

NOVA SCOTIA COURT OF APPEAL

Citation: *Archibald v. Action Management Services Inc.*, 2015 NSCA 103

Date: 20151117

Docket: CA 432537

Registry: Halifax

Between:

Karen Archibald and The Estate of Adam Archibald

Appellant

Respondent by Cross-Appeal

v.

Action Management Services Inc.

Respondent

Appellant by Cross-Appeal

Judge:

The Honourable Justice M. Jill Hamilton

Appeal Heard:

September 10, 2015, in Halifax, Nova Scotia

Subject:

Property Law, Termination of Commercial Lease, Tenancy at Will

Summary:

The appellants rented commercial premises from the respondent. They sought a reduction of rent when they ran into financial difficulties. The parties met on May 31. They gave conflicting evidence as to the agreement reached at the meeting. The judge accepted the appellants' testimony that the respondent agreed to terminate the lease and release them from all of their obligations under it, on payment of \$11,200, which was paid. The judge found the lease was terminated at the beginning of June, but that a tenancy-at-will arose making the appellants responsible for rent for a further six months.

Issues:

(1) Did the judge err when he found as a fact that the parties orally agreed at the May 31 meeting that the lease would be

terminated, and the tenants released from their obligations under it, subject only to their paying \$11,200, and not subject to a second condition, that the landlord enter into an acceptable lease with a new tenant?

(2) If not, did the judge err in finding this oral agreement, together with the payment of \$11,200 by the tenants, effectively terminated the lease and the tenants' obligations under it?

(3) Did the judge err when he found a tenancy-at-will arose following the termination of the lease?

Result:

Appeal and Cross-Appeal dismissed. The judge did not err in accepting Ms. Archibald's testimony and finding as a fact that the parties agreed at the May 31 meeting that the appellants would be released from the lease on one condition only, the payment of \$11,200. Nor did he err in finding the parties' May 31 agreement over-rode clause 30 of the lease, terminating it. The judge also did not err in finding a tenancy-at-will arose following the termination of the lease, given that the appellants were aware from the Statement of Claim and the trial that they were a risk for rent until October 2008.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 16 pages.