

NOVA SCOTIA COURT OF APPEAL
Cite as: Walker v. Tsimiklis, 1993 NSCA 20

Clarke, C.J.N.S.; Hart and Hallett, J.J.A.

BETWEEN:

HAROLD WALKER

Appellant

- and -

JIM TSIMIKLIS

Respondent

V i n c e n t C a l d e r h e a d
for the Appellant

Shaun O'Leary
for the Respondent

Appeal Heard:
February 4, 1993

Judgment Delivered:

THE COURT:

Appeal dismissed from order of County Court judge concerning a complaint made pursuant to the **Residential Tenancies Act**, per reasons for judgment of Clarke, C.J.N.S., Hart and Hallett, J.J.A. concurring.

CLARKE, C.J.N.S.:

The appellant, a former tenant of the respondent landlord, appeals from the order of the Honourable Judge Cacchione, as he then was, dated June 11, 1992. Following a hearing resulting from a notice of objection filed by the appellant, Judge Cacchione affirmed the recommendation of the Residential Tenancies Board and ordered the appellant to pay the respondent arrears of rent of \$1,920.00.

In his complaint to the Board the appellant alleged the respondent broke into and entered his apartment, removed his personal chattels and refused to return them. While admitting he owed arrears of rent, the appellant asserted that he would not pay the back rent until either the respondent returned his belongings or compensated him for their loss. He also alleged that a photocopy of a document entered in evidence by the respondent purporting to bear the appellant's signature in which the appellant acknowledged both the return of his belongings and the rental arrears of \$1,920.00 was a fabrication and a forgery.

The Board had found that:

"... based on the evidence as presented by the landlord in respect to the notices that the tenant did receive his belongings and if he wants to deny the notice of November 27th that he should take this matter further if he feels that it is not his signature on the notice."

At the hearing of his notice of objection, filed pursuant to s. 16 of the **Residential Tenancies Act**, R.S.N.S. 1989, c. 401, the appellant asked for an adjourment to permit him to obtain a forensic analysis of the document to determine if in fact it was a forgery. The judge declined to grant the

adjournment.

In dismissing the allegations set forth in the appellant's objection, Judge Cacchione said:

"The question of the creation or fabrication of the document, the question of the removal of the items in what appears to be either a break, enter and theft or certainly the detention of goods for distraint for rent is something that can be approached in another forum but I don't think this court should involve itself in the determination of criminal liability and that's not in anyway preventing you from pursuing the matter in terms of the Document Section or the police authorities with respect to the removal of items from the property. But I do not think that I can either adjourn these proceedings in order to get Mr. Bent's report to say whether it was or it wasn't a forgery. If it was a forgery then criminal charges should be laid. That's as simple as that. If it wasn't a forgery then the findings of the Board would be reinforced."

He continued:

"There is such an overlapping between the criminal and the civil that if the allegations have any basis then surely the criminal would override the civil. These are very serious allegations of break, enter and theft into a dwelling, which is a life imprisonment offence. There is a forgery offence alleged, which carries with that, I don't have the code, but probably 10 or 14 years. And I think that that aspect should be pursued in another forum, so the Notice of Objection is being dismissed."

On appeal to this Court the appellant contends the County Court judge erred first, in refusing the appellant the opportunity to respond to allegedly forged evidence and, second, in holding that the civil courts should not determine a matter where there is an allegation of criminal conduct.

After reviewing the record and considering the written and oral submissions of counsel, it is my opinion that Judge Cacchione did not err in either of the grounds which are the subject of this appeal. Forgery and unlawful break and entry both fall within the realm of criminal conduct and, as the trial judge suggested, it is the criminal process that is designed to deal with those

matters and not the Residential Tenancies Board. As Judge Cacchione also observed, it is through civil actions in the courts that recovery can be sought for the loss of property resulting from unlawful taking.

It is the statutory function of the Board to make a recommendation to the County Court whether rent is due and, if so, in what amount, and the validity of the claims of each of the landlord and tenant directly arising out of the rental relationship. If a party objects to the recommendation, he or she can file a notice of objection. The County Court judge then determines whether or not the objection has validity and to accept, reject or vary the recommendation.

It was within the discretion of the County Court judge to determine whether an adjournment would be granted as requested by the appellant. We find no reversible error in the exercise of his discretion nor in his finding that the objections of the appellant should be dismissed. For the benefit and the consideration of the appellant, the trial judge outlined other recourses.

For these reasons, I would dismiss the appeal.

C.J.N.S.

Concurred in:

Hart, J.A.

Hallett, J.A.

