Respondents’ occupancy of the residence situate at 291 Main Street, Florence, NS (“the Premises”). It was her position that although she is the mother of the named Respondent, Darryl McNeil, the residence is owned by her and that after residing in the Premises for approximately five years, she had moved out in August 2017 to allow her son to live there with his son, Chase, with the clear understanding that in lieu of any set monthly rental payment he would be responsible for certain ongoing monthly or annual expenses associated with the property. She confirmed that these expenses included the annual real property taxes, the Bell phone/cable bill, water account and so forth. Her evidence was that she has been left saddled with these bills which were left in her name and has and continues to make the payments that the Respondent had promised to assume.

7. It should be noted that after a very short time into this hearing, while the Appellant, Mrs. McNeil, was attempting to provide her evidence and supporting documents, she was being constantly interrupted by Mr. McNeil. The court intervened several times requesting that he not speak or interrupt Mrs. McNeil and that he would be afforded the opportunity to question her on anything she says or presents to the court once she has finished providing her evidence. In response Mr. McNeil abruptly gathered his papers and announced he was leaving. He left the court and did not return. The matter proceeded with the balance of the Appellant’s evidence.

8. The court received numerous exhibits mainly representing individual invoices for ongoing expenses the Appellant stated she had paid herself that were directly associated with the operation of the Premises and formed part of what the Respondent/Tenants had committed to pay as part of the terms of their verbal rental arrangement. The Appellant, Mrs. McNeil, stated that most importantly she “wanted her home back” so that she could resume living there. It was clear that there is “bad blood” amongst the family and added to this situation is issues surrounding the continued custody of the Respondent’s son who is also the Applicant’s grandson. While those issues are not before me it is clear that this collateral matter appears to have a great deal to do with the breakup of this relationship between the Appellant and Respondent, Mr. McNeil.

9. As noted there was a great deal of miscellaneous receipts presented to the court with little organization as to their exact relevance. Overall, it was Mr. McNeil's position that while he accepted the responsibility to assume these various household bills, it was his position that he had paid them or in some cases provided work service such as snow clearing and miscellaneous work associated with other properties owned by the Applicant in consideration of payment. The Respondent did not provide any verification such as receipts or bank records where he had paid such accounts. Further, while the Respondent acknowledged he and his girlfriend had re-located from Toronto and commenced residing in the Premises with the understanding that they were to pay these various household accounts, he also stated that he believed his mother (Appellant) had promised to give him the home/Premises, which had not occurred.

10. Exhibit #6 tendered by the Appellant confirms a handwritten note dated December 1, 2019 which states:

Notice is hereby given that Darryl McNeil and Sharon Jellow are to vacate the Premises at 291 Main St., Florence NS on or before Jan 01, 2019.

(signed) Cavell McNeil
Owner/Landlord

11. The evidence of the Appellant was that a duplicate copy of this notice was given to both Respondents and that they were well aware of the request for them to vacate the Premises. She further stated that this notice was part of the record when the matter was first presented before the Residential Tenancies Board and formed part of her original Application to this agency as well as part of this Appeal.

DECISION

12. The court has reviewed all of the exhibits tendered together with the Appellant's evidence. It is unfortunate that the Respondent, Mr. McNeil, chose not to stay during the proceeding and offer any evidence in response. The court does acknowledge, as referenced above, the general overall position of Mr. McNeil which he referenced while under oath during the second proceeding; however, as noted in both this court's written decision as well as verbally at the conclusion of the July 8th hearing, that once the service issues were resolved this matter would come before the court with a completely "fresh start". Therefore, the principal evidence before me is that which was presented at this hearing, almost exclusively by the Appellant, Mrs. McNeil.

13. As noted there are two principal issues -- first whether the Appellant has properly effected notice and therefore entitled to a Notice to Vacate against the Respondents and second whether she is entitled to an order against the Respondents for certain expenses that she has paid that were the responsibility of the Respondents.

14. The court is satisfied that there was a form of Landlord-Tenancy relationship in spite of the fact that there was no written form of lease. The court is further satisfied that the form of rent was represented by an exchange of promises whereby the Respondents committed to pay various household expenses associated with the ongoing operation of the Premises such as a contribution towards real property taxes, water and power utility, cable and phone (Bell). In this regard, based on the exhibits presented of various of these accounts the Appellant confirmed in evidence she had paid during this tenancy, the court finds that she is entitled to be reimbursed for the following expenses:

| | |
|---------------------------------|-----------------|
| 1. Real Property Taxes (Ex. #4) | \$1030.32 |
| 2. Water Utility (Ex. #5) | \$566.40 |
| 3. Nova Scotia Power (Ex. #3) | <u>\$690.22</u> |

TOTAL **\$2,286.94**

15. The second issue dealing with whether a proper “Notice to Quit” had been provided in accordance with the *Residential Tenancies Act* (“the *Act*”) and in turn whether the Appellant is entitled to such order presents a greater challenge. Clearly it has been long accepted that the *Act* is what governs the parties’ relationship in this instance. The court has found that a Landlord-Tenant relationship does exist and, therefore, the *Act* must apply and be adhered to in all respects. In the court’s preliminary written decision rendered back in July 2019, at that point in time based on the representations and documents presented to the court I had attempted in my remarks to highlight to the Appellant the fact that it did “not” appear her notice complied with what is currently required under the *Act*. Based on the evidence submitted, while there does not appear to be any reason that the Appellant cannot regain possession of her property/Premises, she must do so in accordance with the form of notice and timeframes provided in the *Act*. Further, based on the evidence I find that in this instance the nature of the tenancy is a form of month-to-month tenancy. Through the *Act*, its regulations provide the appropriate forms that are required to be completed and served upon the Tenant. The evidence given by Mr. McNeil suggests that Ms. Jellow has vacated the Premises however he still remains.

16. This decision has found that the Respondent is in arrears for payments he promised to pay in lieu of a set monthly rental. If those payments as directed to be paid by this decision remain outstanding for a period of 30 days than that too would provide reason to seek an application for vacant possession to the Residential Tenancies Board. In this instance, based on my understanding of the facts and having regard to the nature and length of tenancy it would be open for the Landlord to claim back possession of her property, provided proper notice is given. Unfortunately, the court's decision must be based on the evidence provided to it. In this instance, again as alluded to back in July, the Appellant should seek specific assistance and direction from the Residential Tenancies Board to secure the proper forms and notice requirements in order to achieve this specific remedy. Although the evidence did include a handwritten form of notice to vacate, the evidence further confirmed that the statutory requirements of notice had not been met. The evidence confirmed that this particular notice was served on or about December 8, 2018 and further there was no evidence as to actual service. Again as to methods of service, direction can be found in the Regulations of the *Act*.

17. The Court therefore orders that the Respondent pay to the Appellant the amounts referred to above and as set forth in a separate Court order accompanying this decision. I note further there was no evidence presented to me as it relates to any costs in connection with personal service and/or the cost of filing this appeal.

DATED at Sydney, Nova Scotia this 4th day of October, 2019.

A. ROBERT SAMPSON, Q.C.
Adjudicator