

SUPREME COURT OF NOVA SCOTIA

Citation: Killam Properties Inc. v. Frail, 2009 NSSC 419

Date: 20091221

Docket: Hfx No. 312163A

Registry: Halifax

Between:

Killam Properties Inc.

Appellant

v.

Connie Frail and Craig Poirier

Respondents

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Judge: The Honourable Justice John D. Murphy

Heard: November 24, 2009, in Halifax, Nova Scotia

Written Decision: February 26, 2010
{*Oral decision rendered December 21, 2009.*}

Subject: Residential Tenancies, Human Rights, Discrimination -
“Family Status”

Summary: The appellant landlord issued a Notice to Quit to the respondent tenants, requiring them to vacate at the end of their fourth year occupying the premises. No reasons were given in the Notice to Quit. The tenants were subsequently ordered to vacate by a residential tenancies hearing officer. On appeal to the Small Claims Court, however, the adjudicator held that the reason for the Notice to Quit was the increased size of the respondents’ family, and that this constituted discrimination in accommodation on the basis of family status under the Nova Scotia *Human Rights Act*.

Issues: (1) Did the adjudicator have jurisdiction to consider the reasons for

the Notice to Quit on an application for vacant possession pursuant to a notice given under s.10(1) of the *Residential Tenancies Act*?

(2) Did the adjudicator have jurisdiction to consider a human rights complaint in making his decision?

(3) If the adjudicator had jurisdiction to consider the human rights complaint, was there discrimination based on family status?

Result: (1) The reasons for the Notice to Quit under s.10(1) were not properly before the Director.

(2) The adjudicator's powers on appeal from the Director were limited to confirming, varying or rescinding the Order of the Director, or making any order that the director could have made. Where the human rights complaint was not properly before the director, it would not be properly before the adjudicator.

(3) While there was authority for the proposition that discrimination because of the presence of children would constitute discrimination on the basis of family status, the authorities relied upon by the respondents did not establish that a Notice to Quit based on the number of occupants constituted discrimination on the basis of family status.

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