SUPREME COURT OF NOVA SCOTIA
Citation: *Crane v. Arnaout,* 2015 NSSC 106

Date: 2015-05-04
Docket: Hfx No. 432313A
Registry: Halifax

Between:

David Crane, Jacqueline Costello

Appellants

v.

Azmi Arnaout

Respondent

Judge:	The Honourable Justice Peter Rosinski
Heard:	March 30, 2015, in Halifax, Nova Scotia
Counsel:	Danielle Kershaw and Elizabeth McIsaac (articling clerk) for the Appellants
	Lloyd Robbins for the Respondent

By the Court:

Introduction

[1] Miscommunication, and unintended consequences, are best minimized when, as the saying goes: "the parties are on the same page". More specifically, that adage suggests a "written" page will more likely effect a consensus and certainty as to the nature and extent of the precise legal obligations and expectations between parties to a contract.

[2] The relationship of tenant and landlord has become highly regulated by the State in an effort to assist in defining the legal obligations and expectations between those parties. Nevertheless, the parties themselves still play an important part in creating the consensus and certainty as to the nature and extent of their precise legal obligations and expectations.

[3] In this case, a landlord and tenant were satisfied to enter into a residential tenancy agreement, without ever putting it into written form. That decision has caused them to have a dispute about whether the tenant here provided sufficient notice to quit to the landlord.

Procedural history

(i) *Residential Tenancies Act* Officer's decision

[4] Pursuant to s. 13 of the *Residential Tenancies Act,* on April 15, 2014 [within the one year period permitted by the Act] the landlord filed an application for a hearing regarding his claim that the tenants owed him $2,000 per month rent for the months of June, July, and August 2013. They had vacated the premises on May 31, 2013 after providing written notice of their intention to vacate on May 30, 2013.

[5] The documentation filed was carelessly filled out by the landlord, and did involve other incidental matters which are not the subject of this appeal. However, central to the dispute were the differing positions regarding the lease: the tenants claim the lease was "month-to-month" from July 1, 2011 onward; whereas the landlord claims the lease was for a fixed term (year to year it seems; until a separate fixed term from April 1, 2013 to August 31, 2013 was agreed to by the parties). Both parties agree that at no time was the lease reduced to writing, nor did the landlord provide the tenant with a copy of the *Residential Tenancies Act* as is required by s. 7 of the *Residential Tenancies Act.*

[6] After hearing the matter on May 21, 2014, the Residential Tenancies Officer Briand issued her decision on June 3, 2014. The landlord had participated in person; the tenant had participated via telephone. The officer concluded:

> "Based on Section 7(3) of the *Residential Tenancies Act*, I find the tenant's notice to quit issued on May 30, 2013, effective May 31, 2013 is proper, and the landlord is not entitled to his claim of $6000 for rent".

[7] She also noted that: "the tenant testified… He stated that he had also verbally gave notice to the property manager on April 14, 2013".

(ii) Small Claims Court Appeal decision

[8] The landlord appealed that decision pursuant to s. 17C of the *Residential Tenancies Act* to the Small Claims Court. That section reads:

> Appeal to Small Claims Court
>
> 17C (1) Except as otherwise provided in this Act, any party to an order of the Director may appeal to the Small Claims Court.
>
> (2) An appeal may be commenced by filing with the Small Claims Court, within ten days of the making of the order, a notice of appeal in the form prescribed by regulations made pursuant to the Small Claims Court Act accompanied by the fee prescribed by regulations made pursuant to the Small Claims Court Act.
>
> (3) The appellant shall serve each party to the order and the Director with the notice of appeal and the notice of hearing.
>
> (3A) Service of all documents may be by personal service or such other manner of service or substituted service permitted pursuant to the Small Claims Court Act.
>
> (4) The Small Claims Court shall conduct the hearing in respect of a matter for which a notice of appeal is filed.

> (5) The Small Claims Court shall determine its own practice and procedure but shall give full opportunity for the parties to present evidence and make submissions.
>
> (6) The Small Claims Court may conduct a hearing orally, including by telephone.
>
> (7) Evidence may be given before the Small Claims Court in any manner that the Small Claims Court considers appropriate and the Small Claims Court is not bound by rules of law respecting evidence applicable to judicial proceedings.
>
> (8) The evidence at a hearing shall not be recorded. 1997, c. 7, s. 7; 2002, c. 10, s. 26.

[9] It appears that the practice in Small Claims Court is to treat such matters as a "trial *de novo*", rather than an appeal in the strict sense of the word – see for example: *Asselstine v. Drake*, 2015 NSSM 7. As Justice Hood correctly noted in *Shephard v. Fancy*, (1997) 162 N.S.R. (2d) 66, at para. 18: "However, I am satisfied that the proper interpretation of a trial *de novo* is to truly start over again as if the previous proceeding had not occurred. This means that new issues could be raised which were not raised at the original hearing". This accords with the reality that there is no complete "record" created at the *Residential Tenancies Act* hearing nor does it generate a judicial decision.

[10] The landlord was considered to have late filed his appeal from the June 3, 2014 Residential Tenancies Officer's decision (see s. 17C(2) *Residential Tenancies Act*). On June 27, 2014, he therefore made an application for an extension of time to file his notice of appeal [on the basis that: "I was out of the country from May 26, 2014 to June 25, 2014"] which was granted by Adjudicator Parker on July 17,

2014, permitting his filing of his notice of appeal any time before August 21, 2014. The landlord filed his notice of appeal in the Small Claims Court on August 12, 2014.

[11] Adjudicator O'Hara heard both the landlord and tenant at the appeal hearing on August 26, 2014. The tenants were represented by counsel: Ms. Danielle Kershaw; whereas the landlord appeared personally. [Though I note he appears to have had a lengthy involvement with the *Residential Tenancies Act*; *Arnaout v. Ferla*, 2004 NSSM 47] Mr. Crane did give evidence before the adjudicator by telephone.

[12] Since that appeal hearing, though it proceeded as a trial *de novo*, is not recorded, this court is at a disadvantage in assessing the evidence presented to the adjudicator. This court has the adjudicator's decision dated September 15, 2014, in which he concluded that "reasonable notice", viz., at least one month's notice to quit was legally required of the tenants, and that therefore, $2,000 rent for that month is payable by them to the landlord. This court also has his summary report of findings dated November 24, 2014, filed with the prothonotary.

[13] I also have the benefit of oral and written legal arguments from counsel for both the tenant and landlord.

(iii) The particulars of the appeal herein

[14] The tenant's notice of appeal is filed pursuant to s. 17E of the *Residential Tenancies Act*:

> Appeal to Court
>
> 17E (1) Subject to subsection (2), a party to an appeal to the Small Claims Court pursuant to this Act may, if that person took part in the hearing, appeal the order of the Small Claims Court to the Supreme Court of Nova Scotia in the manner set out in the Small Claims Court Act.
>
> (2) An appeal pursuant to subsection (1) may only be taken on the ground of (a) jurisdictional error; (b) error of law; or (c) failure to follow the requirements of natural justice. 1997, c. 7, s. 7; 2002, c. 10, s. 28.

