Date: 20010611
Docket No.: CA 161064

NOVA SCOTIA COURT OF APPEAL

[Cite as: Ofume v. Southwest Apartments, 2001 NSCA 95]

Glube, C.J.N.S.; Freeman and Flinn, JJ.A.

BETWEEN:

PHILLIP OFUME

Appellant

- and -

SOUTHWEST APARTMENTS

Respondent

REASONS FOR JUDGMENT

Counsel:	The appellant on his own behalf The respondent by its agents, Hugh Avery and Gert LaFond
Appeal Heard:	June 1, 2001
Judgment Delivered:	June 11, 2001
THE COURT:	Appeal dismissed without costs as per reasons for judgment of Freeman, J.A.; Glube, C.J.N.S. and Flinn, J.A. concurring.

FREEMAN, J.A.:

[1] The appellant Phillip Ofume is a Nigerian refugee with two Ph.D. degrees who was moved with his family, consisting of his pregnant wife, two sons and a daughter, from the Republic of Togo in West Africa to Halifax in the spring of 1998 with the assistance of international agencies including Amnesty International. This appeal results from residential tenancy proceedings arising from his dissatisfaction with his first accommodation.

[2] The issues are a claim of $2,055. he made for expenses and labour for cleaning the apartment and the landlord's claim for three months' rent totalling $1,560.00. Dr. Ofume advised the court his appeal was not about the money but about how he was treated as a black refugee. It was explained to him that residential tenancies proceedings do not afford an appropriate tribunal for the human rights issues he wished to raise.

[3] Immigration Canada put the Ofume family in contact with the Metropolitan Immigration Settlement Association (MISA), a volunteer agency, for help finding an apartment after several days in a hotel. They were shown a two-bedroom unit owned by the respondent. Concerns were expressed that it was too small for a family of two adults and four children, one a baby girl born immediately after their arrival in Canada. Dr. Ofume inspected it, noting a stained carpet, and signed a lease for a year.

[4] There is no evidence that Dr. Ofume was forced to take the apartment, as he now asserts. He raises the issue of his own competency to enter a leasing contract within the first week of his arrival in Canada after harrowing experiences as a refugee, but again the evidence is insufficient to permit a finding as to his state of mind.

[5] Dr. Ofume says the apartment was cramped and dirty with broken fixtures and appliances. The previous tenants were on hand gathering possessions, and Dr. Ofume says this left no time for a cleanup between the tenancies. He says he expected cleaning and repairs by the landlord which did not occur or were long delayed.

[6] The landlord says Dr. Ofume was provided with a copy of the **Residential Tenancies Act** and a copy of the lease as well as the inspection report indicating everything was okay except for the stained carpet.

[7] Dr. Ofume says he was told by MISA his family would only have to stay there three months and then could be moved into a three-bedroom apartment in the same building. A form entitled "Permanent Accommodation" included in the exhibits shows the lease to have been for the period May 1, 1998 to August 31, 1998. This appears to be a MISA form and it is signed by Wenche Gausdal, the MISA representative. It shows rent of $520. per month and a security deposit of $286. Under "Comments" it states:

> In September they will move into a 3br in the same building. The rent for the apt. will then be $540.

[8] It appears the Ofume family was in fact later shown a three-bedroom unit but rejected it as even smaller than their two-bedroom unit. In any event they did not move and remained in the first apartment for almost a year, until they acquired a house in Bedford, Nova Scotia.

[9] The landlord brought a claim under the **Residential Tenancies Act**, R.S.N.S. 1989, c. 401, initially for four months of unpaid rent at $520. per month. The Board found only three months were owing for a total of $1,560. The landlord also claimed $63.25 for carpet cleaning which the Director allowed but the Board disallowed. After deducting the security deposit of $294.23, the Board found Dr. Ofume owed the landlord $1,265.77.

[10] Dr. Ofume claimed $1,100. for labour and materials for cleaning the floors and carpets, $650. for cleaning walls and mopping up from the leaking toilet, and $305. for replacing door bolts and missing locks, a total of $2,055.

