Docket: SH 162011R

IN THE SUPREME COURT OF NOVA SCOTIA
Cite as: MacDonald v. Dumont, 2000 NSSC 72

BETWEEN:

JAMES MACDONALD

Appellant

- and -

CALVIN DUMONT

Respondent

D E C I S I O N

HEARD: at Halifax, Nova Scotia, before the Honourable Justice Jamie W.S. Saunders on May 19, 2000

DECISION: July 26 , 2000

COUNSEL: Claire McNeil for the Appellant
Judith Gass for the Respondent
Edward Gores for the Nova Scotia Department of Justice

SAUNDERS, J:

PROCEEDINGS

[1] On December 21, 1999 the appellant/tenant James K. MacDonald (the "Appellant") filed an application (Form D) seeking damages from his Respondent Calvin Dumont (the "Respondent"). When providing particulars for his claim the Appellant alleged that while he was in hospital, the Respondent entered his apartment, removed all of his belongings and, subsequently, agreed to return to the Appellant what amounted to worthless items and dirty laundry. The allegations were denied by the Respondent. The matter came on for hearing before Ms. Janet Light, an agent of the Director engaged as a Residential Tenancy Officer (the "Officer") on January 5, 2000. In a written decision dated January 12 the Officer dismissed the Appellant's application, for two reasons: that there was insufficient evidence to substantiate Mr. MacDonald's claim; and that he was out of time in filing his initial application having missed the one year limitation prescribed by statute, by 11 days.

[2] The tenant appealed to the Nova Scotia Residential Tenancies Board (the "Board") by filing a written notice of appeal on January 20. The matter was set down for appeal before the Board on February 4.

[3] The appeal was heard by the Board's Chair, Wynne Slawter. In a written decision filed February 11 the Chair dismissed the tenant's appeal and upheld the Residential Tenancies Officer's order on the basis that:

> "... no new evidence was presented at the hearing ..."

[4] The tenant then appealed to this Court by notice of appeal filed February 21, 2000.

[5] The matter came before me on May 19, 2000. There, for the first time, counsel appeared for all parties interested in the outcome. Ms. McNeil, counsel for the Appellant advised that she had given notice to the Respondent and to the Department of Justice as a courtesy. I had invited all counsel to file written memoranda and to make full oral argument in support of their positions.

POSITION OF THE APPELLANT/TENANT

[6] In his notice of appeal dated February 21, 2000 Mr. MacDonald sets out his grounds of appeal said to qualify as both jurisdictional error and error of law. These may be paraphrased as alleging that the Board erred:

(i) in deciding that his claim was statute barred by virtue of s. 13(1) of the Act;

(ii) in failing to provide adequate reasons;

(iii) in finding that there was insufficient evidence to evaluate the loss; and

(iv) in such other ways as might appear.

[7] In her written brief and in oral argument Ms. McNeil suggested this was a test case with far-reaching potential in that, for the first time, the Court was asked to address process and procedure under the new regime by which the Nova Scotia Residential Tenancies Board has operated since 1997 when revamped legislation came into force. Counsel argued that this case raised the Board's duty of fairness towards parties appearing before it:

> " ... (i)n particular whether reasons are required and the adequacy of those reasons; and issues concerning the neutrality of the decision maker and the propriety of the apparent reliance in this case by the Board on

evidence acquired outside the hearing process." (Appellant's Brief, May 12, 2000, p. 1)

[8] The Appellant emphasized the paucity of detail contained in both the Officer's initial decision dated January 12 and the Board's final decision, through its Chair, dated February 11. While acknowledging Ms. Light's two reasons for dismissing the tenant's claim: that there was "insufficient evidence to substantiate the claim made by the tenant" and, that his complaint was filed 11 days past the one year limitation period for such a claim, Ms. McNeil complained that apart from those two statements "there is no detail about the evidence" gathered by the Officer. Further, in rendering its final decision the Board found that "no new evidence" was led. This, in the Appellant's submission, constitutes an error of law in three respects.

[9] Firstly, there was no transcript of the proceedings before the Residential Tenancy Officer. Accordingly the Appellant argues that the Board could not know "whether the evidence was the same or not", especially so considering the fact that Ms. Light's own decision did not make any "findings of fact" or attempt to outline the evidence that was before her.

[10] Secondly, the Appellant contends that if the Board did have access to notes, files or other information from Ms. Light indicating her view of the evidence,

then such was not made available to the parties and would therefore constitute a clear breach of the duty of fairness owed by the Board as decision maker. In argument, Appellant's counsel said she was rebuffed by the Board when she sought to examine Residential Tenancies staff concerning the information made available to their decision makers in this case.

[11] Finally, even if disclosure were provided to the parties, the Appellant argues that reliance upon any such information by the Board would be improper as it:

> " ... would impair the neutrality of the Board and effectively create an appeal process which allows the person whose decision is being appealed to influence the outcome, or in other words to sit on an appeal of their own decision ... in deferring to the Order of the Director the Board has breached the duty of fairness in failing to fully and independently rule on the evidence presented." (Appellant's Brief, May 12, 2000, p.2)

REASONS FOR JUDGMENT

[12] Having considered the record and the submissions of counsel I have concluded that the appeal should be dismissed.

