Date: 19970529 Docket: C.A. 134930

NOVA SCOTIA COURT OF APPEAL

Clarke, C.J.N.S.; Hart and Freeman, JJ.A.
Cite as: Walker v. Allcott, 1997 NSCA 106

BETWEEN:

BRUCE WALKER and MARLENE ELMAN	)	Jody C. Rice
	)	for the Appellants
Appellants	)	
	)	
- and -	)	
	)	D. Timothy Gabriel
	)	for the Respondent
NATHAN ALLCOTT	)	
	)	
Respondent	)	Appeal Heard:
	)	May 22, 1997
	)	
	)	Judgment Delivered:
	)	May 29, 1997
	)	
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THE COURT: Appeal allowed and the decision of Chambers judge is set aside and the amended decision of the Board is restored per reasons for judgment of Hart, J.A.; Clarke, C.J.N.S. and Freeman, J.A. concurring.

HART, J.A.:

Bruce A. Walker and Marline R. Elman were tenants of an apartment at 556 Tower Road, owned by Nathan Allcott, their landlord. On December 23, 1994, the landlord gave them notice to quit on March 31, 1995. The tenants applied under s. 14 of the **Residential Tenancies Act**, R.S.N.S., c. 401 to set aside the notice to quit as they wished to remain in the apartment until May 31, 1995 and felt they had a verbal agreement with the landlord to do so. The landlord cross-claimed for their failure to vacate on time but this was held in abeyance until the tenants complaint had been settled. The tenants request was referred to the Residential Tenancies Board and was refused. They filed an objection with the Court to the Report of the Board and the matter was referred back to the Board for further hearing. Before this could be arranged, however, the tenants had vacated the apartment as of May 31, 1995 and been transferred to the West coast where Mr. Walker served in the Armed Forces. No address for service was available and the re-hearing was indefinitely postponed.

The landlord wished to pursue his claim for compensation for the tenants' failure to vacate in time and on July 12, 1996, made formal application to the Court pursuant to s. 14 of the **Act** for an order requiring the payment of money by the tenants. This matter was automatically referred to the Board for report and their Report was as follows:

> FINDING OF FACT
>
> Upon examination of the circumstances of the case, the Board determined that the tenancy terminated on May

> 31st, 1995, yet the application was not filed until **July 12th, 1996**. Section 14(1) of the Residential Tenancies Act stipulates that a party seeking redress may apply "not more than one year after the termination of the tenancy". Clearly, more than one year has elapsed between the tenancy termination and the application. The Board therefore declined to hear the case.
>
> RECOMMENDATION
>
> The Board recommends to the Court that the **application** of the landlord be dismissed.

The landlord filed a notice of objection to this Report and the matter came on before Mr. Justice Goodfellow in Chambers on December 2, 1996 and a decision was rendered on December 20, 1996. Although neither party made any reference to the **Limitation of Actions Act**, R.S.N.S. 1989, c. 258, the judge invited submissions on whether the Board should have considered disallowing the limitation under this **Act**. Counsel for the tenants and the landlord, who was not represented by counsel, both agreed that the **Act** did not apply.

In his decision, however, the Chambers judge found that the procedure followed by the landlord under the **Residential Tenancies Act** came within the definition of "action" under the **Limitation of Actions Act** and then concluded:

> The Board made an error in law and committed a denial of natural justice in not making a determination under the **Limitations Act**, and the matter is referred back to a new Board for such a consideration and depending upon the result of such, if the limitations defence is struck, a hearing on the merits. It is noted that the respondents submitted cheques for the two months of April and May, 1995 which out of caution were returned to them by Mr. Allcott, and therefore they acknowledge occupation of the premises for a two-month period for which they have paid no rent.

The tenants have appealed from this decision and it is agreed by counsel that the sole issue in this appeal is whether the Chambers judge erred in holding that the **Limitation of Actions Act** applied to s. 14 of the **Residential Tenancies Act**.

In my opinion the **Limitation of Actions Act** cannot be invoked to disturb the one year limitation requirement to bring an application under s. 14 of the **Residential Tenancies Act** before the Court.

The **Limitation of Actions Act** is designed to set reasonable time limits on the commencement of "actions" in the courts. The types of "actions" intended are extensively enumerated in s. 2 of the **Act** and relate to remedies sought in proceedings brought under the **Rules of Civil Procedure**. These **Rules** require statements of claim, defences and other pleadings enabling the issues to be defined and joined between the parties. These **Rules** require a reliance on a limitation period to be pleaded and the **Act** permits in s. 3(2) the disallowance of this defence if it is equitable to do so.