[15] They assert that the decision to order the tenants to pay $2,000 to the landlord should be overturned by this court on the basis that Adjudicator O'Hara:

i. Erred in law by his incorrect interpretation of s. 7(3) of the *Residential Tenancies Act*, and his conclusion that he was bound to follow the decision of Justice Goodfellow in *Benjamin v. Pottie* [1994] NSJ No. 483 (NSSC);

ii. Contrary to the requirements of natural justice; denied the tenant a fair hearing by not revisiting the decision of Adjudicator Parker to grant an extension of time to file the notice of appeal herein, which extension of notice had been made without permitting the tenant an

opportunity to participate in spite of his requests to the court to that effect.

Analysis of the issues

A. The Requirements of Natural Justice

[16] The tenants have cited the following cases to support their position: *Wiles Welding Limited v. Solutions Smith Engineering Inc.*, 2012 NSSC 255 [Pickup J.] at paras. 10 – 12 and *Kemp v. Prescesky,* 2006 NSSC 122 [Warner J.] at para. 19.

[17] The tenants argue that on August 26, 2014, at the appeal hearing, Adjudicator O'Hara had the authority to set aside the July 18, 2014, order of Adjudicator Parker allowing the extension of time to file the notice of appeal , reasoning that if s. 23(4) of the *Small Claims Court Act* gives Adjudicator Parker the authority to "set aside the order and set the claim down for hearing", then surely Adjudicator O'Hara would have that same authority. They claim this transfer of that authority is set out in the provision of s. 26 of the *Small Claims Court Act*.

[18] The landlord argues that, pursuant to the reasoning of Justice McDougall in *Killam Properties Inc. v. Patriquin,* 2011 NSSC 338, a decision to extend the time to file a notice of appeal is not part of the proceeding in issue per se, but rather a

stand-alone final decision, and that therefore it is not an interlocutory order. Consequently, the landlord argues that the tenants should have appealed Adjudicator Parker's decision to this court if they wanted it reversed. Moreover, the landlord notes a number of the facts relied on by the tenants at this appeal were not findings of fact made by the adjudicator, and therefore, ought not to be considered by this court – paras. 6 –7 of the landlord's brief.

[19] The appeal to the Small Claims Court herein was rooted in s. 17C of the *Residential Tenancies Act*. Subsections 5 and 7, thereof, read:

> 5-The Small Claims Court shall determine its own practice and procedure but shall give full opportunity for the parties to present evidence and make submissions.
>
> …
>
> 7-Evidence may be given before the Small Claims Court in any manner that the Small Claims Court considers appropriate and the Small Claims Court is not bound by rules of law respecting evidence applicable to judicial proceedings.

[20] Very recently, Justice Fichaud reiterated the principles applicable to when an extension to file a notice of appeal should be granted in the criminal and civil context: *R. v. Derbyshire*, 2015 NSCA 23. I am satisfied that each of those specific requirements [bona fide intention to appeal; diligence in doing so/reasonable excuse; prejudice to the opposing party; arguable grounds on appeal] that he articulates should be contextually considered by a Small Claims Court

adjudicator when they are acting in the capacity of an appeal court in such circumstances.

[21] It is unclear precisely why Adjudicator O'Hara refused to revisit the order extending time to file the Notice of Appeal (see paras. 2-3 summary/para. 2 of the decision). It is unclear what factual and legal considerations motivated Adjudicator Parker's order. The tenants did not attempt to appeal that decision directly, nor produce "fresh evidence" before this Court to support their position that his decision, or that of Adjudicator O'Hara effected an injustice. I need not say, but my preliminary sense of this issue is that, one adjudicator may exceptionally revisit such earlier decision of another adjudicator if as an exercise to prevent an injustice otherwise - s. 17C(5) *Residential Tenancies Act*. Then that later decision (including a refusal to extend the time to file an appeal) could be appealed to this Court as required. To my mind, such an order has the hallmarks of an interlocutory order: *Raymond v. Brauer*, 2015 NSCA 37 at paras. 17 – 18.

[22] I am fully satisfied that had the tenants participated (as they requested) in the hearing before Adjudicator Parker, regarding the landlord's application for an extension to file his notice of appeal, the outcome would not have been different. The landlord had 10 days to file his appeal from June 4, 2014. He appears to have satisfied Adjudicator Parker that he was out of the country from May 26 to June

25, 2014. He filed his notice of application for extension of time to file his notice of appeal on June 27, 2014. An affidavit of service can be found in the file showing service on the tenants on July 2, 2014. He appeared and argued his case on July 17, 2014. There is a real issue regarding the proper interpretation of s. 7(3) of the *Residential Tenancies Act*.

[23] This ground of appeal fails.

B. A proper interpretation, and the effect, of s. 7(3)of the Residential Tenancies Act in the circumstances of this case.

[24] I reproduce the entirety of s-ss. 7, 8, and 9 for context:

> REQUIREMENT FOR LEASE
>
> Entitlement to documents and information
>
> 7 (1) No landlord shall grant a lease or possession or occupancy of residential premises to a tenant unless the landlord has provided the tenant with a copy or reproduction of this Act without cost within ten days of the earliest of :
>
> > (a) the date specified in the lease as the start of the tenancy; (b) the date upon which the tenant signs the lease; (c) the date upon which keys to the residential premises are delivered to the tenant by the landlord; and (d) the date upon which the tenant takes possession of the residential premises or occupies those premises.
>
> (1A) For the purpose of subsection (1), where there is more than one tenant occupying residential premises, delivery of the copy or reproduction of this Act by the landlord is compliance with that subsection if it is made to any one of those tenants.
>
> (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.

(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 apply to the Director for permission to pay the rent in trust to the Director until the landlord provides the tenant with an executed copy of the lease and a copy or reproduction of this Act.

(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 acknowledgement that the copies have been received.

(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.

(7) Tenants who are leasing pursuant to a public housing program shall, with respect to that public housing program, (a) provide income verification as required; and (b) continue to meet the qualifications required pursuant to the provisions of that public housing program.

(8) For the purpose of subsection (7), qualifications required pursuant to the provisions of a public housing program means income and family composition and those qualifications shall be attached to the lease. R.S., c. 401, s. 7; 1993, c. 40, s. 5; 1997, c. 7, s. 2; 2010, c. 72, s. 3.

Standard form of lease

8 (1) In addition to the statutory conditions, a landlord and tenant may provide in a standard form of lease for other benefits and obligations which do not conflict with this Act.

