Date: 20000906
Docket: S.H. 115877

IN THE SUPREME COURT OF NOVA SCOTIA

Cite as: Halifax Insurance Company v. Killick, 2000 NSSC 167

BETWEEN:

THE HALIFAX INSURANCE COMPANY, a body corporate

PLAINTIFF

- and -

JAMES KILLICK and KATHERINE KILLICK

DEFENDANTS

- and -

GOLDMARK PROPERTIES LIMITED, a body corporate carrying on business in the registered trade name CENTURY 21 EXPERT REALTY

THIRD PARTY

D E C I S I O N

HEARD BEFORE: **The Honourable Justice Walter R.E. Goodfellow in the Supreme Court of Nova Scotia on August 28, 29, 30, 31, 2000**

DECISION: **September 6th, 2000**

COUNSEL: **Colin J. Clarke/Benjamin Fairbanks, for the Plaintiff**
James and Katherine Killick, Defendants, personally
Brian S. Creighton, for the Third Party

GOODFELLOW, J.:

BACKGROUND

[1] James and Katherine Killick purchased 12 Derby Street, Amherst, Nova Scotia in 1986 and mortgaged it with the CIBC Mortgage Corporation.

[2] In July, 1990 the Killicks were required to move to Whitehorse, Yukon for Mr. Killick's employment.

[3] The Killicks retained the services of Century 21 Expert Realty to list the property for sale and to manage and operate the premises as a rental property. This contract was dated November 5, 1990. A second listing agreement was entered into by the Killicks. The premises were rented out to various tenants by Century 21 up to the end of September, 1991 when the existing tenant gave up possession pursuant to a notice from the Killicks. The Killicks gave the Notice to Quit based upon a Conditional Offer to Purchase from a Third Party which offer unfortunately turned out to be subject to the sale of that person's property, which sale itself was subject to an offer conditional upon their purchaser disposing of a property. As a result, the property became vacant and the Killicks were reaching a strained financial position and frustration. The property was not rented thereafter. The Killicks last rental cheque for the property was for the month of September, 1991.

[4] The property was vacant from the beginning of October, 1991 through February, 1992 and at the time the damage was discovered, it had been vacant for approximately four and a half months.

[5] The Killicks had provided a key to a neighbour, Alisa West , who in February, 1992 was advised of water emitting from the home and she attended at 12 Derby Street on the 17th of February, 1992 and discovered substantial water damage in many areas of the home. An adjuster on behalf of Halifax Insurance Company attended with Ms. West who had advised the Killicks by telephone of the damage. This attendance was on February 18 and Mr. Miller gave evidence as to his opinion as to the cause of the water damage which was substantial.

[6] Halifax Insurance obtained an estimate of the damages and corresponded with their insured, the Killicks over a period of time which correspondence was essentially ignored by the Killicks who shortly after the damage advised the mortgage company that they had no further interest in the property.

[7] Halifax Insurance had an estimate of the cost of repairs and after corresponding with the Killicks and receiving silence, they proceeded pursuant to the standard mortgage insurance clause to pay the mortgagee, CIBC Mortgage Corporation, $14,224.43 which represented the estimate less the premium cost and the $200.00 deductible.

[8] CIBC Mortgage Corporation proceeded to foreclosure and the amount fixed as outstanding was $52,647.27. The Killicks did not defend the foreclosure action. A Notice of Sale was sent to all parties, including the Killicks, and on October the 15th, 1992 the sheriff sold the property to CIBC Mortgage Corporation, being the highest bidder for $1,930.57. An appraisal of the property was obtained at $28,000.00 as is and offers were sought and a sale of the property took place for $25,000.00. The Killicks, shortly after the damage to the property was discovered, wrote to CIBC giving formal notice that they would no longer make any payments on their mortgage. One witness commented that the Killicks had paid

too much for the property in the first place and the evidence clearly indicates that to be the case.

[9] Goldmark Properties Limited were joined as Third Party, as the Killicks in their Amended Statement of Defence allege an Agreement with Goldmark Properties Limited, carrying on business under the name Century 21 Expert Realty, was obligated to insure that heating was being maintained in the premises during the usual heating season.

INSURANCE ACT, R.S.N.S. 1989, c. 231.

Regulations

3 The Governor in Council may make regulations

(h) extending the provisions of this *Act* or any of them to a system or class of insurance not specifically mentioned in this *Act.*

Effect of Delivery of policy

20(1) Where a contract has been delivered, the contract is as binding on the insurer as if the premium had been paid, although it has not been paid, and although delivered by an officer or agent of the insurer who did not have authority to deliver it.

Delivery and contents of policy

18 An insurer shall, within a reasonable time after a contract is entered into, deliver to the insured a policy setting out the term of the contract which shall include

(a) the name or a sufficient description of

(i) the insured, and

(ii) the person to whom the insurance money is payable;

(b) the amount, or the method of determining the amount of the premium;

(c) the subject-matter of the insurance’

(d) the indemnity for which the insurer may become liable;

(e) the event on the happening of which the liability is to accrue;

(f) the date upon which the insurance takes effect; and

(g) The date upon which the insurance terminates of the method by which termination is fixed or to be fixed.