[11] In addition to noting Dr. Ofume's claim for cleaning and repairs the Board stated under the heading "Appellant Evidence":

> The tenant, Philip Ofume, testified on his own behalf and stated the following:
>
> 1. He and his family were new immigrants to Canada, on entering the country Immigration Canada placed them with MISA (Metropolitan Immigration Settlement Committee) responsible for finding accommodations for the family until they were able to make decisions of their own.
>
> 2. MISA arranged for them to move into a two bedroom apartment,

> although they, the tenants, felt the apartment was too small for two adults and four children. They were moved into the apartment within two hours of the other tenants moving out. The former tenants came back and forth for things they had forgotten.
>
> 3. MISA told them they had to stay three months, and they could be moved to a three bedroom apartment in the same building.
>
> 4. The stove had only two burners working, the carpet was very dirty, the place needed painting, and they were promised to have repairs done within 4 days.
>
> 5. He wrote to the management several times [copies of his letters were produced as exhibits], as well as, telephoned requesting repairs, they complained of the toilet leaking, only to be told by the property manager, if they didn't like it they should move.
>
> 6. They did not wish to stay but MISA forced them to remain for a year, between August 1998 and March 1999, they did not have a contract, they have no copy of the lease or **Residential Tenancies Act**.
>
> 7. They paid the rent by cheque with the exception of three times when they paid cash. They haven't any receipts for the cash payments.

[12] In rebuttal evidence Dr. Ofume acknowledged signing a lease but said that and the **Residential Tenancies Act** were taken by MISA and not returned to him. The landlord said the locks were changed in early April 1998 after the previous tenants left the unit. The leaking toilet was not repaired until December, 1998.

[13] The Board stated under the heading "Relationship":

> The Board is satisfied that a landlord/tenant relationship existed between the parties. They entered into a written year-to-year standard form lease, with occupancy commencing on May 1st, 1998, at a monthly rental of $572.00 the first month, and the next 11 months at $520.00, due on the first day of each month. The landlord was paid a security deposit of $286.00 on April 28th, 1998. . . . The landlord provided the tenant with a copy of the **Residential Tenancies Act**, and a signed copy of the standard form lease. The tenant vacated the premises on April 5th, 1999, and the unit was rerented on May 1st, 1999.

[14] The Board found the following facts:

> 1. The landlord and the tenant executed a standard written year-to-year lease.
>
> 2. The landlord is holding a security deposit of $294.23 (principal plus interest).
>
> 3. The tenant has no receipts for rent paid for February, March and April [1998]. All bank cheques are correct ending with January 1999. The tenant owes to the landlord unpaid rent in the amount of $1,560.00.
>
> 4. MISA had no right to state the tenants would move to a three bedroom apartment at the end of three months. This is the prerogative of the landlord and they were not consulted.
>
> 5. The in-inspection was completed and signed by the tenant on May 1st, 1999. All walls and floors were signed as OK only the carpet was marked stained, compensation for cleaning the walls and floors is disallowed, as well as, [the] cost for replacing the bolts as agreed in the Director's decision (see attached).
>
> 6. Carpet cleaning costs of $63.25 as sought by the landlord is disallowed, the carpets were stained and were not cleaned prior to occupancy.
>
> 7. The landlord is owed by the tenant the sum of $1,560.00 less the security deposit and interest of $294.23 for a balance of $1,265.77.

[15] The reference in paragraph 5 is to paragraph 8 of the Director's report, which states:

> 8. The tenant has provided no evidence to establish any negligence on behalf of the landlord regarding the condition of the unit. Therefore, the tenant's claim of $2,055.00 for compensation for cleaning carpets, walls and replacing door bolts is not allowed.

[16] Dr. Ofume appealed the Board's decision to the Supreme Court of Nova Scotia. Justice Cacchione conducted a hearing December 3, 1999 and heard submissions from Dr. Ofume and the landlord's representative.

[17] Justice Cacchione stated that he assumed that Dr. Ofume, as an educated person who had received both the lease and the **Residential Tenancies Act**, should have understood his rights as a tenant. There was a contract between Dr. Ofume and the landlord. Justice Cacchione explained the appeal process, stating that he

was unable to find a breach of natural justice, excess of jurisdiction, or an error of law in the Board's report. Accordingly he dismissed the appeal and affirmed the finding of the Board.

[18] The **Residential Tenancies Act** does not provide for appeals to this court, but pursuant to the **Judicature Act**, R.S.N.S. 1989, c. 240, decisions of the Supreme Court are subject to appeal. **Michaud v. Newton**, [1994] N.S.J. No. 280 (C.A.) establishes a high standard:

> In the absence of a manifest error so serious that it creates a substantial injustice, findings of fact by a Residential Tenancies Board which have been accepted by the Supreme Court should not be disturbed on appeal.

[19] Dr. Ofume found the apartment "horrible" and suggests he rented it because he was vulnerable, new in Canada after his experiences as a refugee, and felt under pressure from MISA to take it. These are all matters of fact which were considered before the finders of fact which heard the evidence, and we have no basis for considering them further. He says he signed the lease without reading it because "I trusted the people." It is clear MISA was involved in his confusion as to whether he could move to another apartment after three months, but MISA was not a party to the residential tenancy proceedings and is not before this court. Dr. Ofume asserted it is contrary to Canadian and Nova Scotia standards for six people to be accommodated in a two-bedroom apartment. The court is unaware of such a rule and no authority was provided.

