



NOVA SCOTIA COURT OF APPEAL

**BETWEEN:**

WINDOW ON THE COMMONS  
MANAGEMENT, a registered  
business name to Syed Monawar Hussain

Appellant

- and -

DUNCAN HARPER

Respondent

REASONS FOR  
JUDGMENT BY:

Clarke, C.J.N.S.  
(Orally)

The reasons for judgment of the Court were delivered orally by:

**CLARKE, C.J.N.S.:**

The issue in this appeal is whether Justice Tidman erred in his order of January 13, 1997, by which he approved the recommendations contained in a report by the Tenancies Board and dismissed, with costs, an objection filed by the appellant.

The parties signed a standard form lease by which the respondent tenant rented an apartment from the appellant landlord for \$520.00 per month. During the Summer and Fall of 1996, the landlord caused extensive repairs to be made to the apartment building. The tenant alleged that they interfered with his use and occupancy to such an extent that it rendered the premises unfit for his habitation. He sought a rebate of \$2,080.00, being his total rent for the period from July, 1996 to and including October, 1996, at which later date he vacated the apartment.

The tenant conducted his employment in and from his apartment during the working hours of the day.

The Board found, among others, that the noise level from the jack hammering was extensive, intrusive and unrelenting; there was a lack of water in both pressure and quality; there was interference with the use of the elevators, and the security of the building was diminished by entry and garage doors being left open and unattended. The Board further found that all of this resulted in a substantial interference in the tenant's occupancy of his rented premises.

The Board decided that the landlord was in breach of statutory conditions (2) and (3) of s. 9(1) of the **Residential Tenancies Act**, R.S.N.S. 1989, c. 401.

2. Services - Where the landlord provides a service or facility to the tenant that is reasonably related to the tenant's continued use and enjoyment of the premises such as, but not so as to restrict the generality of the foregoing, heat, water, electric power, gas, appliances, garbage collection, sewers or elevators, the landlord shall not discontinue providing that service to the tenant without proper notice of a rental increase or without permission from the residential tenancies board.

3. Good Behaviour - A landlord or tenant shall conduct himself in such a manner as not to interfere with the

possession or occupancy of the tenant or of the landlord and the other tenants, respectively.

The Board decided that the tenant was entitled to a 25% abatement of rent being \$130.00 for each of the four months claimed. Accordingly, it recommended the landlord pay the tenant \$520.00.

The landlord's objection to the recommendation was heard in the Supreme Court by Justice Tidman. In his lengthy and comprehensive reasons he concluded the recommendation of the Board was reasonably founded in both law and fact. He found, for the reasons he gave, that there was no cause to interfere with the recommendation of the Board. He found nothing in the **Act** to prohibit the landlord from paying the tenant an abatement of rent in these circumstances. He upheld the recommendation of the Board and awarded costs to the tenant. From this the landlord appeals.

We have examined the record and considered the arguments and submissions of counsel. Broad powers are conferred upon the Supreme Court by s. 16(5) of the **Act**. In **Hancock v. Fuchs** (1994), 132 N.S.R. (2d) 357, Chipman, J.A. stated at p. 358, para. [2]:

By virtue of s. 15(5) of the **Residential Tenancies Act**, R.S.N.S. 1989, c. 401, the evidence at a hearing before the Board is not recorded. The Supreme Court nevertheless has jurisdiction over the factual issues before the Board by virtue of s. 16(5) of the **Act**. A finding of fact made by a Residential Tenancies Board and adopted by a judge of the Supreme Court pursuant to the legislative scheme governing residential tenancies will not therefore be disturbed by this court, unless it is manifestly erroneous. In applying the requisite test, this court is necessarily confined to the record and the report of the Board and any additional record before the Supreme Court pursuant to s. 16(5). An error of law on the part of the Board which is adopted by the Supreme Court may, however, be corrected by this court.

After reviewing the record we are satisfied Justice Tidman made no manifest error in adopting the findings of fact made by the Board. We have also considered the manner by which he interpreted the provisions of the **Act** and how he applied the facts as found. In so doing it is our opinion that he did not commit any error in law.

We are unable to accept the proposition advanced by the landlord that there must be blameworthy conduct on the part of the landlord before the Court can order restitution.

Also, we are unable to accept the proposition that a landlord cannot be in breach of a statutory condition for quiet enjoyment while fulfilling the landlord's obligation to do repair work.

Accordingly we dismiss the appeal and we order costs to the respondent in the amount of \$1,000.00, plus his disbursements.

C.J.N.S.

Concurred in:

Jones, J.A.

Flinn, J.A.