

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

(RESIDENTIAL TENANCIES APPEAL)

Cite as Ramsey v. Reit, 2005 NSSM 5

BETWEEN:

WAYNE E. RAMSAY

Appellant

-and-

CAP REIT

Respondent

DECISION AND ORDER

[1] This matter is a residential tenancies appeal. It was heard before the Small Claims Court of Nova Scotia at Halifax, on the evening of Tuesday, November 22, 2005.

[2] The Appellant was present for the hearing and represented himself.

[3] The Respondent was present for the hearing through its manager, April Jenkins. Ms. Jenkins also represented the Respondent's interests.

[4] By way of background, the Appellant entered into a standard form of year-to-year Lease with the Respondent on March 1, 2005. The Appellant's Lease with the Respondent required him to pay a monthly rent of \$1,450.00 on the first day of each month of the demised term.

[5] The Appellant's Lease with the Respondent was all-inclusive. The monthly rent of \$1,450.00 included heat, hot water and electricity.

[6] The Respondent fulfilled all of the statutory conditions in the Lease with the Appellant. The Lease was signed. A copy of it, along with a copy of the *Residential Tenancies Act*, was delivered by the Respondent to the Appellant. There was no requirement that the Appellant post a security deposit with the Respondent.

[7] By June 29, 2005, the Appellant was seriously in arrears in the payment of his monthly rent to the Respondent. The Respondent then brought an Application to the Director of Residential Tenancies. The Respondent sought the Director's Order that the Appellant was in default of the Lease and that he was obligated to pay past due rent and surrender vacant possessions of the demised premises.

[8] The Director of Residential Tenancies investigated the Respondent's complaint and, pursuant to the provisions of Section 16(1) of the *Residential Tenancies Act*, endeavored to mediate a settlement. The mediation was successful. On July 25, 2005, the Appellant and the Respondent signed a written Mediated Settlement Agreement which included the following:

1(a) The landlord and tenant agreed that the balance of the rent account was \$5,550.00 including a \$25.00 NSF cheque charge for a May 2005 cheque and the rent up to and including July 2005.

1(b) The tenant agreed to pay the regular rent (presently \$1,450.00 a month) plus a minimum of \$300.00 towards the rent arrears for a total of \$1,750.00 each month starting on July 28, 2005 and continuing on or before the end of each month until the rent arrears are paid in full.

1(c) The tenant agreed to pay the balance of the rent account when he receives his pension(s) which are presently under appeal.

1(d) The tenant agreed that any rent that comes due during the term of this Mediated Settlement will be added to the balance of the rent account when the rent comes due and will be included in a Director's Order should one be requested by the landlord as a result of this Mediated Settlement being in default.

1(e) The landlord will be entitled to termination of tenancy (vacant possession) if the minimum payments are not made as agreed to in this Mediated Settlement.

[9] As a result of the Mediated Settlement, the Appellant made three separate payments to the Respondent on July 29, 2005. These separate payments were in the sums of \$1,175.00, \$725.00 and \$1,000.00, for a total of \$2,900.00.

[10] The Appellant's next payments to the Respondent were on September 1, 2005 and on September 29, 2005. Those payments were both in the sum of \$1,750.00. The Appellant has made no further payments to the Respondent. In particular, the Appellant did not make any payment to the Respondent at the end of October, 2005. Additionally, the Appellant has not made any payment to the Respondent during the month of November, 2005.

[11] The Mediated Settlement required the Appellant to pay to the Respondent the sum of \$7,000.00 by the end of October, 2005. That is by October 31, 2005. The above payments, having been properly credited by the Respondent, the Appellant was still \$600.00 short by October 31, 2005. In the result, the Respondent sought enforcement of the Mediated Settlement and again appeared before a Residential Tenancy Officer.

[12] The salient findings of the Residential Tenancy Officer, dated November 3, 2005, are as follows:

3. Based on the Mediated Settlement, the tenant should have paid a total of \$7,000.00 by October 31, 2005. The payments made total \$6,400.00 leaving a shortage of \$600.00
4. Based on reason #3, the Mediated Settlement is in default. The tenant is more than 30 days in arrears for rent. Therefore, the landlord is entitled to termination of the tenancy (vacant possession).
5. The landlord does not hold a security deposit.
6. The landlord is entitled to \$4,950.00 for rent (including the November 2005 rent).

Having reviewed all of the evidence, it is ordered that:

The tenant, Wayne Ramsay, pay to the landlord, CAP REIT, the sum of \$4,950.00.

It is further ordered that the tenant vacate the premises known as 1333 south Park Street, Apartment 315, Halifax, NS on Tuesday, November 15, 2005 and the landlord be given vacant possession of the residential premises as of this date.

[13] It is from those findings which the Appellant has appealed.

[14] In his Form 1, Notice of Appeal, the Appellant has set out the following grounds:

- (1) Financial
- (2) Medical
- (3) "I paid \$6,400 Dollars. Was short \$600 and will pay at the end of Nov."

[15] The role of the Small Claims Court of Nova Scotia in an Appeal from an Order by a Residential Tenancy Officer is set out in Section 17C of the *Residential Tenancies Act*. The Section provides that:

- (4) The Small Claims Court shall conduct the hearing in respect of the matter for which a Notice of Appeal is filed.
 - (5) The Small Claims Court shall determine its own practice and procedure but shall give full opportunity for the parties to present evidence and make submissions.
 - (6) The Small Claims Court may conduct a hearing orally, including by telephone.
 - (7) Evidence may be given before the Small Claims Court in any manner that the Small Claims Court considers appropriate and the Small Claims Court is not bound by rules of law respecting evidence applicable to judicial proceedings.
 - (8) The evidence that hearing shall not be recorded.
- 17D (1) Within fourteen days of holding a hearing pursuant to subsection 17C(4), the Small Claims Court shall
- (a) confirm, vary or rescind the order of the Director; or
 - (b) make any order that the Director could have made.

