

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Certain Tenants of Victoria Road v. Central East Development Inc* 2020 NSSM 28

SCCH [as listed in Schedule “A” hereto]

Between:

Certain tenants of 252/254 Victoria Road, Dartmouth, Nova Scotia,
as listed in Schedule “A” hereto

Applicants

— and —

Central East Development Inc

Respondent

Adjudicator:

Augustus M. Richardson, QC

For the Applicants:

Mark Culligan and Amy Wohler

For the Respondent:

Cydney L. Kane and Ashley Hamp-Gonsalves

Heard:

December 21, 2020 (by
teleconference)

Decision:

December 22, 2020

DECISION and ORDER

Introduction

[1] These are 17 individual applications on behalf of 17 individual tenants of the Respondent Central East Development Inc (“Central East”), which is the current owner/landlord of two apartment buildings located at 252 and 254 Victoria Road, Dartmouth, Nova Scotia. The applications are to extend the time to file Notices of Appeal of orders made by Residential Tenancy Officers (“RTOs”). The RTO orders all terminated the lease agreements of the tenants with a previous owner/landlord and required them to deliver vacant possession of their respective units effective January 1, 2021. The tenants, and the file numbers with respect to their applications, are listed in Schedule “A” hereto. They will be referred to collectively as “the Tenants” save where it may be necessary to refer to some of them by name.

[2] The hearing of the applications took place by teleconference on December 21, 2020.

[3] On behalf of the applicants I heard the testimony of the following:

- a. Darcy Gillett, a housing support worker with Welcome Housing and Support Services;
- b. Susan LeBlanc, MLA, whose constituency includes the buildings on Victoria Road, Dartmouth and whose office assisted some of the tenants involved in these applications;
- c. Shermon Jackson, one of the Tenants;
- d. Steven Sutherland, one of the Tenants.

[4] Two exhibits, being Building Permits for 252/254 Victoria Road, were filed on behalf of the applicants.

[5] No witnesses were called on behalf of the Respondent, though the two co-owners of Central East, Adam Barrett and Spencer Meens, were on the teleconference. Three exhibits were filed on behalf of the Respondent.

[6] Prior to the hearing I reviewed the 17 files and in particular the 17 Residential Tenancy Orders for which the Tenants now seek the right to appeal by way of extensions of the time to file their appeals. Written submissions on behalf of the Tenants and the Respondent were also filed. The following facts are based on those RTO Orders as well as the testimony and exhibits and submissions that were filed.

The Facts

[7] As of October 1, 2020 252/254 Victoria Road, Dartmouth (the “Buildings”) were owned by a different entity, being Ranger Investments Ltd (“Ranger Investments”). Ranger Investments was the owner of the Buildings, and the landlord of the Tenants at that time.

[8] Ranger Investments served Notices to Quit on the Tenants on October 1, 2020. Central East acted as agent on behalf of Ranger Investments.

[9] About a week later (the dates vary somewhat) Central East, acting on behalf of Ranger Investments, filed applications with the Residential Tenancy Board for orders terminating the tenancy agreements, and delivering vacant possession, of the units in the Buildings owned by Ranger Investments and occupied by the Tenants. From my review of the RTO Orders under appeal it appears that the applications were pursuant to s.10(8)(f)(ii) of the *Residential Tenancy Act*. That section permits a landlord to issue a Notice to Quit where the Director is satisfied as follows:

s.10(8) A landlord may give to the tenant notice to quit the residential premises where

...

(f) the Director is satisfied that it is appropriate to make an order under Section 17A directing the landlord to be given possession at a time specified in the order, but not more than twelve months from the date of the order, where

...

(ii) the landlord in good faith requires possession of the residential premises for the purpose of demolition, removal or making repairs or renovations so extensive as to require a building permit and vacant possession of the residential premises, and all necessary permits have been obtained, or

(iii) the Director deems it appropriate in the circumstances.

[10] On November 6, 2020 Ranger Investments obtained Building Permits for the Buildings. The permit for 252 Victoria Road contained the following note regarding “Special Conditions:”

“Interior renovations and replacement of minor building features. No proposed changes to exterior dimensions of building.”

[11] There were no special conditions noted on the permit for 254 Victoria Road.

[12] Hearings by teleconference of the applications by Ranger Investments were conducted by the RTOs in respect of the 17 individual applications in mid November, 2020. (With the exception of one, on October 21, the hearings were between November 9th through to November 19th.) A very few also involved unpaid rent; more included “unpaid and future rent.” The primary reason in all for possession for the purposes of renovations. All of the resulting Orders listed the applicant at the time as “Ranger Investments, c/o Central East.”

