**PROVINCE OF NOVA SCOTIA**
**COUNTY OF HALIFAX** **C.H. NO. 78612**

**IN THE COUNTY COURT**
**OF DISTRICT NUMBER ONE**

**BETWEEN:**

**GILBERT LAROCQUE**

**Applicant**

**- and -**

**WALTER R. E. GOODFELLOW**

**Respondent**

Gilbert Larocque, Acting on his own behalf;
Jamie S. Campbell, Esq., Counsel for the Respondent.

1993, January 12, Palmeter, C.J.C.C.:-

This is a Notice of Objection filed pursuant to a report and recommendation of the Halifax and County West Residential Tenancies Board, dated August 14th, 1992, wherein the Board recommended that the Applicant ("tenant") herein pay the Respondent ("landlord") the sum of $1,322.03. The matter was heard on November 19th, 1992 and decision was reserved.

The application to this Court involved a condominium unit, Apartment #218, 1326 Lower Water Street in the City of Halifax, owned by the landlord and rented to the tenant. On July 2nd, 1992, the tenant applied to this Court for a declaration that the Tenancy Agreement be terminated. On July 14th, 1992, the landlord applied to the Court requiring payment of monies by the tenant.

The facts do not appear to be in dispute. There was a written lease dated August 26th, 1991 on a year-to-year term. Rental was in the amount of $900.00 per month and a security deposit was paid on August 29th, 1991. The tenant first occupied the premises as of October 1st, 1991, and vacated the premises on or about July 1st, 1992. The premises were re-rented by the landlord effective September 1992.

On or about April 12th, 1992 the tenant received a Notice from the Condominium Corporation in which the premises was a unit, regarding a problem with the sprinkler system in the building. The tenant contacted his Insurance Agency as a result of this notice and informed them of a potential hazard. The Insurance Company responded by excluding any coverage for loss or damage arising out of sprinkler leakage.

The tenant sent correspondence to the landlord concerning his inability to obtain insurance coverage for this type of damage. In this correspondence, the tenant indicated that he was concerned with safety of himself and his guests together with concern for the safety of his belongings. The tenant sought from the landlord a guarantee that the landlord would cover any damage, failing which the tenant indicated that he wished to vacate the premises. The landlord responded to the tenant suggesting that the tenant could obtain insurance coverage through another agency. The tenant apparently made some inquiry with another insurance agency and found that there would be an increased premium for this insurance coverage.

Upon vacating the premises on or about July lst, l992, the tenant sent a letter by registered mail to the landlord and put a stop-payment on post-dated cheques for the July rental.

The Findings of Fact by the Board are as set out in the Report and are as follows:

> "The tenant's claim is based upon an allegation that the landlord has breached statutory condition number l concerning condition of premises which states:
>
> > 'The landlord shall keep the premises in a good state of repair and fit for habitation during the tenancy and shall comply with any statutory

> enactment or law respecting health, safety or housing.'
>
> The Board is unable to accept the tenant's argument that the potential problem with sprinkler leakage amounts to a breach of the statutory condition referred to. The Board takes note that there was no damage or leakage in the tenant's apartment. The matter of insurability is not relevant as there is no warranty as such given by the landlord under the lease, the Residential Tenancies Act or otherwise.
>
> The Board accepts the evidence of the landlord that he had no prior knowledge of any problem with the sprinkler system at or prior to the time of entering into the lease agreement with the tenant.
>
> The Board finds no merit in the tenant's claim that he would be deprived of facilities during the month of August, namely the pool, the sundeck and the sauna and therefore should not be entitled to terminate the tenancy for this reason.
>
> The Board accepts the claim by the landlord for the loss of rent in the amount of $1,800.00 together with bank service change of $1.60 and the courier fee of $3.75.
>
> The Board finds that the landlord is not entitled to the $10.00 filing fee on the basis of the decision of the Supreme Court of Nova Scotia (Appeal Division) in **Turner** vs. **Fitness** which decision determined that costs are not recoverable under applications made pursuant to the Residential Tenancies Act.
>
> The tenant is entitled to be credited with the security deposit and accrued interest in the amount of $483.32 which leaves a balance owing to the landlord of $1,322.03."

