

**SMALL CLAIMS COURT OF NOVA SCOTIA**

**Citation:** *Harris v. Wade*, 2023 NSSM 94

**ON APPEAL FROM AN ORDER OF THE DIRECTOR OF RESIDENTIAL  
TENANCIES**

**Date:** 20231220

**Docket:** 527500

**Registry:** Truro

**Between:**

Kimberley Harris

*Appellant*

v.

Karen Wade and Rally Lequigan

*Respondents*

**Adjudicator:** Julien S. Matte

**Heard:** December 18, 2023 via teleconference

**Decision:** December 20, 2023

**Counsel:** Kimberley Harris, self-represented  
Karen Wade, property manager, for the Respondents

**By the Court:**

[1] Instead of leaving the regulation of housing to the free market, the legislature opted to spell out the rights of tenants and landlords for what is arguably an essential public good worthy of legal protection. As per s.2 of the *Residential Tenancies Act*, the *Act's* stated purpose is to provide a dispute resolution mechanism for landlords and tenants. However, the *Act* is much more, giving parties a comprehensive framework to govern all aspects of their relationship.

**Facts**

[2] The Appellant, Kimberley Harris (“Tenant”) had lived in her apartment since the spring of 2020 at the time that the Respondent, Rally Lequigan, (“Landlord”) purchased the two unit building in and around August 2022. At that time, the Landlord presented a letter (“August letter”) to the Tenant purporting to offer the Tenant options with respect to possible lease arrangements.

[3] The Tenant testified that she only met the Landlord once when he was doing work at the downstairs apartment. Her recollection of the interaction was that it was pleasant. She recalled telling the Landlord that she would have liked to take the downstairs apartment had she known it was available. She reported that the

Landlord suggested she should have let him know earlier implying he would have gladly allowed her to move had he known.

[4] The evidence of the Landlord was that he did not recall a meeting at the downstairs apartment and says the only time he recalled an interaction with the Tenant was when he personally dropped off the August letter and explained to the Tenant the various options for continued tenancy. The Landlord gave no specific details of the encounter. The Tenant denied that the Landlord presented her with the August letter and rather that she received the letter in the mail or dropped at her door. She never discussed the contents with the Landlord.

[5] Shortly after the purchase, the Landlord hired the Respondent, Karen Wade, (“Property Manager”) to manage the property. The Property Manager did not have any interaction with the Tenant between the fall of 2022 until February 2023. In February 2023, the Property Manager testified that to create a written record of a lease, she drafted a lease for the Tenant to sign. On February 7, 2023, the Property Manager arranged to come to the Tenant’s apartment to sign the lease. There was no evidence of any discussions before the visit with the Tenant or that the Tenant had seen the lease until presented. Further the parties agreed that the Property Manager was minimalist in her approach to interacting with the Tenant and did not engage in conversation. In fact, the Property Manager testified that her approach was

intentional as she did not want to engage in conversation that might be used against her during proceedings.

[6] The Tenant does not recall the Property Manager explaining the fixed term lease on February 7, 2023, while the Property Manager testified that she was certain she would have pointed the fixed term lease clause out to the Tenant as she always did in like situations.

[7] On May 24, 2023, the Property Manager presented the Tenant with another document to sign, namely a second fixed term lease. While the parties spoke a little, the Property Manager admitted she likely did not point out the fixed term lease provision again. In both instances, the Property Manager admitted she was in a hurry.

### **The Leases**

[8] The first document signed between the Tenant and Property Manager was on February 7, 2023, with the fixed term lease option for the period of February 1, 2023, to July 31, 2023. The second document signed by the Tenant and Property Manager on May 24, 2023, was for a fixed term lease which appears to be from June 1, 2023, to September 31, 2023.

[9] While each of the Property Manager and Landlord claim to have explained the fixed term lease option to the Tenant, neither claim that the Tenant ever expressed a desire for a fixed term lease. The August letter makes it clear that either the Tenant could continue on a month-to-month basis or a “yearly” fixed lease but if the month to month was chosen, the Tenant would be subject to a rent increase.

[10] As noted at the hearing, the rent increase would have been limited to 2% or \$14.30 per month, something not noted in the August letter. There was no evidence to suggest that the Landlord or Property Manger explained to the Tenant what increase in rent might be avoided and what the effect of switching to a fixed-term lease would have on her rights.

[11] The Property Manager quite candidly admitted that all the properties that she manages, described as hundreds, are on fixed leases with only very few historical month-to-month leases left in place. The Property Manager also expressed that it is the Tenant’s obligation to inform herself about the law rather than her responsibility to explain it to tenants. The Court notes that the Property Manager failed to provide a copy of the *Act* as per the requirements of the *Act* opting instead to write “Access Nova Scotia/Residential Tenancy” where a web address to obtain the *Act* should have been included as per the standard form lease.