[13] The essence of this tenant's appeal seems directed towards discerning the exchange, if any, of information between distinct decision makers employed in the residential tenancies regime, and to compel the Board to file detailed and complete written reasons for judgment so as to:

> " ... enable the court to test the validity of (any) decision. To do otherwise would immunise the process from judicial review." (Appellant's Brief, May 12. 2000, p.3)

[14] Illustrative of this objective counsel for the Appellant, during argument, urged me to issue or authorize the issuance of a subpoena to the Director to compel her attendance at a discovery examination so as to determine all "information" accessed by the Board in arriving at its decision. I was invited to force such disclosure pursuant to either or both this Court's inherent jurisdiction as a superior court "exercising its supervisory role over an inferior tribunal", as well as this Court's "power" expressed in Practice Memorandum 16(8) which states:

> "The Court may order additional materials to be filed by the Board and may request clarification of the materials as provided by the Board."

[15] I decline to do so. Substantive rights are not created by practice memoranda issued, from time to time, by the Supreme Court. Such directives are intended to instruct practitioners or other interested parties as to the proper procedures to be followed , when applying a particular Civil Procedure Rule or statute to which the practice memorandum relates.

[16] There is no compelling reason *in this case* to intervene on the basis of my inherent jurisdiction, or any other. To accede to the suggestion that subpoenas be issued to compel the Director's attendance at discovery examination or to order the Board and its staff to disclose all materials to which its decision makers had access, would, in my view, defeat the purpose of the Residential Tenancies Act. The statute's stated objective is to provide landlords and tenants with an efficient, inexpensive way to settle their disputes. What the Appellant has proposed would, in my respectful view, jeopardize the very intent of this legislation.

[17] While neither party was represented by legal counsel at either of the first two hearings, both the Appellant and the Respondent had ample opportunity to testify, call witnesses and present arguments. There is simply no basis in this case for suggesting any breach of natural justice or procedural fairness. The matter was first heard by the Residential Tenancy Officer, Janet Light, in her

capacity as the Director's agent, as the statute permits. Her written decision, while brief, provides a clear, straightforward and unequivocal basis for her decision. Ms. Light determined that there was insufficient evidence to substantiate Mr. MacDonald's claim and also that he was out of time, having passed the prescribed statutory time limit. His claim was therefore dismissed. In such circumstances there was no need, in my view, for Ms. Light to have been any more elaborate in her written reasons.

[18] The tenant then appealed. At the hearing before the Board Chair, the Appellant and the Respondent again gave evidence and the Appellant called another witness to give further testimony on his behalf. A review of the statute confirms the Nova Scotia Legislature's clear intention to relax customary rules of evidence and procedure so as to achieve its stated objective, that is to provide a cheap, efficient and speedy way to settle such disputes. For example, s. 17C provides in part:

> "(5) The board shall determine its own practice and procedure but shall give full opportunity for the parties to present evidence and make submissions.
>
> (6) The board may conduct a hearing orally, including by telephone, or in writing or partly in writing and partly orally.

(7) 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.

(8) The evidence at the hearing shall not be recorded."

[19] Section 17D obliged the Board to:

> (a) confirm, vary or rescind the Order of the Director (or her agent); or
>
> (b) make any Order that the Director (or her agent) could have made.

Thus, the Chair in this case was entitled to confirm the decision of the agent (her designate) if she saw fit to do so. It is apparent from the decision of the Residential Tenancies Board Chair that no new evidence was adduced from the testimony given at that hearing. The initial decision dated February 4 was upheld. In my view all necessary procedures under the Act were followed.

[20] From the words "no new evidence" counsel for the Appellant asks me to infer that the Board's Chair was privy to information in the hands of the Officer but to which the parties were denied access. I am not prepared to draw such a

conclusion. I take the Chair's findings to mean that there was nothing in the evidence presented at the second hearing to justify any variation or recision of the initial decision.

[21] Section 17D(2) describes what the Board shall assemble and furnish after an appeal is launched to this Court. It states:

> "(2) The board shall compile a record of a hearing consisting of
>
> (a) the order of the Director that was appealed from;
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> (b) the notice of appeal to the board;
>
> (c) the notice of hearing by the board;
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> (d) any written submissions and exhibits received by the board; and
>
> (e) the order of the board and <u>any reasons</u> for the order." (underling mine)

In my view this section provides another clear signal of the Legislature's objective to mandate a quick, informal process to resolve disputes between landlord and tenant. Each of those statutory requirements was fulfilled in this case. Had the Nova Scotia Legislative Assembly intended that there be such "transparency" as urged by the Appellant between decision makers; or, oblige every decision maker to file detailed and complete written reasons for his/her/its decision; or permit the discovery of such decision makers so as to reveal all information accessible to them in rendering their

decision, it would have been very easy to include such duties when the revised legislation was debated and proclaimed. Their absence reinforces my view that such was never intended.

[22] In summary I see no basis for suggesting any breach of natural justice or procedural fairness in this case. Each side, on two occasions, had ample opportunity to represent themselves, testify, call witnesses and present other evidence in an attempt to prove their case. The matter before me is not an appeal *de novo*. An appeal to this Court is restricted to a question of law or jurisdiction. I find no error in either respect. There is no other authority under the Act. Given the intent and purpose of the statute and the documentation before me, I can find no reason in this case to order the Residential Tenancies Board to file more than the Record required by the Act, or to submit to the procedures suggested by the Appellant.

[23] The appeal is dismissed, without costs.

J.