

SUPREME COURT OF NOVA SCOTIA

Citation: *Tibert v. Gaudet*, 2024 NSSC 18

Date: 20240116

Docket: 528026

Registry: Kentville

Between:

Kevin Tibert and Natasha Tibert

Appellants

v.

Ellen Gaudet

Respondent

Judge: The Honourable Justice Gail L. Gatchalian

Heard: January 11, 2024, in Kentville, Nova Scotia

Counsel: Benjamin Corkum, for the Appellants
Kent Noseworthy, for the Respondent

By the Court:

Introduction

[1] This is an appeal from a decision of Adjudicator G. Bernard Conway dated October 13, 2023. The central question in this appeal is whether the Adjudicator erred when he found that Kevin Tibert and Natasha Tibert were tenants of Ellen Gaudet and therefore subject to the *Residential Tenancies Act*, R.S.N.S. 1989, c.401. The Tiberts argued that they had purchased the mini home that they had been renting from Ms. Gaudet pursuant to an option to buy agreement, making them owners rather than tenants. The Adjudicator found against the Tiberts, and ordered them to pay rental arrears, terminated the tenancy, and granted Ms. Gaudet vacant possession of the mini home. The Tiberts allege that the Adjudicator made jurisdictional errors, erred in law and failed to follow the requirements of natural justice.

[2] In determining whether the Adjudicator made reversible errors, I will consider the following:

1. The findings made by the Adjudicator and the evidence before him.
2. The alleged errors of law, which are:

- a) that the Adjudicator failed to apply the doctrine of *contra proferentum*, and
 - b) that the Adjudicator made findings of fact about events that occurred outside the applicable limitation period.
3. The argument that the Adjudicator had no jurisdiction to hear the appeal because the Tiberts were not tenants of Ms. Gaudet.
 4. The alleged breaches of the requirements of natural justice, which are:
 - a) that the Adjudicator should have adjourned the hearing to give the Tiberts time to file documents relevant to their claim of ownership of the mini home, and
 - b) that the Adjudicator should have informed the Tiberts of the option of asking for a stay of proceedings so that they could pursue a claim for ownership in the Nova Scotia Supreme Court.

Adjudicator's Findings and the Evidence Before Him

[3] The Small Claims Court hearing took place on October 10, 2023. There were only two witnesses at the appeal hearing: Ellen Gaudet and Kevin Tibert.

Written Decision

[4] Before setting out his findings in his written decision, the Adjudicator explained why he preferred the evidence of Ms. Gaudet over that of Mr. Tibert:

10. I listened carefully to both Ellen Gaudet and Kevin Tibert during their respective testimony. I found Ellen Gaudet to be more straightforward and credible in her evidence. Kevin Tibert was more evasive in his answers. He also made generalized comments instead of answering direct questions. Consequently, I prefer the evidence of Ellen Gaudet when it differs from Kevin Tibert.

[5] The Adjudicator found that the parties had entered into a lease agreement as well as a “Rental Agreement with Option to Buy” in respect of a mini home located at 22 Owen Avenue in Mount Uniacke. The Adjudicator found that the Option to Buy provided that it would be “... Guaranteed as long as the agreement remains valid.” See paras. 11 to 16 of the written decision.

[6] The Adjudicator found that, in 2018, the parties had discussions regarding rental arrears and the desire of the Tiberts to purchase the mini home. The Adjudicator found that the parties agreed that the mini home would be sold to the Tiberts if they paid \$20,000 within a month. He found that the Tiberts made a payment of \$9000, which would be a deposit on the \$20,000 if the transaction closed, but that failing a successful sale, the \$9000 would be applied to rental arrears. The Adjudicator found that the Tiberts failed to pay the \$20,000, that the sale was therefore not completed, and that the \$9000 was therefore applied to rental arrears. See para.23 of the written decision.

[7] The Adjudicator concluded that, on balance of probabilities, the Tiberts were tenants and that they breached the lease without legal excuse: at para.34.

[8] The Adjudicator awarded Ms. Gaudet \$7222.32 for rental arrears, terminated the tenancy effective October 31, 2023, and granted Ms. Gaudet vacant possession of the mini home on that date: at paras.34-37.