(2) An additional benefit or obligation under subsection (1) is void unless it appears on both the landlord's and tenant's copies of the standard form of lease.

(3) Any alteration of or deletion from provisions that a standard form of lease is required by regulation to contain is void.

(4) On or after the first day of February, 1985, a landlord and a tenant who enter into a written tenancy agreement or renew a written tenancy agreement and who

do not sign a standard form of lease are deemed to have done so and all provisions of this Act and the standard form of lease apply.

(5) **A landlord and tenant who have an oral tenancy agreement and who do not sign a standard form of lease are deemed to have done so and all provisions of this Act and the standard form of lease apply.**

STATUTORY CONDITIONS

Statutory conditions

9 (1) Notwithstanding any lease, agreement, waiver, declaration or other statement to the contrary, where the relation of landlord and tenant exists in respect of residential premises by virtue of this Act or otherwise, there is and is deemed to be an agreement between the landlord and tenant that the following conditions will apply as between the landlord and tenant as statutory conditions governing the residential premises:

Statutory Conditions

1. Condition of Premises - 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 standards of health, safety or housing

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 Director.

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.

4. Obligation of the Tenant - The tenant is responsible for the ordinary cleanliness of the interior of the premises and for the repair of damage caused by wilful or negligent act of the tenant or of any person whom the tenant permits on the premises.

5. Subletting Premises - The tenant may assign, sublet or otherwise part with possession of the premises subject to the consent of the landlord which consent will not arbitrarily or unreasonably be withheld or charged for unless the landlord has actually incurred expense in respect of the grant of consent.

6. Abandonment and Termination - If the tenant abandons the premises or terminates the tenancy otherwise than in the manner permitted, the landlord shall mitigate any damages that may be caused by the abandonment or termination to the extent that a party to a contract is required by law to mitigate damages.

7. Entry of Premises - Except in the case of an emergency, the landlord shall not enter the premises without the consent of the tenant unless (a) notice of

termination of the tenancy has been given and the entry is at a reasonable hour for the purpose of exhibiting the premises to prospective tenants or purchasers; or (b) the entry is during daylight hours and written notice of the time of the entry has been given to the tenant at least twenty four hours in advance of the entry.

8. Entry Doors - Except by mutual consent, the landlord or the tenant shall not during occupancy by the tenant under the tenancy alter or cause to be altered the lock or locking system on any door that gives entry to the premises.

9. Late Payment Penalty - Where the lease contains provision for a monetary penalty for late payment of rent, the monetary penalty shall not exceed one per cent per month of the monthly rent.

(2) NOT APPLICABLE

[25] Also relevant is s. 10 of the *Residential Tenancies Act*:

NOTICE TO QUIT

Notice to quit

10 (1) **Notwithstanding any agreement between the landlord and tenant respecting a period of notice, notice to quit residential premises shall be given**

(a) where the residential premises are let from **year to year**, by the tenant at least three months before the expiration of any such year;

(b) where the residential premises are let from **month to month**,

(i) repealed 2010, c. 72, s. 5.

(ii) by the tenant, at least one month, before the expiration of any such month;

(c) where the residential premises are let from **week to week**,

(i) repealed 2010, c. 72, s. 5.

(ii) by the tenant, at least one week, before the expiration of any such week.

(2) For the purposes of subsection (1), where the residential premises are let for periods that are greater than a week and less than a month, the residential premises are deemed to be let from month to month.

(3) Notwithstanding any agreement between the landlord and tenant respecting a period of notice and notwithstanding the periods of notice in subsection (1), where a tenant rents a manufactured home space from a landlord and the tenant owns the manufactured home or rents the manufactured home from a person other than the landlord, notice to quit the manufactured home space shall be given (a)

repealed 2010, c. 72, s. 5. (b) by the tenant, at least one month, before the termination of the tenancy.

(3A) A landlord shall not give to the tenant a notice to quit residential premises except in accordance with this Section.

(4) **A notice to quit residential premises shall be in writing and shall contain the signature of the person giving the notice or his agent, a description of the residential premises and the day on which the tenancy terminates.**

(5) **A notice to quit must be in the form prescribed by regulation.**

(6) **Where a fixed-term lease exists or where a year to year or a month to month tenancy exists or is deemed to exist and the rent payable for the residential premises is in arrears for fifteen days, the landlord may give to the tenant notice to quit the residential premises fifteen days from the date the notice to quit is given.**

…

Renewal term and daily rents

10A (1) **A lease, except for a fixed-term lease, continues for the same type of term if no notice is given pursuant to subsection (1) of Section 10 and is deemed to have been automatically renewed.**

(2) A fixed-term lease ends on the day specified in the lease and, if a tenant remains in possession with the consent of an owner, the lease is deemed to have renewed itself on a month-to-month basis.

(3) Where a tenant gives a notice to quit three months prior to the anniversary date of a year-to-year lease and requests in writing that the term be changed to a month-to-month lease, the consent of the landlord shall not be arbitrarily or unreasonably withheld.

(4) Where a tenant makes a written request pursuant to subsection (3), the landlord shall respond within thirty days of receipt thereof, otherwise consent is deemed to be granted.

(5) No landlord shall charge daily rents to avoid the provisions of this Act unless the residential premises or a part thereof are licensed pursuant to the Hotel Regulations Act. 1993, c. 40, s. 9.

[26] The expressed findings of fact by the adjudicator may be summarized as follows:

(1) There was no fixed term lease for the period April 1 – August 31, 2013;

(2) The tenants moved out on May 31, 2013 after providing written notice on May 30, 2013; and

(3) The tenants' claimed verbal notice in mid-April to the property manager was not proved on a balance of probabilities.

[27] The upshot of these conclusions and his decision is that the adjudicator therefore was satisfied that:

(i) there was no written lease between the parties

(ii) the landlord at no time provided a copy of the *Residential Tenancies Act* to the tenants

(iii) there was deemed to be an oral lease/tenancy between the parties pursuant to s. 8(5) of the *Residential Tenancies Act* and that the parties are deemed to have signed a standard form of lease to which "all provisions of this *Act* in the standard form of lease apply" (including the Statutory Conditions).

[28] The adjudicator also accepted that the lease term was as stated by the residential tenancy officer in her decision: month-to-month.

[29] I note that s. 34 of the *Residential Tenancies Regulations* OIC 2013-331; N.S. Regs. 304/2013 reads:

> A standard form of lease under subsection 7(2) of the *Act* and clause 26(1)(c) of the Act must be in Form P: standard form of lease.

[30] That form of lease contains in cl. 19: "tenants notice to quit (except fixed term)"- a box where landlords and tenants are to check off whether the tenancy is year-to-year, month-to-month, or week to week. It also contains all the statutory conditions.

[31] Since the parties are deemed to be in a month-to-month lease, the notice to quit provisions in s. 10 of the *Residential Tenancies Act* are still generally applicable. In a month-to-month lease, the tenant must give "at least one month, before the expiration of any such [tenancy] month", notice to quit to the landlord.

