

PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX

C.H. No.: 74857

I N T H E C O U N T Y C O U R T  
O F D I S T R I C T N U M B E R O N E

**BETWEEN:**

**ROBERT AND JOHN FAIRFIELD**

**Appellants**

- and -

**METCALFE REALTY COMPANY LIMITED**

**Respondent**

Lyle I. Sutherland, Esq., Counsel for the Appellants.  
David Connolly, Esq., Counsel for the Respondent.

1992, February 3rd, Bateman, J.C.C.:— John and Robert Fairfield have filed a Notice of Objection to the report of the Residential Tenancies Board. On the facts, as found by the Board, Metcalfe Realty Company Limited agreed to rent an apartment to the Fairfields on a year to year basis. The Fairfields took occupation and subsequently received, from the Landlord, a package containing the proposed standard form lease to be signed and a copy of the Residential Tenancies Act.

The Fairfields did not sign the lease. They vacated after five months. The Landlord sought compensation for loss rent.

The Tenant asserts an entitlement to vacate on one month's written notice, as was given.

The issue turns on the interpretation of Section 7 of the Residential Tenancies Act which states:

**"Copy of Act to tenant**

7 (1) No landlord shall grant a lease or possession or occupancy of residential premises to a tenant unless he has provided the tenant with a copy or reproduction of this Act without cost to the tenant within ten days of such grant, possession or occupancy.

**Copy of lease to tenant**

(2) A landlord, with respect to every written tenancy agreement entered into, shall when the tenancy agreement is initially entered into, or if it is entered into before the first day of February, 1985, on the anniversary date thereof, provide the standard form of lease as prescribed by regulation for both the landlord and tenant to sign and a copy signed by both the landlord and tenant shall be retained by the tenant at the time of the signing or given to the tenant within ten days thereof.

**Failure to comply with subsection (1) or (2)**

(3) Where a landlord fails to provide a copy or reproduction of this Act in accordance with subsection (1) or a copy of a written lease in accordance with subsection (2), the tenant

(a) at any time before the tenant receives a copy or reproduction of this Act or the written lease from the landlord; or

(b) within one month after the tenant receives a copy or reproduction of this Act or the written lease from the landlord,

may give notice to the landlord that the tenant will quit and deliver up the premises on a specified day within a period of three months from the day the notice is given.

(4) A tenant may pay the rent in trust to the board until the landlord provides the tenant with an executed copy of the lease and a copy or reproduction of this Act.

**Acknowledgment of receipt of copies**

(5) When a landlord provides an executed copy of the lease or a copy or reproduction of this Act, the landlord may request the tenant to execute an acknowledgment that the copies have been received.

**Information to tenant**

(6) The landlord shall provide the tenant in writing with

(a) the landlord's name;

(b) the landlord's address; or

(c) the name and telephone number of a person responsible for the premises."

The tenants say that they were not provided with a signed copy of the written lease (as there was no signed written lease) and, thus, are entitled to vacate upon one month's notice consistent with Section 7(3). In other words, they submit, in all oral tenancies, irrespective of the term agreed, tenants may vacate on one month's notice.

The Board found that there was an oral year to year lease. The statutorily required notice period for a year to year lease is at least three months prior to the anniversary (Section 10(1)). The landlord says that the tenant is only entitled to take advantage of Section 7(3) if there is, in fact, a signed written lease in existence and a signed copy is not provided by the landlord.

The tenants submit that the intent of the Statute is to encourage written tenancy agreements and the method of doing so is to leave the landlord at risk of early termination by the tenant under Section 7(3). The Statute does admit of this creative interpretation if the subsections are read disjunctively. It is, however, both a rule of statutory interpretation and common sense that general words may be limited by their association with other words. Section 7(2), when requiring a landlord to provide a copy of the signed lease, modifies the circumstances by the words "with respect to every written tenancy agreement".

Section 7(3) provides the tenant with a license to vacate where the landlord has not provided a copy of "a written lease in accordance with subsection (2)."

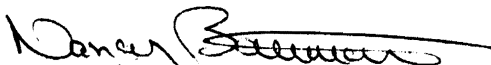
I agree with the submission of the landlord that a tenant's option to vacate is limited to those cases where there is a written lease, a copy of which is not provided. I cannot construe Section 7(3) in isolation from the other subsections.

The tenant raised other points in the Notice of Objection. The finding of the Tenancy Board that the agreement was for a year to year term is a finding of fact which is apparently based upon the Board's assessment of the credibility of the parties. I am not prepared to disturb that finding.

The Board did refer to the applicants being estopped from denying the one year term as they had not objected to the contents of the proposed written lease (which referred to a one year term). In my view the Board might have better stayed away from the legal term "estoppel" and, instead, looked at the tenant's failure to object to the term in the lease as further evidence going to their credibility. Given my decision above it is not necessary for me to consider this point in any further detail.

In summary, then, the objection of the tenants is dismissed and the report of the Board confirmed.

As this matter has raised a rather novel legal point which, to my knowledge, has not been considered previously, in this instance, I will not award costs.

  
A Judge of the County Court  
of District Number One