**The Act**

[12] Section 10(3A) of the *Act* reflects the legislature's intent to give tenants tenure under the *Act* by limiting landlords from giving a notice to quit or unilaterally ending a lease except as prescribed. It is clear from the *Act* that where a tenant enjoys a month-to-month lease, she enjoys tenure. A tenant's tenure serves an important purpose. As an essential human need, housing provides stability and safety. Tenure in this context aims to safeguard stability and safety for the good of everyone and to serve as the foundation for a healthy economy.

[13] Fixed term leases are defined at s.2(ac) of the *Act* as a lease entered for a fixed period. These leases are similar to commercial leases as they are not subject to the restrictions that flow from recognizing tenure.

[14] It is not surprising that the Property Manager operates mainly on fixed term leases. Fixed term leases offer the greatest flexibility to landlords and therefore are more useful in the aims of maximizing investments. However, in the context of the *Act* and its aims to regulate housing, and as raised by the Tenant, the use of fixed term lease can lead to abuses. Although fixed term leases are subject to the same current cap on rent increases (*Interim Residential Rental Increase Cap Act 2021, c.22, s.1.*), the cap only applies to fixed term leases where the same tenants occupy

the same property (see s.4(2) of *Cap Act*). As a result, fixed terms leases may incentivize some landlords to limit the length of tenancies to maximize their investments.

[15] The task of this Court, however, is neither to ensure landlords maximize profits or tenants maximize tenure but rather is to uphold both the letter and spirit of the *Act*.

### **Findings**

[16] The Court finds, based on uncontradicted evidence, that the Tenant and Landlord continued a pre-existing month-to-month tenancy with a rent payable of \$715 per month starting in August 2022. At the beginning of that month, the Tenant received the August letter from the Landlord acknowledging the existing tenancy and offering the Tenant the option of continuing or switching to a yearly fixed term lease without any initial rate increase. The Court prefers the evidence of the Tenant that the only time she met the Landlord, the letter was not discussed. The Court finds her detailed recollection of the first meeting to be more reliable than the Landlord's general recollection of meeting one of many tenants to discuss tenancy options. However, little turns on whether the Landlord discussed the August letter with the Tenant.

[17] The Property Manager was hired by the Landlord shortly after the letter was received by the Tenant. Between August 2022 and February 2023, the Property Manager did not communicate with the Tenant other than to arrange the lease signing of February 7, 2023. The explanation for the delay was that her business had tripled in three months, and it took time to get through each lease that needed to be drafted and given to the tenants of the new properties she now managed.

[18] The parties' recollection of what was explained at the February 7, 2023, meeting differs but what is uncontested is that at no time prior to the meeting did the Tenant tell either the Property Manager or the Landlord that she chose to switch to a fixed term lease. The Property Manager brought the lease to the Tenant and in a short and somewhat terse meeting, requested that she initial and sign the document. The document indicates a start to the fixed term on February 1, 2023, but no evidence was tendered to show that the parties had any discussions prior to that meeting. By her actions, the Property Manager was purporting to retroactively change the lease from month to month which would have run, at a minimum until March 1, 2023 given that rent paid on February 1, 2023.

[19] The second document signed raises even more questions.



[20] While it is the expected norm for subsequent fixed term leases to be signed before the end of the initial term, it is not expected that the terms of each lease for the same apartment would overlap. The term for the second lease, signed on May 24, 2023 starts on June 1, 2023 when the first lease does not end until July 31, 2023 and purports to continue to September 31, 2023, a day that simply does not exist.

[21] This matter could be decided solely based on sloppy drafting of the alleged leases but ultimately the leases fail on a more fundamental level.

[22] Fixed-term contracts are intended to be the exception to the rule. While much of the *Act* details the parties' rights and responsibilities with respect to tenured leases, fixed-term contracts provide an alternative to parties who may want to enter a defined shorter-term relationship. Inevitably and without the protection of the *Act* the tenant is less likely to be in as strong a position as the landlord in fixed term negotiations. The evidence establishes that even the Landlord recognized that it was the Tenant's decision if she wished to switch lease arrangements, the Tenant never indicated to anyone that she wanted to change to a fixed term lease. The Tenant never asked for a written lease and the Tenant paid her rent on time including on February 1, 2023. The only indication that the Tenant agreed to a fixed term lease is her signature on the documents presented to her by the Property Manager.

