

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** Flewelling v. Scotia Island Property Ltd., 2009 NSSC 94

**Date:** 20090323

**Docket:** Hfx No. 286346

**Registry:** Halifax

**Between:**

Elizabeth Flewelling and Dean Flewelling and  
Elizabeth Flewelling as Litigation Guardian for  
Cody Flewelling and for Ryan Flewelling and for  
Tyson Flewelling

Plaintiffs

v.

Scotia Island Property Limited, a body corporate and  
Maria Sharbell

Defendants

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**Judge:** The Honourable Justice Walter R.E. Goodfellow

**Heard:** March 18, 2009 in Halifax, Nova Scotia

**Subject:** Summary Judgment; Security for Costs

**Summary:** The defendants rented premises to adult plaintiffs who took up residence with their three children. The defendants secured a tenancy judgment for arrears of rent in the amount of \$801.25 and a further tenancy judgment for additional rent, damages, et cetera in the amount of \$4,404.21. The plaintiffs sued for breach of contract, negligence and nuisance. Three of the plaintiffs are infants and, therefore, parties under disability. An Order granted February 26, 2009 permitting plaintiffs' solicitor to withdraw effectively stayed the proceedings as persons under disability must have the litigation conducted by counsel. (**Sherman v. Dalhousie College and University**, [1996] N.S.J. No. 302)

**Issue:**

- (1) Is the defendant entitled to summary judgment?
- (2) Is the defendant entitled to security for costs and, if so, the quantum?

**Result:** Whether you apply the old 1972 Rules or the 2009 Rules, the result would be the same, namely, that the application for summary judgment is premature as the evidence has not yet crystallized to any level of certainty.

Whether you apply the new Rule for security for costs or the old Rule, the result is the same. Under the new Rule, CPR 45.02(1), judicial discretion is somewhat fettered as all four statutory factors must be established and conclusion that they have been established. If the old Rule applies, the application for security for costs would, in any event, be less stringent. Security for costs ordered.

**Quantum?** Difficult to deal with where there has been a lack of cooperation by the plaintiff. No financial disclosure by them or any indication whether they are even employed, et cetera, failure does not relieve applicant of establishing CPR 45.01(c). Best guesstimate at this stage is a two to three day trial with continual delays through lack of cooperation. At this stage, the best estimate would be costs in the range of \$5,000 to \$10,000. Quantum to be deposited by plaintiffs with the Prothonotary of the Supreme Court of Nova Scotia as security fixed in the amount of \$5,000. Action stayed until security posted.

No costs of the summary judgment application. Costs of the application for security for costs fixed and allowed against the plaintiffs Dean Flewelling and Elizabeth Flewelling in the amount of \$550.00 payable forthwith.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.  
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