Imperfect compliance

30 An act or omission of an insurer that results in non-compliance or imperfect compliance with a provision of this Act does not render a contract invalid as against an insured.

SUBROGATION

Subrogation

149(1) An insurer who makes any payment or assumes liability therefor under a contract is subrogated to all rights of recovery of the insured against any person and may bring action in the name of the insured to enforce those rights.

Statutory Conditions

167(2) The conditions set forth in the Schedule to this Part shall be deemed to be part of every contract and shall be printed on every policy with the heading "Statutory Conditions" and no variation or omission of or addition to any statutory condition shall be binding on the insured.

[10] The Killicks acknowledged receiving from their independent insurance agent, D. Cormier, the original Buildex Homeowners Insurance Policy of the Halifax Insurance Company which contained the following statutory condition:

Material change

4. Any change material to the risk and within the control and knowledge of the insured shall avoid the contract as to the part affected thereby, unless the change is promptly notified in writing to the insurer or its local agent; and the insurer when so notified may return the unearned portion, if any, of the premium paid and cancel the contract, or may notify the insured in writing that, if he desires the contract to continue in force, he must, within fifteen days of the receipt of the notice, pay to the insurer an additional premium; and in default of such payment the contract shall no longer be in force and the insurer shall return the unearned portion, if any, of the premium paid.

[11] It also contained the standard mortgage clause, which includes:

Right of Subrogation

> Whenever the insurer pays the Mortgagee any loss award under this policy and claims that - as to the Mortgagor or Owner - no liability therefor existed, it shall be legally subrogated to all rights of the Mortgagee against the Insured, but any subrogation shall be limited to the amount of such loss payment and shall be subordinate and subject to the basic right of the Mortgagee to recover the full amount of its mortgage equity in priority to the Insurer, or the Insurer may as its option pay the Mortgagee all amounts due or to become due under the mortgage or on the security thereof, and shall thereupon receive a full assignment and transfer of the mortgage together with all securities held as collateral to the mortgage debt.

ISSUES

Issue No. 1: Has the Plaintiff Insurer met the burden of proving on a balance of probabilities that the Defendant Insureds breached the contract of insurance in such a manner allowing them to claim in subrogation the amount paid to CIBC under the standard mortgage clause as an insured mortgagee?

[12] Issue No. 1 has been broken down in the defendants' brief filed on their behalf by Sean Foreman of Burchell Hayman Barnes and I will address each sub-issue as outlined therein.

1A. The defendants maintain they did not receive a copy of the policy as required by s. 18 of the *Insurance Act* and therefore the policy exclusions cannot apply.

[13] The onus is upon the insurance company to establish it has complied with the requirements of *The Insurance Act* and with respect to any exceptions to the policy, the onus remains upon the insurance company to establish any exception that would deny coverage to an insured.

[14] This issue like many of them requires a determination of credibility. The evidence of Mr. Killick is his acknowledgment of the initial policy and acknowledgment of receipt in the mail of each and every one of the subsequent policy coverage summaries forwarded to them by the Halifax Insurance Company. The summaries, in essence, contained the information required by s.18 of the *Insurance Act*. In the brief filed by the Killicks' solicitor, reliance is placed upon the case of *Janmohamed v. Co-Operators General Insurance Co.*, [1997] A.J. No. 670, Alberta Court of Queen's Bench. The first thing to note is that Justice Medhurst made a finding of fact that the residential insurance policy was never sent to the insured and therefore the Defendant was not able to rely on the exclusion clause as a defence. In addition, the section considered in the *Alberta Insurance Act* expressly set out failure to set out all the conditions and terms of the contract or any conditions, stipulation, warranty, or proviso modifying or impairing its effect, is neither valid or admissible in evidence to the prejudice of the insured. The *Nova Scotia Act* does not indicate the consequences of failure to make strict compliance and I would read the *Nova Scotia Act* to placing a heavy duty upon the insurer to bring home to the insured the exclusions that will be relied upon and this is usually achieved by providing a copy of the insurance policy containing such exceptions.

As it turns out, the original policy meets that requirement. It clear from the evidence that the Killicks were advised by the independent insurance agent, when they were moving to Whitehorse, that it was necessary for them to acquire a vacancy permit and the policy was so changed. When they decided to rent the property, a further change took place in the coverage and the vacancy permit was not continued. The series of summary communications, receipt of which has been acknowledged by the Killicks, were, according to the evidence of Halifax Insurance, mailed out to them as a matter of course and it included when the Killicks changed their policy to repeat the original optional coverages provision in their initial policy, para 18:

Optional Coverages

The following items are added to the section Loss or Damage Not Insured:

> (18) caused by freezing of a plumbing, heating, sprinkler or air conditioning system or domestic appliance, unless it happens within a building heated during the usual heating season and you have not been away from your premises for more than four consecutive days. However, if you had arranged for a competent person to enter your dwelling daily to ensure that heating was being maintained or if you had shut off the water supply and had drained all the pipes and appliances, you would still be insured. If the loss or damage occurs while your building is under construction or vacant, you would not be insured, even if permission for construction or vacancy has been given by us.