[32] The crux of the dispute here is whether, under s. 7(3) of the *Residential Tenancies Act*, the tenants here, who are required to 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", properly did so by giving **any** period of notice less than three months from the day the notice is given.

Position of the Parties

[33] The tenants argue that they gave one day notice in writing, and thereby complied with s. 7(3) of the *Act*.

[34] They argue that applying the principles of statutory interpretation (see most recently: *Potter v. New Brunswick Legal Aid Services Commission*, 2015 SCC 10) leads to their preferred interpretation.

[35] They say the wording of the subsection is not ambiguous, and should be given its plain meaning. The grammatical and ordinary meaning of the words are clear. Moreover, it is not appropriate to reject that ordinary meaning of the subsection because the provision cannot bear another meaning, and is not vague; judicially reading "reasonable notice" into the subsection which contains the wording "on a specified day within a period of three months from the day the notice is given" is inconsistent with the purpose of the provision and Act as a whole. The purpose of the *Act* they say is to ensure a balance between the rights of tenants and landlords and that where a landlord has breached his obligation to provide the information that is inherent in provision of a copy of the *Residential Tenancies Act*, then it is appropriate to give tenants the authority to not be bound

by the one-month period of notice they would have to give pursuant to s. 10 if the landlord had provided a copy of the *Residential Tenancies Act*.

[36] Adjudicator O'Hara felt bound by Justice Goodfellow's decision in *Benjamin v. Pottie*, [1994] NSJ No 483. The tenants say the adjudicator was not bound by that decision because the facts underlying it are distinguishable (one of the co-tenants received a copy of the *Act* and it was a written lease); the *Act* has been amended (see s. 7 (1A) of the *Act*) since then to address the injustice Justice Goodfellow sought to prevent; and that in any event Justice Goodfellow's interpretation of the provision is incorrect (that is, his rationale that the *Act* "is silent as to the extent of notice" in s. 7(3) as a reason for importing a "reasonable notice" interpretation into that subsection is not in accordance with the principles of statutory interpretation).

[37] The landlord argues that the adjudicator was properly bound by Justice Goodfellow's decision in *Benjamin*. It relies on pronouncements from the Supreme Court of Canada regarding the doctrine of *stare decisis*: *Canada v. Bedford*, 2013 SCC 72 at paras. 43 – 44; *Carter v. Canada*, 2015 SCC 5, at para.44.

[38] He further argues that even if this court wished to reconsider the decision in Benjamin, it should be mindful of the principle of judicial comity – *Glaxo Group*

Ltd. v. Canada, [1995] F.C.J. No. 1430 and *R v. Northern Electric Co. Ltd.*, [1955] O.J. No 649 (OntHC).

[39] The landlord recognizes that s. 7(3) "is designed to protect the tenant if they are not provided the rules", however he points out that "it is not meant as a tool to penalize a landlord which is what would happen if one day notice could be given. The landlord would not only lose tenants, he would have no opportunity to replace them. Surely that is not the intent of our legislature."

Principles of Statutory Interpretation applied to s. 7(3) of the Residential Tenancies Act

[40] The *Interpretation Act* RSNS, 1989 c. 235, as amended, sets out the rules of construction in sections 6- 21. Most significant for present purposes are the following:

> 9 (1) the law shall be considered as always speaking and, whenever any matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to each enactment, and every part thereof, according to its spirit, true intent, and meaning.
>
> …
>
> (5) every enactment shall be deemed remedial and interpreted to ensure the attainment of its objects by considering among other matters
>
> a-the occasion and necessity for the enactment
>
> b-the circumstances existing at the time it was passed
>
> c-the mischief to be remedied
>
> d-the object to be attained

> e- the former law, including other enactments upon the same or similar subjects
> f-the consequences of a particular interpretation; and
> g-the history of legislation on the subject.

[41] Statutory interpretation was commented on by the Court of Appeal in *R. v. R.V.F.*, 2011 NSCA 71 per Beveridge J.A., at para. 29 (albeit in the context of the criminal law (i.e. *Youth Criminal Justice Act* and *Federal Interpretation Act*):

> A word or phrase should not be examined in isolation, but in context and in accord with the recognized principles of statutory interpretation. The correct approach to statutory interpretation is straightforward and oft repeated. Recently in *Cape Breton (Regional Municipality) v. Nova Scotia (Attorney General)*, 2009 NSCA 44, MacDonald, C.J.N.S. wrote:
>
> > [36] The Supreme Court of Canada has endorsed the "modern approach" to statutory interpretation as expounded by Elmer Driedger, *Construction of Statutes*, 2nd ed. (Toronto: Butterworths, 1983) at p. 87:
> >
> > > ... the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
> >
> > See Re *Rizzo and Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27 at 41; *Canada (House of Commons) v. Vaid*, 2005 SCC 30, [2005] 1 S.C.R. 667; and *Imperial Oil Ltd. v. Canada*; *Inco Ltd. v. Canada*, 2006 SCC 46, [2006] 2 S.C.R. 447.

[42] See also: *Coates v. Capital Health District Authority*, 2011 NSCA 4, at para. 36; *Nova Scotia (Health) v. Morrison Estate*, 2011 NSCA 68, at para. 14 and *Waterman v. Waterman*, 2014 NSCA 110 per Beveridge J.A., at paras. 29-32.

[43] As required, I will consider:

(i) What did the legislature intend in writing the relevant Act and Regulations as it did? What was its purpose?

(ii) What is the meaning of the text found in the Act?

(iii) What are the consequences of my proposed interpretation?

1. What did the legislature intend in writing the relevant *Act*. What is its purpose?

[44] Section 1A of the *Residential Tenancies Act* reads:

> The purpose of this Act is to provide landlords and tenants with an efficient and cost-effective means for settling disputes.

[45] In *Reference, re: Residential Tenancies Act (Nova Scotia)*, [1994] N.S.J. No. 214, our Court of Appeal set out the background of the legislation as it existed at that time:

> **1** CLARKE C.J.N.S.:-- This reference concerns the validity in unproclaimed legislation of conferring decision making powers in matters relating to residential tenancies upon persons other than judges appointed pursuant to s. 96 of the *Constitution Act*, 1867.
>
> **2** The following reference is advanced under the provisions of the Constitutional Questions Act, R.S.N.S. 1989, c. 89.
>
> **1.** Are the unproclaimed provisions of An Act to Amend Chapter 401 of the Revised Statutes, 1989, the *Residential Tenancies Act*, S.N.S. 1992, c. 31 (the "Act"), within the legislative jurisdiction of the House of Assembly of Nova Scotia to the extent that those provisions confer authority respecting residential tenancies upon persons other than judges appointed

pursuant to s. 96 of the Constitution Act, 1867, and, most particularly, are the following provisions of the Act within the legislative jurisdiction of the House of Assembly of Nova Scotia:

7. The heading immediately preceding Section 13 and Sections 13 to 17 of said Chapter 401 are repealed and the following headings and Sections substituted therefor:

APPLICATION OF DIRECTOR

13 (1) Where a person applies to the Director

(a) to determine a question arising under this Act; or

(b) alleging a breach of a tenancy agreement or a contravention of a provision of this Act,

and, not more than ninety days after the termination of the tenancy, files with the Director the form prescribed by the regulations, together with the fee, if any, prescribed by the regulations, the Director is the exclusive authority, at first instance, to investigate and endeavour to mediate a settlement.