Summary Report

[9] The Adjudicator filed a Summary Report of his findings of law and fact in response to the Notice of Appeal, as required by s.32(4) of the *Small Claims Court Act*, R.S.N.S. 1989, c.430.

[10] In his Summary Report, the Adjudicator confirmed that, based on the evidence of Ms. Gaudet, he found that the parties had agreed to amend the agreement of purchase and sale in 2018, and that pursuant to that amended agreement, the \$9000 payment would have been applied to the purchase price if the sale had successfully closed. However, he found that the sale had not successfully closed and therefore that the \$9000 was applied to the rental arrears: at para.6(c).

Exhibits

[11] The Option to Buy was entered into in evidence at the Small Claims Court hearing. The Option to Buy provided in part as follows:

- “The Residential Tenancies Act and Regulations is applicable with any default of this rental agreement.”
- “...the current sale price and subsequent balance owing is guaranteed as long as the agreement is remains [sic] valid.”
- “From a bi-weekly rental payment, \$302 will be paid towards the purchase amount owing.”
- “At any time, the renters may offer to purchase the home and pay in full the balance owing without penalty.”
- “In addition to the monthly payments, lot rental, insurance, and municipal taxes must be paid to maintain the option to buy/to purchase retroactively.”
- “Bill of sale will be provided by the current owner of the mini-home if option to buy is exercised and balance owing is paid in full.”
- “Bi-weekly rental payments (with option to purchase) in the amount of \$450.00 begin May 11, 2007 and will be paid by post dated cheques supplied till the end of the year, each year.”

[12] Ms. Gaudet also relied on the following documents at the Small Claims

Court hearing:

- A copy of an eviction notice dated June 7, 2018, in which she claimed that the Tiberts had failed to pay their rent in full and that they had failed to pay any rent at all in some months over the years.
- A copy of an email from Ms. Gaudet to Mr. Tibert dated June 10, 2019, stating that that the Tiberts had paid a lump sum payment, that they had agreed to a pay out *if* the Tiberts paid in full, and asking the Tiberts to pay something as soon as possible, failing which Ms. Gaudet was giving them 15 days notice of eviction.
- A copy of an email from Ms. Gaudet to Mr. Tibert dated June 17, 2019, asking that the Tiberts pay \$600 a month to cover current lot rental, taxes and insurance costs, given that the Tiberts had not yet paid the balance owing to transfer ownership.

- A copy of an email from Mr. Tibert on the same day, responding to Ms. Gaudet's email of June 17, 2019, stating "Ok I will do 150 a week ..."
- An email from Ms. Gaudet to Mr. Tibert dated April 29, 2023, in which she stated that the buy out amount agreed to in 2018 had not been paid.
- An email in response from Mr. Tibert to Ms. Gaudet dated April 29, 2023, in which he asked whether Ms. Gaudet had come up with a price that she would be happy with.

Alleged Errors of Law

[13] The Adjudicator was hearing an appeal of a Residential Tenancies Officer, who had found in favour of Ms. Gaudet. Such an appeal is a hearing *de novo* pursuant to s.17D(1) of the *Residential Tenancies Act*. The Adjudicator properly instructed himself on this procedure: see para.5 of the Adjudicator's written decision.

[14] The Tiberts will succeed in establishing an error of law on the part of the Adjudicator if they demonstrate that he:

- misinterpreted a statute;
- made a clear error in the interpretation of documents or other evidence,
- failed to appreciate a valid legal defence,
- reached conclusions supported by no evidence, or
- clearly misapplied the evidence in material respects thereby producing an unjust result.

Brett Motors Leasing Ltd. v. Welsford, (1999) 181 NSR (2d) 76, at para. 14

The Contra Proferentem Rule

[15] The Tiberts claim that the Adjudicator erred in failing to apply the doctrine of *contra proferentem* against Ms. Gaudet in interpreting the 2007 Option to Buy. I reject this argument. Mr. Conway found that the parties had renegotiated the terms of the Option to Buy in 2018, and that pursuant to the amended agreement, the Tiberts were required to pay \$20,000 within a month in order to complete the sale. The Adjudicator found that the Tiberts failed to pay the \$20,000 on time, that they therefore did not complete the sale, and that they remained tenants. There is no indication on the record that there was a dispute between the parties about the interpretation of the renegotiated agreement. The *contra proferentem* rule had no application in these circumstances.