[20] The only remaining issue before this court is whether Dr. Ofume paid the three months' rent for which he has been found responsible. He says he paid in cash but was unable to get receipts. He did not explain why he did not follow his practice of paying with cheques on his bank account. Cancelled cheques were not in evidence. He told Justice Cacchione "I became confused as to how much I've paid and how much I've not paid." However he submitted his statements for one of his two bank accounts covering the whole of the relevant period. These show a pattern of monthly withdrawals of $520. from Dr. Ofume's bank accounts to and including February, 1999, one of the months for which Dr. Ofume was found to be in arrears.

[21] In letters from Dr. Ofume to the landlord, entered as exhibits in the court file dated August 1998 and February 1999, Dr. Ofume complains that he was not being

issued receipts. In the February, 1999 letter he says he had reviewed his records and found he had overpaid three months' rent and claims $1,560.

[22] Copies of the landlord's ledger pages were also entered as exhibits. They show only nine rental payments received from Dr. Ofume. There is no direct evidence that the withdrawals were in fact paid to the landlord. The Board was faced with a conflict of evidence which it was required to resolve. It did so by finding as a fact in paragraph 3 of its findings that Dr. Ofume owed the landlord rent for February, March and April of 1999 in the total amount of $1560., less the security deposit.

[23] In the language of **Michaud v. Newton**, it cannot be said that this is "a manifest error so serious that it creates a substantial injustice." It is a finding of a Residential Tenancy Board supported by some evidence and confirmed by the Supreme Court. It should not be disturbed on appeal. I would therefore uphold the judgment of Justice Cacchione and dismiss the tenant's appeal.

[24] In his appeal to this court Dr. Ofume raised a number of issues which were not before the Director of Residential Tenancies, the Residential Tenancies Board, nor Justice Cacchione. Therefore they cannot be before this court in this appeal. There is no jurisdiction to inquire into them.

[25] Dr. Ofume filed a detailed 11 paragraph notice of appeal asserting the landlord forced him and his family into a small apartment contrary to the standard in Nova Scotia and Canada and further forced them into it while it was dirty and in some disrepair, thus taking advantage of his vulnerable situation as a new refugee to force them into punitive and hazardous shelter. The remainder of the notice of appeal elaborated on this theme, which essentially is a reiteration of factual matters already dealt with. There is no evidence before this court that would support a factual finding that Dr. Ofume was forced to do anything by the landlord, which is the only other party.

[26] Much of Dr. Ofume's dissatisfaction centers on MISA, which was not a party. Whatever MISA's shortcomings, if any, in steering newly arrived immigrants into unsuitable accommodation, Dr. Ofume must seek his remedy in another forum.

[27] Dr. Ofume's attempt to characterize his complaints as "a provincial, federal

and international constitutional issue" lacks a procedural framework or evidentiary foundation, particularly within the context of residential tenancy proceedings. No constitutional issue has been properly raised in this court in this proceeding; therefore no notice is required under the **Constitutional Questions Act,** R.S.N.S. 1989, c. 89. His attempt to have this court issue subpoenas to various national and international figures, including the UN High Commissioner for Refugees and the Canadian Minister of Citizenship and Immigration was properly rejected in Chambers. This court is not a fact-finding body and it is not its function to issue subpoenas; see **Gazdeczka v. Gazdeczka,** [1986] B.C.J. No. 655 (B.C.C.A. in Chambers). Moreover, there are no live issues before this court in this residential tenancies appeal respecting which the testimony of the dignitaries Dr. Ofume wishes to call could be relevant.

[28] While his notice of appeal repeats his claim for damages of $2055.00 referred to above, Dr. Ofume's factum claims $65,000. general damages for a broken hand which he says his son Keynes Ofume suffered in a fall resulting from crowded conditions in the apartment. He claims a further $50,000. for "what the Appellant and his household suffered in terms of pains, poor ventilation, infringement of their fundamental human rights, discrimination, deformity as a result of the fracture of the son (Keynes Ofume) of the Appellant, dirty environment, psychological problem, sickness, sleepless night, lack of space, embarrassment by the Respondent and its Collection Agents. . . " These claims cannot be added to a residential tenancies matter at this stage of appeal proceedings. There is no application before this court for the admission of new evidence which could give such claims an air of reality. Therefore there is no jurisdiction to consider them.

[29] As stated above, I would dismiss the appeal. As this was a tribunal appeal in which both sides were self-represented I would award no costs.

Freeman, J.A.

Concurred in:

Glube, C.J.N.S.

Flinn, J.A.