[16] Again, with respect, the Appellant's financial and medical circumstances are not matters which this Court can consider. Pursuant to Section 10B of the *Residential Tenancies Act*, a tenant is entitled to the early termination of a Lease when his income has been reduced because of a significant deterioration of his health such that it is no longer reasonably sufficient to pay the rent due. There is no reverse position which would effectively permit a tenant to remain in the demised premises and term despite the inability to pay the rent due.

[17] Almost by the same token, Section 10C of the *Act* permits an early termination of a Lease when a tenant has suffered such a significant deterioration to his health that in the opinion of his physician, he can no longer live alone. A similar provision is found in Section 10D of the *Act* which provides for an early termination of a Lease where a tenant has been accepted into a nursing or other home for special care. None of those provisions apply to the Appellant in the instant case.

[18] More problematic is a determination of whatever rights might accrue to the Appellant as a result of his payment of the \$6,400.00 referred to above. The question arises of whether or not there is some form of “fairness provision” in the *Residential Tenancies Act* or in the common law which permits an extension of the types sought by the Appellant simply to accommodate his financial circumstances. Having considered the matter carefully, I have concluded, unfortunately for the Appellant, that there is not.

[19] Section 10(6) of the *Residential Tenancies Act* provides that:

Notwithstanding the periods of notice in subsection (1), where a year to year or month to month tenancy exists or is deemed to exist and the rent payable for the residential premises is in arrears for thirty days, the landlord may give to the tenant notice to quit the residential premises fifteen days from the date that the Notice to Quit is given.

[20] A Notice to Quit on the basis of an arrears in rent for more than 30 days is the remedy the Respondent was seeking when it entered into the Mediated Settlement with the Appellant on July 25, 2005. At the time, the Respondent had complained to the Director of Residential Tenancies seeking its rights under the subject section. While not ruling specifically on the merits of the Respondent’s claim, it is implicit in the settlement mediated by the Residential Tenancy Officer on July 25, 2005, that the Respondent’s entitlement to vacant possession and to past due rent had been made out. In particular, the Appellant had agreed that his rent was past due on the sum of \$5,550.00. He also agreed to pay \$7,000.00 by October 31, 2005. He also agreed to a minimum monthly increase of \$300.00 on his normal monthly rent of \$1,450.00. While the Appellant remained current on his agreements until October 31, 2005, he was again in default at that time.

[21] In terms of his ability to pay, the Appellant testified to a stroke he suffered on or about October 8, 2005. According to the Appellant, this stroke compromised his ability to manage his money. He testified that he “lost” \$600.00 which he intended to apply towards his past due rent on

or before October 31, 2005.

[22] In corroboration , the Appellant entered into evidence a copy of the medical consultation note written by Dr. Stephen J. Phillips. Dr. Phillips' report does not substantiate the Appellant's evidence that he suffered a stroke. The Appellant does appear, from Dr. Phillips' evidence that he suffered a stroke. The Appellant does appear, from Dr. Phillips' report, to suffer from a range of medical symptoms. It is not for this Court to determine whether they are mild, moderate or severe. There is currently no statutory nor common law authority which can result in forbearance of rents due by a tenant who is either financially or physically disabled.

[23] There can be little doubt of the Appellant's *bona fides*. He is a victim of difficult circumstances not of his own making. His evidence in support of his appeal was forthright and sincere. He is a person entitled to a "break" if only there was a statutory or common law basis for one.

[24] The Respondent, too is entitled to its rights. It is entitled to a tenant who is going to pay the rent due, on time, every time. It has extended compromises and accommodations to the Appellant in the past. It cannot be expected to forbear indefinitely given the Appellant's past financial problems and apparent general financial needs.

[25] This proceeding being an appeal, it is incumbent upon the Appellant to provide some evidence or argument that the Residential Tenancy Officer was wrong. I arrive at that conclusion notwithstanding the provisions of Sections 17C(5) of the *Residential Tenancies Act*. Contrary to a finding that the Residential Tenancy Officer was incorrect, in either his findings of fact or his applications of the law to his findings of fact, I find that the Residential Tenancy Officer was correct. It is a conclusion that I come to reluctantly. The Appellant is entitled to sympathy. I wish there was more that the Court could do for him.

[26] In all of its essential elements, the Order of the Residential Tenancy Officer, dated November 3, 2005, now under appeal, is confirmed. One minor variance is the date upon which the Appellant is to surrender vacant possession of the demised premises to the Respondent. The date ordered by the Residential Tenancy Officer was November 15, 2005. That date is now redundant. It is hereby extended to November 30, 2005.

[27] It is ordered that the Appellant pay to the Respondent the sum of \$4,950.00. It is further ordered that the Appellant vacate and deliver up vacant possession of the demised premises to the Respondent not later than November 30, 2005.

DATED at Halifax, Nova Scotia, this 25th day of November, 2005.

Gavin Giles, Q.C.
Chief Adjudicator,
Small Claims Court of Nova Scotia

(2005nssm5.wpd)