The **Residential Tenancies Act**, on the other hand, sets up a statutory scheme for the quick and inexpensive settlement of disputes between landlords and tenants. When an application for relief is filed with the Court it is automatically referred to the Board for hearing and Report. The Court can then use the Report as a basis for its order, reverse or vary the report, order a new hearing or determine the matter itself based on the

material disclosed by the Report. This type of scheme does not, in my opinion, come within the meaning of "action" in the **Limitation of Actions Act**.

Even if it could be said that the scheme falls within the intended meaning of "action" in the **Act**, there is another reason why the **Act** cannot be invoked to vary the one year limitation. Section 1(3) of that **Act** states:

> Nothing in this Section contained shall extend to any action given by any statute when the time for bringing such action is by any statute specially limited.

This would prevent the use of s. 3(2) to disallow or extend the time limitation in s. 14 of the **Residential Tenancies Act**.

I note that a similar conclusion was reached by Roscoe, J.F.C. (as she then was) in **Brake v. Rice (No. 2)** (1988), 86 N.S.R. (2d) 407 where she stated at p. 409:

> I find that the **Limitation of Actions Act** does not apply to the **Family Maintenance Act** for these reasons. First, an action under s. 11 of the **Family Maintenance Act** or, in fact, any action under the **Family Maintenance Act** unless it happened to be an action for the enforcement of a debt, is not an action of a type listed in s. 2(1) of the **Limitation of Actions Act**; and I find that it's not even close. An action for maintenance from a possible father I don't find comes anywhere close to the types of actions that are listed in s. 2(1) of the **Limitation of Actions Act**. Secondly, s. 2(3) of the **Limitation of Actions Act** says that this section, i.e., s. 2, "does not apply to any action which is specially limited by statute" and I find that the **Family Maintenance Act** does provide a special limitation period in respect to actions under s. 11; and that is found in s. 14. That's another reason why the **Limitation of Actions Act** does not apply.

The reasoning of Roscoe, J.F.C. in **Brake v. Rice** was adopted by Williams, J.F.C. in **P.A.D. v. L.G.** (1988), 89 N.S.R. (2d) 7.

In **Jennifer's of Nova Scotia Inc. v. Clark** (1994), 136 N.S.R. (2d) 110 the Nova Scotia Court of Appeal considered whether the **Limitation of Actions Act** applied to the **Rent Review Act**, R.S.N.S. 1989, c. 398. Pugsley, J.A. speaking for the Court stated at p. 122:

> The critical question is whether the review proceeding before the Commission, instituted as a result of the decision of the residential tenancy officer falls within the definition of action under the **Limitation of Actions Act**.
>
> I am of the opinion, it does not. The **Limitation of Actions Act** applies, as the name suggests, to actions. The proceeding before the Commission to enforce a regulatory scheme set out under the **Rent Review Act** is not, in my opinion, an "action" as defined in the **Limitation of Actions Act**.
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> The term "action" does not normally include a "proceeding" (**Roberts v. Battersea Metro (Borough)** (1914), 110 L.T. 566 (C.A.); **O'Shaughnessy v. O'Shaughnessy** (1987), 16 C.P.C. (2d) 53 (B.C.C.A.)).
>
> I am assisted in this conclusion by the decision of this court in **Dunn and Angle v. Rent Review Commission (N.S.)** (1986), 74 N.S.R. (2d) 291; 180 A.P.R. 291.
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> Clarke, C.J.N.S., on behalf of the court stated at page 295:
>
> > 'The scheme of the **Act** is to vest in the Commission the authority to take into account, the history of the tenancy and to correct inequities in the rate of rent which have occurred in a landlord and tenant relationship where the price to be paid for rental accommodation is otherwise fixed by legislation.'
>
> The inference I take from this comment is that the Commission is not affected by limitation provisions when determining refunds to be made to tenants. Indeed, this court (in **Luddington v. Rent Review Commission (N.S.) and Helpard** (1983), 55 N.S.R. (2d) 340; 114 A.P.R. 340 (C.A.), confirmed an award to a tenant that extended back in excess of four years.

Counsel for the landlord tries to distinguish this case because the decision is made by the Board rather than a court. I fail to see this distinction, however, because to enforce any decision of the Board it must be made a Rule or Order of the Supreme Court.

For these reasons I would allow this appeal, set aside the decision of the Chambers judge and restore the amended decision of the Board with costs in the amount of $1,000 including disbursements.

Hart, J.A.

Concurred in:

Clarke, C.J.N.S.

Freeman, J.A.

C.A. No. 134930

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BRUCE WALKER and MARLINE ELMAN

Appellants

- and -

NATHAN ALLCOTT

Respondent

REASONS FOR JUDGMENT BY:

HART, J.A.