(2) Upon making an application pursuant to subsection (1), the applicant shall, in accordance with the regulations, serve the other parties to the matter with a copy of the application.

(3) The Director may, on the Director's own initiative, investigate and determine a matter arising pursuant to a tenancy agreement or this Act.

(4) In exercising authority pursuant to this Section, the Director may determine and adopt the most expeditious method investigating, mediating and determining a matter.

(5) On receiving an application pursuant to subsection (1), the Director shall investigate and, subject to subsections (7) and (8), endeavour to mediate a settlement of the matter.

(6) If a matter is settled by mediation, the Director shall make a written record of the settlement which shall be signed by both parties and which is binding on the parties and is not subject to appeal.

(7) If, after investigating the matter, the Director is of the opinion that the parties are unlikely to settle it by mediation within fourteen days, or if the matter is urgent and it involves the safety or security of the landlord, the tenant or other tenants, the Director may make a decision or order in accordance with Section 14.

(8) The Director may refuse to accept an application or continue a proceeding where, in the Director's opinion, the matter is trivial, frivolous, vexatious or has not been initiated in good faith, and may, subject to the approval of the Minister, issue an order to that effect.

(9) An applicant may withdraw an application at any time before an order or decision is made.

(10) For greater certainty, the landlord and the tenant have the right to be represented by legal counsel at any stage of the proceedings.

14 (1) A decision or order made by the Director pursuant to Section 13 may

(a) require a landlord or tenant to comply with a lease or an obligation pursuant to this Act;

(b) require a landlord or tenant not to again breach a lease or an obligation pursuant to this Act;

(c) require any repair or action to be taken by the landlord or tenant to remedy a breach, and require the landlord or tenant to pay any reasonable expenses associated with the repair or action;

(d) order compensation to be paid for any loss that has been suffered or will be suffered as a direct result of the breach;

(e) terminate the tenancy on a date specified in the order and order the tenant to vacate the residential premises on that date;

(f) determine the disposition of a security deposit;

(g) direct that the tenant pay the rent in trust to the Director pending the performance by a landlord of any act the landlord is required by law to perform.

(2) A decision or order made by the Director pursuant to Section 13 is, and is deemed to be, when no appeal is made pursuant to Section 15 within the time provided by that Section, a decision or order of a board.

APPEALS

15 (1) Except as otherwise provided in this *Act*, any person, directly affected by a decision or order of the Director, may appeal the decision or order to the residential tenancies board for the area in which the residential premises to which the decision or order relates are situate

(2) An appeal may be commenced by filing with the Director, within ten days of the making of the decision or order, a notice of appeal in the form prescribed by the regulations and paying to the Director, within the said period of ten days a fee in the amount prescribed by the regulations.

(3) The appellant shall, in the manner prescribed by the regulations, give a copy of the notice of appeal to all persons directly affected by the decision or order.

(4) The Board shall give reasonable notice of the hearing to the parties by public notice given in the manner prescribed by the regulations, by personal service or by registered mail.

(5) The board shall conduct a hearing in respect of a matter for which a notice of appeal is filed.

(6) The board shall determine its own practice and procedure but shall give full opportunity for the parties to present evidence and make submissions.

(7) The board may conduct a hearing orally, including by telephone, or in writing or partly in writing and partly orally.

(8) Evidence may be given before the board in any manner that the board considers appropriate, and the board is not bound by rules of law respecting evidence applicable to judicial proceedings.

16 (1) Within seven days of holding a hearing pursuant to Section 15, the board shall

(a) Confirm, vary or rescind the decision or order of the Director;

(b) Make any decision or order that the Director could have made.

(2) The board shall compile a record of a hearing which shall consist of

(a) The decision or order of the Director that was appealed from;

(b) The notice of appeal to the board;

(c) The notice of hearing by the board;

(d) Any written submissions received by the board; and

(e) The decision or order of the board and any reasons for the decision or order.

17 (1) A person who is a party to an appeal to a board pursuant to this *Act* may, if a person is dissatisfied with a finding of fact made by the board, apply to the Minister to have

(2) Where, pursuant to an application made pursuant to subsection (1), the Minister is satisfied that the matter should be reviewed, the Minister may refer the matter to the board or another board for rehearing.

(3) The board rehearing a matter pursuant to subsection (2) shall make a decision pursuant to Section 16 based, in its discretion, on the record or its

rehearing, or both, and such decision shall be substituted for the first decision and shall not be reviewed pursuant to this Section.

17A (1) Subject to subsections (2) and (3), any person who is a party to an appeal to a board pursuant to this *Act* may, if that person took part in the hearing, appeal the decision or order of the board to the Appeal Division of the Supreme Court.

(2) An appeal pursuant to this Section may only be taken on a question of law or jurisdiction and only with leave obtained from a judge of the Appeal Division of the Supreme Court.

(3) An application for leave to appeal shall be made within fourteen days of the decision or order of the board or within such further time as the judge allows.

(4) The board is entitled to be heard, by counsel or otherwise, on the argument of an application for leave to appeal and on an appeal pursuant to this Section.

(5) The Appeal Division of the Supreme Court, on hearing an appeal pursuant to this Section, may

(a) Make any decision or order that in its opinion ought to have been made;

(b) Quash, vary or confirm the decision of the board;

(c) Refer the matter back to the board with the direction of the Court.

8 (2) Subsections (3) and (4) of said Section 18 are repealed and the following subsections substituted therefor:

. . .

(4B) It is the function of a board and the board has the power to hear appeals from decisions or orders of the Director.

2 If the aforesaid provisions of the Act are not within the legislative jurisdiction of the House of Assembly of Nova Scotia, in what particular respects are those provisions ultra vires.

(Counsel for the appellant informed the court that s. 17 will not be proclaimed.)

3 In 1992, several amendments were made to the Act which have been proclaimed and are in full force and effect. Those which have not yet been proclaimed are the subject of this reference.

THE PRESENT PROCEDURE

4 The following is a summary of the procedure used at this time where a dispute occurs between a landlord and tenant:

1. Although not specifically provided in the Act, informal mediation by a residential tenancies officer takes place with the disputing parties.