[23] The legislature intended and did create a tenured system of tenancy which protects tenants from capricious eviction. Beyond the provisions of the *Act* recognizing tenure, the *Act* recognizes the value of tenure to tenants. For example, s.10AB of the *Act* is one of the exceptions that allows landlords to evict tenants to effect renovations. However, even when the stringent guidelines are met and notice is given, landlords are required to compensate tenants a minimum of three months' rent as per s.10AC(2)(a) of the *Act*. This is a clear recognition by the legislature of the importance of housing to tenants which cannot be extinguished unilaterally.

[24] Tenure has value as recognized by the *Act*. Therefore, the *Act's* provisions cannot be interpreted to undermine the foundational purpose of tenure. Absent clear legislative intent, fixed term contracts must be interpreted within the entire scheme of the *Act*. The use of fixed term leases in a way that contradicts the purpose of the *Act* cannot logically fit within its intent. Absent unequivocal evidence of intent, contracts purporting to abandon tenure in favour of fixed terms should be viewed with significant suspicion. Courts tasked with upholding the *Act* must insist on clear unequivocal evidence showing an intent by the tenant to abandon their tenure in favour of a fixed term lease.

[25] Although the Property Manager used the prescribed form, the manner of obtaining a signature with little time or explanation of the significant implications

for the tenant leads to only one conclusion, there was no meeting of the minds, there was no contract. The tenants never requested that her month-to-month lease be changed to a fixed term lease and reduced to writing. The change was unilaterally initiated by the Respondents. The insignificant promise of a rent cap which by February would have amounted to less than \$90 for the proposed six-month term is not valid consideration absent significant evidence showing the Tenant understood the bargain.

[26] Nothing short of a detailed letter explaining exactly what was being proposed, including the small monetary incentive to forgo the month-to-month tenancy, explicitly noting the right of the landlord to unilaterally terminate the proposed fixed term lease at the end of the six month period as well as clear language setting out what the tenant was giving up would be needed to ensure that the parties are in a position to agree to such lease and that such an lease is enforceable.

[27] Showing up, as a relative stranger in a position of power, to someone's home with a hastily drafted lease and minimally engaging with that person is significantly short of what would be needed to extinguish a tenant's rights under the *Act*. While the *Act* does not spell out what is needed to convert a month-to-month tenancy to a fixed-term lease, the *Act's* core purpose is undermined if landlords are permitted to use their position of influence to obtain more favourable agreements from vulnerable

tenants. Treating a residential tenancy like a commercial agreement is contrary to the *Act*.

[28] The deliberate actions of the Property Manager were at best hasty and at worst opportunistic. It appears that the Property Manager's sole focus is on her own business success. However, when a business falls within a statutory regime designed to regulate an essential service, the usual rules of business engagement do not apply. The rights of tenants should be as much the concern to landlords as they are to tenants to ensure a relationship of minimal conflict that provides safety to tenants and a source of investment to landlords.

[29] The alternative arguments advanced by the Property Manager, that the Tenant has breached the lease or statutory conditions are without any merit. As previously noted by this Court to the Property Manager in the matter of *Asselstine v. Chase*, 2023 NSSM 30, opening a window in the winter is not cause for eviction. As pointed out by the Tenant, she received no written rules or warning about possible breaches of purported landlord rules as required by section 9A of the *Act*. There is no indication in the two leases drafted by the Property Manager of any specific rules which are now claimed to be breached. No emails were tendered showing warnings or complaints. There was simply no evidence in support of the Property Manager's bare allegations.

## **Conclusion**

[30] It is beyond the scope of this Court's jurisdiction to define how fixed term leases can be used under the *Act*. The *Act* and similar legislation across the country are testament to the need to regulate in an area so fundamental to our basic needs. The evidence before this Court shows that fixed term leases are now the default rather than the exception and suggests that when economic incentives are not properly regulated, the *Act*'s delicate balance to safeguard housing as an essential public good, is put at risk.

[31] This Court's role is to ensure that the facts surrounding agreements between landlords and tenants follow both the spirit and the letter of the *Act*. Here, the facts and evidence support the finding that the parties never properly entered a fixed term lease as there was insufficient evidence to support the conclusion that an agreement could have been reached. In the alternative, the deficient overlapping leases were of no effect given the Property Manager's failure to put even a minimum effort into the documents as evidence by the lack of a website address for the Tenant to obtain a copy of the *Act*, overlapping periods of tenancy and an imaginary end date. With ambiguous dates of commencement and termination, these documents do not meet the definition of fixed term leases under the *Act*.

**Order**

[32] The appeal is allowed. The Order of the Director dated October 5, 2023 is set aside. The original month to month lease continues at the rate of \$715 per month.

Julien S. Matte, Small Claims Court Adjudicator