The Notice of Objection filed by the tenant states that the grounds of the application are that the "Applicant does not concur with the recommendations of Tenancy Board". This does not give much information, but as the tenant was acting on his own behalf this Court allowed him to

argue on the three grounds which are the normal practice of this Court, namely, excess of jurisdiction, denial of natural justice or error in law.

The tenant did not argue excess of jurisdiction and it is clear to me that there was no excess of jurisdiction in this case. With regard to denial of natural justice, the tenant argued that there was a reasonable apprehension of bias on the part of the Board because the landlord personally appeared, and because the landlord was a Justice of the Supreme Court of Nova Scotia. Perhaps in hindsight it might have been more appropriate for the landlord to have appeared before the Board by an agent rather then personally, but because one is a judge does not mean that he does not have the same civil remedies as other persons. There must be a reasonable possibility of bias and I do not find this to be the case in this application. The tenant may have had some subjective apprehension of bias in this matter but, in my opinion, that is not sufficient.

As set out in the report of the Board, the main argument of the tenant was based on the allegation that the landlord breached statutory condition number 1 of the **Residential Tenancies Act**, which states as follows:

> "1. Condition of Premises - The landlord shall keep the premises in good state of repair and fit for habitation during the tenancy and shall

comply with any statutory enactment or law respecting standards of health, safety or housing."

The matter at issue before this Court is whether there was a breach by the landlord of Statutory Condition # 1 and if so, would the breach allow the tenant to arbitrarily treat the lease as at an end and move out with no further liability.

This Court does not interfere with findings of credibility by a Board. In this case the Board accepted the evidence of the landlord that he had no prior knowledge of any problem with the sprinkler system at or prior to the time at entering into the lease agreement with the tenant.

The Board found that the problem with the sprinkler system did not constitute a breach of statutory condition # 1 and I take no objection to this finding as there appeared to be sufficient information and evidence before the Board to enable it to make this determination. There was a potential problem with the sprinkler system which the Condominium Corporation, and by reference the landlord undertook to have fixed as expeditiously as possible. There was no damage to the tenant's apartment and he was not deprived of facilities. The only problem was one of insurability, and the evidence

indicated that the tenant could have obtained insurance from another agent at an increased premium.

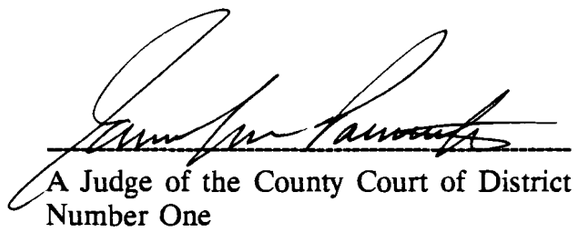
I agree with the findings by the Board that there is no warranty given under the lease, or by the **Act,** or otherwise by the landlord to the tenant as to insurability.

The tenant decided arbitrarily to move out without making application to this Court to determine the status of the tenancy, whether it had been breached, whether the tenant could treat the lease at an end, or whether the landlord might be liable for damages for an increased insurance premium. None of this was done and, in my opinion, this would and should have been the proper procedure to be followed by the tenant in this case.

Even if there had been a breach of the statutory condition, would the breach have been serious enough to allow the tenant to immediately give up occupancy. With respect, I think not. My decision in the case of **Lantz** v. **Hanson** et al., Feb. ll, l987, C.H. 54163 and C.H. 54157, should only be applied in the most obvious and serious of cases. Here the matter was not of serious nature. There was a potential problem and the landlord had, through the Condominium Corporation, agreed to rectify the problem as expeditiously as possible when it first came to his attention. **Lantz v. Hanson** is also

precedent for the proposition that the Court will not force a tenant to commit an illegal act for which they may be subject to a penalty. This is not the situation in the case before me.

Accordingly, I can find no error in law in the report and recommendation of the Board. I will dismiss the Notice of Objection and confirm the recommendation of the Board.



A Judge of the County Court of District Number One