Limitation Period

[16] The Tiberts claim that the Adjudicator erred in law by making findings of fact concerning arrears of rent in the years 2007 to 2015, outside of the applicable limitation period. I reject this argument. Mr. Conway ordered that the Tiberts pay rental arrears for 2023 only. He considered the question of rental arrears in previous years in order to determine the defence raised by the Tiberts that they were owners and not tenants and therefore not subject to the *Residential Tenancies Act*. In determining whether the Tiberts had a valid legal defence, the Adjudicator was not adjudicating a claim being made by Ms. Gaudet.

[17] Moreover, the Adjudicator's finding that the Tiberts were in arrears of rent before 2018 was not material to his decision. This is because he found that the parties had renegotiated the terms of the Option to Buy in 2018, and that the Tiberts failed to successfully complete the purchase pursuant to the amended agreement.

Conclusion re: Alleged Errors of Law

[18] This is not a case where there is no evidence to support the conclusions reached by the Adjudicator. The Adjudicator had the benefit of hearing from both Mr. Tibert and Ms. Gaudet when they gave their evidence. The Adjudicator preferred the evidence of Ms. Gaudet where it conflicted with that of Mr. Tibert and he gave reasons for doing so. The documents relied on by Ms. Gaudet support the Adjudicator's findings. The Adjudicator did not err in law when he found that the Tiberts remained tenants of Ms. Gaudet.

Jurisdictional Error

[19] The Adjudicator's finding that there was a tenancy between the Tiberts and Ms. Gaudet will not be disturbed. In light of this, the Tiberts have failed to demonstrate that the Adjudicator had no jurisdiction to hear the appeal.

Natural Justice

Adjournment to File Documents

[20] The Adjudicator noted in his decision that, while both parties filed documents with the court, Mr. Tibert said that he had other documents that he did not file as he was “saving them for the Supreme Court,” as he planned to sue to get title of the mini home. The Tiberts did not ask for an adjournment of the Small Claims Court hearing. The Adjudicator wrote that, “[i]n the absence of those documents, I cannot state whether they would have been of assistance to the court”: at para.9 of the written decision.

[21] In their brief, the Tiberts claim that the Adjudicator failed to follow the requirements of natural justice because he was required to assist the Tiberts, who were self-represented, by adjourning the hearing to give Mr. Tibert time to submit the evidence relevant to the issue of the ownership of the mini home. Counsel for the Tiberts asserted that they may have misunderstood what the Adjudicator would be deciding, especially given that the Director of Residential Tenancies stated in her decision that she did not have the jurisdiction to order Ms. Gaudet to provide them with a deed to the mini home.

[22] As the Honourable Justice Glen G. McDougall noted in *Brown v. Newton*, 2009 NSSC 388, the purpose of the *Small Claims Court Act* is to provide an informal and inexpensive forum for lay persons to seek redress for civil disputes: at paras.15-16 and s.2 of the *Small Claims Court Act*. When either or both parties are self-represented, an adjudicator must be prepared to explain the procedure that will be followed and some of the basic rules of evidence: at para.20.

[23] However, the information an adjudicator should provide will vary from case to case and from party to party: at para.22. Moreover, in providing information to the self-represented party, the adjudicator must be mindful of not taking or being perceived to be taking sides: *ibid*.

[24] The Tiberts rely on the decision of McDougall J., who found that the adjudicator in that case failed to follow the requirements of natural justice when the claimant closed his case and expressed his surprise when the defendant, a lawyer represented by counsel, decided not to call evidence. McDougall J. held that the adjudicator should have explained to the claimant that he could ask to re-open his case for the purpose of calling the respondent lawyer as part of his case-in-chief: at paras.26-27.

[25] In this case, having considered the entire context, I am not satisfied that the Adjudicator failed to follow the requirements of natural justice.