[13] The RTOs issued Orders on November 16, 17, 20 and 23. (The one exception was that with respect to the tenant Mike Efford, which was issued on October 23, and which included substantial arrears in rent.) All of the Orders terminated the tenancy agreements pursuant to s.10(8)(f)(ii) of the *Residential Tenancy Act* effective January 1, 2021 and ordered delivery of vacant possession effective January 1, 2021.

[14] All of the Orders advised that an appeal of the order could be filed within 10 days of the date of the order. None of the Tenants filed a Notice of Appeal within 10 days.

[15] The RTO orders with respect to Mr Efford was made an Order of this court on November 19th.

[16] On November 25th, 2020 the Government of Nova Scotia issued a Direction of the Minister under a Declared State of Emergency (section 14 of the *Emergency Management Act*), 20-014R, “regarding tenant protections” (the “NS Direction”). Part 1 (Renoviction of Tenants) of the NS Direction provides as follows:

1 For the purpose of this Direction, a “renoviction” means a renovation undertaken by a residential landlord to residential premises, or a building containing residential premises, that will require the tenant to vacate the premises,

(a) effective on and after September 1, 2020, a residential landlord is prohibited from giving a notice to quit under the Residential Tenancies Act to a tenant for a renoviction,

(b) effective on and after September 1, 2020, any notice to quit given by a residential landlord to a tenant for a renoviction is void,

(c) effective on and after November 25, 2020, a residential tenancy officer, or on appeal the Small Claims Court, must not make an order terminating a tenancy or order the tenant to vacate the residential premises for a renovation.

[17] Following the public announcement of the NS Direction a number of the Tenants (not all) made enquiries of MLA LeBlanc's office to determine its affect, if any, on their eviction notices. Similar contacts were made to the offices of Welcome Housing and to Dalhousie Legal Aid. However, meetings and contacts were rendered difficult to arrange because of COVID-19 restrictions, and did not take place until early December.

[18] On December 2, 2020 Ranger Investments sold the Buildings to Central East.

[19] The various other RTO orders with respect to the other Tenants were made Orders of this court on the following dates: November 30th, December 7th, 8th and 12th. Making an RTO Order an order of this court is a necessary step in obtaining an order to the Sheriff to obtain vacant possession in the event the tenant does not deliver vacant possession on the date specified in the RTO Order.

[20] The within applications for an order extending the time to file an appeal of the RTO Orders were filed with this court on December 7th and 11th, 2020. All contained the following reasons for why an extension should be granted:

“The evidence did not show that vacant possession of the unit is required for renovation. The date set by the Order of the Director for vacant possession is unconscionable given the scarcity of affordable housing, the time of year and the COVID-19 pandemic. The November 25 order of council would have been applicable.”

Position of the Parties

[21] The position of the applicants was essentially that set out in the applications. Mr Gillett admitted that the Buildings were run down and needed extensive repair. He also testified that the vacancy rate in the Halifax Regional Municipality was 1% and that over the past few years rents had been escalating dramatically. These factors posed problems for the Tenants, most if not all of whom were on some form of social assistance with very limited resources. Some had physical or mental

disabilities. Some had educational limitations which meant that they could not read or understand the RTO Orders (other than that they were being evicted). Many did not understand their legal rights, or thought they had none, at least insofar as the RTO Orders were concerned. Mr Gillett and fellow housing support workers were doing all they could to find alternate accommodation, and to obtain supplements to their social assistance or pension income. However, it was virtually impossible to find apartments in the same range as the rents currently in effect in the Buildings (which were in the range of \$600-\$700/month). He thought that it would be possible to find alternate accommodation with time, but that January 1st was unreasonable given the state of rental housing in the city.

[22] Mr Gillett and Ms LeBlanc also testified as to their efforts to meet with the Tenants after the NS Directive was issued. They both noted the problems with meetings caused by the COVID-19 restrictions on social distancing; and the difficulties created by those restrictions on the ability of tenants to access public services, such as WIFI, that would otherwise have been available in libraries and the like.

[23] Central East's position was that the RTO Orders had been obtained in good faith. The rules had been followed. The RTO Orders had been obtained before the NS Direction was issued. Owners and landlords needed certainty in the application of statutes and regulations. Central East would be prejudiced by way of financial loss if the applications were granted. The renovations contemplated were extensive and costly (referring to Exhibit C). Moreover, the Tenants had taken no steps to file any appeal within the 10 days allotted. No reason for their failure to file had been given. They failed to satisfy the test for extensions that had been laid down in *Sun v. Lu* 2008 NSCA 77. The applications should be dismissed. In the alternative, if they were granted, I should retain jurisdiction and hear the appeals as soon as possible.