2. If mediation fails, the aggrieved landlord or tenant applies to the court by completing a summary application form entitled, In The Supreme Court of Nova Scotia.

3. The court refers the application to the appropriate residential tenancies board for a report.

4. The board, consisting of one member, holds a hearing. The procedure at the hearing is informal. Section 15(1) obliges the board to ensure that "both the landlord and the tenant have an adequate opportunity of presenting evidence and making representations on their behalf".

5. Three business days later the board files a written report for distribution to the parties. The report is also filed with the Supreme Court by way of responding to the reference.

6. Either the landlord or the tenant, or both, may object to the recommendations of the board. The objection is filed with the Supreme Court.

7. The powers of the Supreme Court are broad. Whether or not an objection is filed, it may adopt the report in whole or part, vary or reverse the report, require a supplemental report from the board, or hold a further hearing.

8. The court has the authority under s. 16(5)(f) to make an order:

(i) declaring the tenancy to be terminated,

(ii) setting aside a notice to quit,

(iii) directing that the landlord or tenant be put into possession of the residential premises,

(iv) directing the tenant to pay the rent in trust to the board and directing the board as to the disposition of the same,

(v) requiring the payment of money by the landlord or tenant,

(vi) requiring the landlord or tenant to perform any act or cease and desist from any act.

THE PROPOSED PROCEDURE

1. The landlord or tenant files an application with the Director, a person of provincial appointment, and serves a copy on the other party.

2. The Director may delegate his or her powers to residential tenancies officers.

3. The Director "is the exclusive authority, at first instance, to investigate and endeavour to mediate a settlement".

4. The Director may decide not to mediate and move directly to adjudication. The Director has the authority to make orders in the matters described in s. 14(1) above. It will be observed that the order making authority of the Director includes a broad scope of remedies. They essentially include most, if

not all, of the types of disputes that arise between landlords and tenants. Unless appealed, the order of the Director is final and binding on the parties. (s. 14(2))

5. An appeal of an order or decision of the Director may be taken to the Residential Tenancies Board. It would appear that the hearing of the board on appeal is de novo. The board is given broad powers for the conduct of its hearing. The board issues an order and upon filing it with the Supreme Court of Nova Scotia, it becomes an order of that court.

6. An appeal from an order of the board may be taken to the Nova Scotia Court of Appeal but only upon leave being granted by a judge of the court. An appeal may be taken only "on a question of law or jurisdiction". Where such an appeal is heard, the Court of Appeal may:

> (a) make any decision or order that in its opinion ought to have been made;
>
> (b) quash, vary or confirm the decision of the board;
> (c) refer the matter back to the board with the direction of the Court.
>
> ……

The Historical Analysis

15 On this subject both counsel have assisted the court tremendously….

(b) Nova Scotia

An order of a Residential Tenancies Board respecting unpaid rent which was later allowed and increased on appeal to the County Court prompted a further appeal to the then Appeal Division of the Supreme Court. The case is Burke v. Arab and the Attorney General of Nova Scotia. It was heard by five justices and resulted in the unanimous decision of the court delivered by Jones, J.A. on November 20, 1981.

Burke v. Arab followed, in time, the decision the Supreme Court of Canada in the Residential Tenancies Reference from Ontario. Mr. Justice Jones was alert to the need to review the scheme of the applicable Nova Scotia legislation against the tests enunciated by the Supreme Court of Canada. In discussing the reference from Ontario, he correctly stated (at p. 194, N.S.R.):

> The essential issue was whether the broad scheme conferring judicial powers on the Commission was in conflict with the judicial power set out in s. 96 of the British North America Act.

And at p. 196 (N.S.R.):

> The court [the Supreme Court of Canada] concluded that the legislature sought to withdraw historically entrenched and important judicial functions from the superior courts and vest them in the Commission and, accordingly, the legislation was ultra vires.

Before the court in Burke v. Arab was the Residential Tenancies Act, S.N.S. 1970, c. 13. It applied to all residential tenancies in the province of Nova Scotia. Entrusted to a board of provincial appointment were considerable powers described in s. 11. In addition to the powers of review, investigation and mediation, the board was given the following jurisdiction:

(c) to investigate allegations of violations of the provisions of this Act and the statutory conditions provided by Section 6;

(d) to investigate and review the rent charged for residential premises and determine whether the rent be approved or varied;

(e) to direct the tenant to pay the rent in trust or accept rent payable by a tenant and hold the same in trust pending performance by a landlord of any act the landlord is required by law to perform;

(f) to require the return of a security deposit or money or other value or a portion thereof held by or for a landlord or tenant;

(g) to provide for the termination of the tenancy between the landlord and the tenant where the residential premises are being physically damaged by the tenant or the tenant is conducting himself in such a manner as to unduly interfere with the possession or occupancy of other tenants;

(h) to direct that the landlord be put into possession of the residential premises where the tenant is in arrears of rent for more than fourteen days for weekly tenancies and more than forty-five days for monthly or yearly tenancies;

(i) require the payment of money by the landlord or the tenant, said payment not to exceed five hundred dollars.

Jones, J. A. considered the historical jurisdiction for the settlement of residential tenancies disputes in Nova Scotia. He stated at pp. 196-199 (N.S.R.):

24 Historically the settlement of disputes in Nova Scotia between landlords and tenants, including eviction orders, has been confined to the Supreme and County Courts. In *Attorney General of Nova Scotia v. Gillis*, 39 N.S.R. (2d) 97; 71 A.P.R. 97, Chief Justice MacKeigan, in delivering the judgment of this court, stated at p. 104:

> General analogy to Superior Court powers is not enough. We must in this Province first ask whether the type of issue to be judicially resolved is, broadly speaking, the type that was dealt with judicially in 1867, the time of Confederation, by the Supreme Court of Nova Scotia. (Nova Scotia's County Courts were not established until 1875).
>
> Here there is not the slightest doubt that the Supreme Court has since the founding of the colony enjoyed and exercised power to determine title as between subject and subject and as between subject and the Crown. Clothed in what are to us the mysteries of ancient forms of action and rules of real property law, actions of possession, trespass and ejectment and suits in equity

> for injunctions or declarations were available for adjudication of most title disputes. The Revised Statues of 1864 provide procedural and substantive support for such proceedings: for example, c. 134, 'Of Pleading and Practice' esp. ss. 139-173 re ejectment; c. 124, 'Of Proceedings in Equity'; c. 154, 'Of Limitations', etc.

25 While c. 140 of the Revised Statutes, 1864, "Of Tenancies and Of Forcible Entry and Detainer", provided for the issue of warrants of detention by two justices, the action was triable at the next term of the Supreme Court. In Williams' The Canadian Law of Landlord and Tenant (4th Ed.), p. 606, there is a review of the remedies available for the recovery of possession.