[26] The relevant context is as follows:

- The Tiberts themselves raised the issue of their ownership of the mini home in their Notice of Appeal of the decision of the Director of Residential Tenancies when they wrote that “[t]he original Option to Buy agreement was for \$48900 and was paid in 2018.”
- The Tiberts knew that they had the right to rely on documents at the Small Claims Court hearing because:
 - the Adjudicator held a pre-hearing conference with both parties, and set a deadline for the filing and service of documents; and
 - The Tiberts in fact filed documents in the Small Claims Court hearing, including a copy of the Option to Buy as well as text messages between Mr. Tibert and Ms. Gaudet.
- The Tiberts knew that Ms. Gaudet would be disputing their claim of ownership of the mini home and they knew the case that they had to meet because:
 - Ms. Gaudet filed a brief in advance of the hearing in which she claimed in part that:
 - the Tiberts never paid the balance owing to purchase the mini home pursuant to the Option to Buy: para.11; and
 - the parties renegotiated the agreement in 2018, whereby Ms. Gaudet agreed to a quick sale for \$20,000 with a deposit of \$9,000, which was paid, and the balance to be paid by the end of June, 2018: para.14; and
 - Ms. Gaudet attached to her brief a number of documents, including the emails already referred to, supporting her position that the Tiberts had never paid the balance owing to transfer ownership of the mini home to them.

- The Tiberts knew that the Adjudicator would be determining whether they were tenants or owners because, as the Adjudicator wrote at para.3 of his written decision, he asked the Tiberts at the commencement of the appeal hearing the basis for the appeal, and they replied with the following grounds of appeal:
 - They had fulfilled the terms of an Option to Buy agreement dated April 12, 2007, and are therefore no longer tenants of the Respondent; and
 - In the alternative, if they are tenants of the Respondent, they are not in arrears of rent.

[27] Based upon the above, I find that it was absolutely clear to the Tiberts that the central issue in the appeal would be whether they were tenants or whether they owned the mini home, and therefore that the Adjudicator would have to determine whether they had successfully purchased the mini home. I also find that the Tiberts were aware of their ability to file and rely upon documents to support their position that they had successfully purchased the mini home, and that they chose to file certain documents but not others. In the circumstances of this case, the Tiberts have not persuaded me that the Adjudicator breached the requirements of natural justice by failing to adjourn the hearing to give them time to file further documents.

Stay

[28] In their brief, the Tiberts also claim that the Adjudicator should have informed the Tiberts of the option of requesting a stay of proceedings pending a

determination of their claim for ownership of the mini home, and that the Adjudicator's failure to do so breached the requirements of natural justice. I disagree.

[29] Ms. Gaudet's claims for arrears, termination of the tenancy and vacant possession were properly before the Adjudicator. The Adjudicator had the jurisdiction to determine whether the Tiberts were tenants or owners. The Tiberts had not commenced a proceeding in the Supreme Court at the time of the Small Claims Court hearing, even though they had indicated four months earlier in their June 6, 2023 response to the Director of Residential Tenancies that they would be doing so. If the Tiberts had filed a Supreme Court proceeding at that point, it would have been five years after the events giving rise to the proceeding (they claim that their successful purchase of the mini home occurred in 2018), raising the real possibility that their claim was statute-barred. If the Tiberts were not successful in their claim for ownership, a stay would have resulted in a lengthy delay in the adjudication of Ms. Gaudet's claims.

[30] In my view, in the circumstances of this case, had the Adjudicator suggested to the Tiberts that they request a stay, the Adjudicator would have strayed beyond explaining the procedure to be followed during the hearing and the basic rules of evidence. The Adjudicator would have crossed the line between offering

information and giving legal advice, and would have reasonably been perceived by Ms. Gaudet as taking sides rather than providing neutral advice: see *Brown v. Newton* at paras.21-22 and *Bidart v. MacLeod*, 2005 NSSC 100 at para.10.

[31] The Tiberts had the opportunity to fairly present their case, including their position that they were owners of the mini home and not tenants: see *Brown v. Newton* at para.22. The Adjudicator did not breach the requirements of natural justice by failing to inform the Tiberts that they could ask him to stay the proceedings.

Conclusion

[32] The appeal is dismissed. Ms. Gaudet is entitled to costs under s.23 of the *Small Claims Court Forms and Procedures Regulations*, NS Reg 17/93. If the parties cannot agree on the amount of costs, I will receive submissions from them within two weeks of this decision.

Gatchalian, J.