Analysis and Decision

[24] The test in the Nova Scotia Court of Appeal for granting extensions for the filing of appeal was set out in *Sun v. Lu* as follows:

- a. 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;
- b. there was a bona fide intention to appeal while the right of appeal existed; and
- c. a reasonable excuse for the delay in launching the appeal is advanced.

[25] The court there noted that the three-part test was more of a guide than a rigid test, and that “the ultimate goal being a just result in the circumstances of each case.” *Sun*, per MacDonald, CJNS at para.8.

[26] Taking these guidelines to heart I have decided that an extension should be granted, and that any notice of appeal be filed by December 30, 2020. I came to this conclusion for the following reasons.

[27] I recognize that none of the Tenants made any effort to file appeals within the 10 days allotted to them. However, I take the state of their ability to understand or exercise their rights to be limited.

[28] But more importantly, it appears to me that there are valid questions as to the RTO Orders that were granted, and of the potential impact of the NS Direction on the jurisdiction of this court to issue any order respecting the tenancies in issue.

[29] First, s.10(8)(f)(ii) of the *Residential Tenancies Act* is premised on the landlord needing possession because the “repairs or renovations *so extensive* as to require a building permit *and* vacant possession of the residential premises.” While the evidence is that a building permit was required there was no evidence before me that the renovations were so extensive as to require vacant possession.

[30] Second, and while we are on the point, the RTO Orders were all made in favour of the then owner and landlord of the Buildings, being Rangers Investment. Section 10(8)(f) entitled “*the* landlord” to apply for vacant possession. But the landlord at the time of the application and resulting order was someone different from Central East, who only became owner (and hence landlord) on December 2nd. My question here is whether an order made in favour of a previous owner and landlord can be transferred to a new owner and landlord. That is a question of law and fact that needs to be addressed—and which perforce is not answered by the RTO Orders in question.

[31] Third, there is the question of whether the January 1st dates laid down in the RTO Orders were in the circumstances an appropriate exercise of their jurisdiction. Section 10(8)(f) contemplates possession being ordered up to 12 months. In the files before me the Tenants were given roughly five to six weeks to find a new apartment over the Christmas holidays in the midst of a pandemic. There was no evidence before me as to why such a short period of time was requested or ordered. That then

raises the question of whether the RTOs exercised their discretion as to timing of a s.10(8)(f)(ii) order in a reasonable way.

[32] Fourth, the NS Direction states that “effective on and after November 25, 2020, a residential tenancy officer, or on appeal the Small Claims Court, must not make an order terminating a tenancy or order the tenant to vacate the residential premises for a renoeviction.” This court is a statutory court. It has no inherent jurisdiction. It can do only what its enabling statute, or any regulation, gives it the power to do. The question that arises is whether the orders of this court (made on November 30th, December 7th, 8th and 12th) were caught by the NS Direction. If they were then the step necessary to secure possession in the event one or more of the Tenants fails to vacate on January 1, 2021 cannot be taken. Nor can this court make or do anything in furtherance of the RTO Order. On the other hand, if the RTO Orders are not caught by the NS Direction then their enforcement can proceed in the event the Tenants do not vacate their units effective January 1, 2021. This too then is a question that needs to be answered.

[33] All of these questions, particularly the one touching on the jurisdiction of this court, need answers. As a result I was satisfied that the just result in the particular circumstances of these files was to grant an extension of the time to file a notice of appeal to December 30th, 2020.

[34] I accordingly make the following orders. I note that I do not have the time or resources to prepare separate and individual decisions and orders in each of the 17 applications and files listed in Schedule “A” hereto. Accordingly when reading this decision reference is to be made to the SCCH file number and title of proceeding listed in Schedule “A” hereto:

IT IS ORDERED that the time for the Tenants to file their Notices of Appeal in these applications is extended to December 30th, 2020.

IT IS FURTHER ORDERED that the representatives of the Tenants and of Central East take such steps as are necessary to hold the contemplated appeals as soon as possible;

IT IS FURTHER ORDERED that the Tenants shall continue to pay their rents to Central East as and when due;

IT IS FURTHER ORDERED that the RTO Orders under appeal in these files shall be stayed pending the outcome of the appeals in these files.

IT IS FURTHER ORDERED that pending the outcome of the appeals Central East Developments Inc shall not interfere with or obstruct the use and enjoyment of the Tenants of their respective units in 252 and 254 Victoria Road, Dartmouth.

DATED at Halifax, NS
this 22nd day of December, 2020

Augustus Richardson, QC
Adjudicator