26 The *Overholding Tenants Act*, c. 244, R.S.N.S. 1923, conferred the power of eviction on the County Court. This power was transferred to stipendiary magistrates by the *Overholding Tenants Act*, c. 8 of the *Acts* of 1930. The *Overholding Tenants Act* no longer applies where the *Residential Tenancies Act* is applicable. The effect of the latter *Act* is to confer on the Board the power to make eviction orders in at least two instances. The powers of a magistrate over the enforcement of the Act are greatly extended. It should be noted that s. 10 is headed "Judicial Proceedings".

27 While it is true that the Ontario provisions were spelled out in considerable detail, the powers of the Nova Scotia Board, though deceptively simple, are very broad. It is also true that they do not purport to be exclusive. I do not think these factors change the essential nature of the Board, which is to enforce the Statute and expeditiously resolve disputes between landlords and tenants. In the exercise of those powers the Board must act judicially. In doing so the primary role of the Commission is to adjudicate. That is exactly the role it performed in the present case. I see no essential difference between the Board's function and that to be performed by the Ontario Commission. The Attorney General maintained that the power contained in s. 11(3)(i) is analogous to the power exercised by justices' courts in dealing with claims for debts. See c. 128, R.S. 1864. Section 11 now provides for orders for the payment of money up to $1,000.00. The Board is not restricted to a claim for debt. The clause must be read in the context. Obviously it relates to any order for payment arising from the exercise of the Board's general powers. A similar argument was made in the Ontario Reference and was rejected by the Supreme Court of Canada. The power of the Divisional Court in Ontario was more extensive than that of Justices in Nova Scotia. See *Morris v. Cameron* (1862), 12 U.C.C., p. 422.

. . .

28 I am satisfied that our legislation is more analogous to the Ontario legislation even though limited in scope.

29 I must accordingly conclude that we are bound to follow the decision of the Supreme Court of Canada in the Ontario Reference and hold that the powers conferred by s. 11(3)(c) to (i) inclusive of the *Residential Tenancies Act* are ultra vires. It follows that the Board had no jurisdiction to make the determinations as set forth in the decision dated February 4, 1980.

The appellant contends that the historical error committed in B*urke v. Arab* is that the court did not have before it all of the relevant legislation. Had that been so, in the opinion of the appellant, it would have demonstrated that prior to 1867 the Inferior Court of Common Pleas had at the minimum nearly concurrent jurisdiction in civil matters with the Supreme Court and this jurisdiction included that of landlord and tenant.

A review of the material presented in this reference reveals that the Inferior Court of Common Pleas existed from 1749 until it was abolished in 1841. During these years it took on various shapes, styles and jurisdictions. Initially (1749-1752), it was styled after the court structure in Virginia. Later it was altered so that its structure was a combination of features designed in England and Massachusetts and subsequently borrowed by legislative enactment in Nova Scotia. However, the significant feature is that in 1841 the Inferior Court of Common Pleas was abolished with the result that in 1867 the Supreme Court was the only court which had virtually the entire jurisdiction over the law relating to landlords and tenants. To suggest that Justices Courts had trifling jurisdiction over debts and were thereby exercising power over arrears of rent is to strain the underlying judicial historical fact. **At Confederation the jurisdictional home for landlord and tenant disputes in Nova Scotia was with its Supreme Court. In short a review of the other historical data confirms that the conclusion reached by Mr. Justice Jones in *Burke v. Arab* was correct. The unproclaimed provisions propose a regime essentially similar to those struck down in Burke v. Arab.**

As a side note, that jurisdiction continued until 1874 when by S.N.S. 1874, c. 15, legislation was passed and later proclaimed in 1876 by which jurisdiction in tenancies matters was transferred to the County Court which, incidentally, was also a s. 96 court.

[emphasis added]

[46] Notably this decision was rendered just six months before Justice Goodfellow issued his decision in *Benjamin v. Pottie* [1994] NSJ No 483. Moreover, it was overturned by the Supreme Court of Canada - [1996] 1 S.C.R. 186. Nevertheless, the Court of Appeal decision sets out the legislative and historical context to that date.

[47] In 1989, s. 7 of the *Residential Tenancies Act* read as follows:

> (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 of the tenant within 10 days of such grant, possession or occupancy.
>
> (2) A landlord, with respect to every written tenancy agreement entered into, shall… 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 10 days thereof.
>
> (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.

[48] In 1992, the section was amended as follows:

> (1) The landlord shall, within such time, as may be prescribed, after granting a lease or possession or occupancy of residential premises to a

> tenant, provide to the tenant a copy or reproduction of this Act and such information as may be prescribed by the regulations.
>
> …
>
> (3) [subsection 3 was amended by adding immediately following the word "Act" wherever it appears therein in each case the words "and the prescribed information"]

[49] In 1993, the *Act* was amended, but the only relevant amendment is the addition of s. 1A in the present *Act*. No further amendments of consequence to this appeal have been made.

[50] In relation to the general purpose of the Act and intention of the legislature, the majority in *Reference, re: Residential Tenancies Act* (Nova Scotia) stated:

> **53** As the appellant and interveners pointed out, in this case, the broad and distinct social policy goals of the legislature can be said to be the creation of a comprehensive regulatory scheme to deal with residential tenancies inexpensively and expeditiously. It is aimed, at least in part, at addressing a perceived imbalance in the residential landlord and tenant relationship: Re *Residential Tenancies Act*, 1979, supra, at p. 718. The residential tenancy scheme under consideration here establishes the statutory rules which are to govern every aspect of the residential landlord and tenant relationship and contemplates resolution of disputes through mechanisms of investigation, mediation, and ultimately adjudication where that becomes necessary. The observations of La Forest J. in Sobeys Stores, at p. 283, are particularly apposite:
>
> > The underlying social and economic philosophy of this legislation could not be in sharper contrast to that which existed at Confederation. At that time, the philosophy of laissez-faire was at its zenith. This was reflected in a legal environment that promoted strict individual equality and freedom of contract. Legislative control of economic activity was minimal.

2. What is the meaning of the text found in the *Act*?

Section 7 of the present iteration of *Residential Tenancies Act* reads:

REQUIREMENT FOR LEASE

Entitlement to documents and information

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

(a) the date specified in the lease as the start of the tenancy;

(b) the date upon which the tenant signs the lease;

(c) the date upon which keys to the residential premises are delivered to the tenant by the landlord;

and (d) the date upon which the tenant takes possession of the residential premises or occupies those premises.

(1A) For the purpose of subsection (1), where there is more than one tenant occupying residential premises, delivery of the copy or reproduction of this Act by the landlord is compliance with that subsection if it is made to any one of those tenants.

(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.

(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 apply to the Director for permission to pay the rent in trust to the Director until the landlord provides the tenant with an executed copy of the lease and a copy or reproduction of this Act.

> (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 acknowledgement that the copies have been received.
>
> (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.

[51] More precisely, can the following words plausibly bear more than one meaning?:

> Where a landlord fails to provide a copy or reproduction of this *Act*… or a copy of a written lease…, the tenant at any time before the tenant receives a copy or reproduction of this *Act*… 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.

[52] The words "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" do not appear on their face to be ambiguous.

[53] The judicial adding of words/"reading in" is permitted only to the extent that doing so would reflect the intention of the legislature – *Montréal v. 2952 – 1355 Québec Inc.*, [2005] 3 SCR 141.

[54] In the sixth edition of Sullivan on the Construction of Statutes [Lexis-Nexis] the author notes:

> The courts' jurisdiction to adopt a strained meaning follows from Driedger's modern principle. If the ordinary meaning of a text cannot be reconciled with the other indicators of legislative intent, then to achieve harmony the court must

> reject ordinary meaning. However, the meaning adopted must be one the words of the text can reasonably bear. Strained meaning thus occupies the uncertain grey area between ordinary meaning on the one hand and implausible meaning [amendment] on the other. It requires courts to make subtle linguistic judgments, yet there is nothing like a test or set of criteria to determine just how strained an interpretation must be before it must be rejected as amendment. Once again, judges must fall back on their linguistic intuitions. – Para. 7.26.

[55] The words of s. 7(3) of the *Act* are not ambiguous, and do not require a judicially interpreted adjustment to properly reflect the intention of the legislature. The section intends, where the landlord has not provided tenants with [either] a copy of the *Act* [or a copy of a written lease in cases of written leases], that tenants be permitted to give notice to quit on an accelerated timetable.

[56] The legislation was written at a time when mass access to the Internet, and easy access to legislation was unavailable, thus creating greater likelihood that tenants may not have been properly informed of their legal rights and obligations. At that time, the Legislature placed the obligation to ensure tenants were informed of their legal rights and obligations upon landlords, by requiring them to provide a copy of the *Act* to their tenants.

[57] For landlords who did not provide copies of the *Act* [or written lease] to their tenants, the Legislature empowered those tenants with the right to be relieved of their otherwise existing strict obligations under the written lease or the *Act*.

[58] Thus, tenants extraordinarily may give to the landlord, notice of a specified date of when they will quit and deliver up the premises to the landlord, and that such specified date may be any day "within a period of three months from the day the notice is given".

[59] Thus, one day notice could be sufficient. The Legislature has left the choice of how many days notice in the hands of the tenant. There is no "reasonableness" requirement.

[60] Although many tenants today may easily have access to the *Residential Tenancies Act* and regulations via the Internet, and so become informed of their rights and obligations, the interpretation of the *Act* should not be judicially adjusted for such arguable change in circumstances. There will no doubt remain tenants who for various reasons [linguistic; cognitive and other deficits; inability to access the Internet effectively] cannot so inform themselves, and thus resolve any disadvantage they might face by not being given a copy of the *Act* [and a written signed copy of their lease]. Moreover, the legislation is intended in **all** cases to obligate landlords to strictly observe s. 7 of the Act.

3. What are the consequences of my proposed interpretation?

[61] In *Benjamin v. Pottie, supra*, Justice Goodfellow stated in relation to the presently worded s. 7(3) of the *Act*:

> The *Act* requires that notice to be on a specified day within a period of three months from the day the notice was given, and is silent as to the extent of the notice. Its provision must be interpreted to require "reasonable notice" which is to be determined by the factual situation, and here where the tenants occupied the premises for part of the month in June and had occupied the premises for close to two years prior to giving notice, these circumstances warrant a reasonable notice of one month.

[62] My application of the principles of statutory interpretation has led me to a conclusion that is at odds with Justice Goodfellow's interpretation.

[63] Whether seen as an aspect of *stare decisis* or judicial comity, I recognize that there are sound policy reasons set out in the jurisprudence for judges of the same court to exercise restraint, if reasonably possible, in issuing conflicting legal interpretations in relation to the same legislative text.

[64] In the case at Bar, I conclude that I must diverge from the statutory interpretation adopted by Justice Goodfellow in *Benjamin*. I do so, after much consideration, as I appreciate there is no further appeal from my decision – *Killam Properties Inc. v. Patriquin*, 2014 NSCA 114, at para. 26, per Fichaud J.A.

[65] Other than his conclusory statement that: "the *Act*… is silent as to the extent of the notice. Its provision must be interpreted to require "reasonable notice" which

is to be determined by the factual situation"; he did not elaborate on his reasoning process. With great respect, not only am I uncertain of his reasoning, but I can think of no persuasive basis for his conclusion.

[66] On the other hand, I find my interpretation is in accord with the intention of the legislature.

[67] Effectively, under my interpretation of s. 7(3), the notice to quit, otherwise required by s. 10 would be:

- In a week to week lease, as little as one day notice rather than one week before the expiration of any such week;

- In a month-to-month lease, as little as one day notice rather than one month before the expiration of any such month; and

- In a year-to-year lease, as little as one day notice rather than three months before the expiration of any such year, would be required of tenants in such cases.

[68] Notably, s.7 is applicable to fixed term leases. In a one year fixed term lease scenario, for example, noncompliance with s. 7 may permit a tenant to give notice

that they will quit and deliver up the premises on a specified day within a period of three months from the day the notice is given. If the landlord does not comply with s. 7, the tenant could give as little as one day notice to quit.

[69] While this may appear a harsh result to some, I note there are corollary provisions for landlords in the legislation which may appear harsh to tenants.

[70] For example, in s. 10 we find:

> (6) Where a fixed term lease exists or where a year to year or month to month tenancy exists or is deemed to exist and the rent payable for the residential premises is in arrears for 15 days, the landlord may give to the tenant notice to quit the residential premises 15 days from the date the notice to quit is given.
>
> (6A) Within 15 days after receiving a notice to quit under subsection (6) the tenant may
>
> (a) Pay to the landlord the rent that is in arrears, and upon the payment of that rent, the notice to quit is void and of no effect; or
>
> (b) Apply to the Director under section 13 for an order setting aside the notice to quit.

Conclusion

[71] While Adjudicator O'Hara properly felt bound by Justice Goodfellow's statutory interpretation of s. 7 of the *Residential Tenancies Act* in *Benjamin v. Pottie,* I conclude that the interpretation adopted by Justice Goodfellow, and therefore Adjudicator O'Hara, is incorrect. By giving one day notice,

exceptionally as a result of the landlord's failure to comply with s. 7 of the Act, Mr. Crane gave sufficient notice to the landlord.

[72] The appeal is therefore allowed and the decision of the Residential Tenancies Officer, to award none of the $6,000 claimed by the landlord for rent, is confirmed as correct.

[73] In the unusual circumstances of this case, I order that the parties each bear their own costs.

Rosinski, J.