[15] I carefully reflected upon the evidence with respect to providing the prerequisite documentation to the insured and despite their denial I am satisfied on a strong balance of probabilities that they did in fact receive all the prerequisite documentation and I accept and prefer the evidence of James Johnston. I am satisfied that the Killicks knew, from the very outset and throughout of the requirements of a vacancy permit when they changed the

operation of their home to a rental property, of the exclusion set out in para 18 of the policy and subsequent rider provided to them. The Killicks are drained emotionally and apparently financially, as a result of the unfortunate circumstances and indeed the Canadian Imperial Mortgage Corporation declined to pursuing them for a deficiency judgment based on their having no other assets, children, etcetera, however, as with respect to the situation confronting them in this action, they conducted themselves in such a manner that they have brought consequences of their actions or failures upon themselves. Mr. Killick is an articulate intelligent individual who I am certain knew at all times the existence of the exclusions to their insurance coverage. The frustration of not being able to sell their property induced an out of sight out of mind attitude and by way of further example, Mr. Killick put oil in the property December the 5th, 1991 but made no effort by way of automatic delivery or otherwise to bother to see whether any further oil was required and he acknowledges none was provided to their home from that date to the time of the damage. There is no evidence that the lack of oil was a contributing factor to the furnace not functioning resulting in freezing but it is a further indication of the attitude and approach adopted by Mr. Killick which has put him in his present position.

[16] The Killicks were aware from the outset of the additional exception to coverage, namely:

Water Escape, Rupture, Freezing

This peril does not include damage:

> (f) caused by freezing which occurs during the usual heating season if you have been away from your premises more than four consecutive days.

> However, if you had arranged for a competent person to enter your dwelling daily to ensure that heating was being maintained or if you had shut off the water supply and had drained all the pipes and appliances, you would still be insured.

[17] Halifax Insurance has met the onus upon it of establishing the factual basis entitling them to rely upon paragraph 8 of the Killicks' insurance policy.

1B. If the policy exclusions apply, then:

(i) The damage was not caused by freezing.

[18] Overwhelmingly, the evidence establishes that the damage was caused by freezing and subsequent water flow primarily from bursted pipes and separated hoses. I find the evidence of Mr. Miller, Ms. West, Mr. Pettas compelling in this regard. Ms. West did say that Ms. LeBlanc had turned a tap on to let it drip and if that is correct, all that would do would be to slow down the freezing process. The weather in February was described as "cold" and by one witness as "very cold" and clearly from the photographic evidence, snow accumulated and remained at some depth in and about the property at the time of the damage. Freezing also took place in and about the toilet area and I accept Mr. Pettas's evidence, notwithstanding the evidence of the subsequent owner some years later expressing the view that the toilet looked the same now as it did in the photograph of February, 1992.

1B. (ii) The Defendants arranged for competent supervision through Century 21.

[19] There is absolutely no evidence to support this conclusion. The Rental Agreement was precisely that and the management of the property referred to in the Rental Agreement was

ancillary to and directly related to the intention of the parties, namely, that Kathy LeBlanc was to endeavour to obtain satisfactory tenants. The agreement did not provide any policing, inspecting of the property, responsibility for any utilities, fuel, water, telephone, all of which remained with the Killicks as owner. They provided Ms. West with a key but did not give her any instructions for inspection and if they gave anyone instructions for inspection it was to a co-worker of Mr. Killicks, Brian Skahar. They advised D. Cormier, the insurance agent, that their co-worker would be looking after it for the summer months.

[20] I find, in addition, as a matter of fact that the Killicks terminated the Rental Agreement no later than December the 12th, 1991 and probably as early as October, 1991. They clearly throughout wished to sell the property and did not wish to be landlords and finally reached the stage where sale was their only instructions and I prefer and accept the evidence of Kathy LeBlanc and Cathy Kent.

1B. (iii) The property was not "vacant".

[21] The policy contained an exclusion:

> **We do not insure:**
>
> Loss or damage occurring after your dwelling has, to your knowledge, been vacant for more than 30 consecutive days.

[22] Black's Law Dictionary defines "vacant":

> Vacant - empty, unoccupied as a vacant office or parcel of land. Deprived of contents; without inanimate objects. It implies entire abandonment; non-occupancy for any purpose. Absolutely free, unclaimed and unoccupied. Vacant and

> unoccupied as used together in rider to fire policy have different meanings. Term vacant meaning empty, while term unoccupied means lack of habitual presence of human being.

[23] In *MacLean v. The Dominion Insurance Corporation*, [1978] I.L.R. 1-975 (N.S.S.C.), Hallett, J. states at p.1039:

> I find that according to the plain meaning of the word "vacant", the plaintiff's property that was destroyed by fire was vacant to the knowledge of the plaintiff for more than thirty consecutive days prior to the loss on December 9, 1975. As a consequence, there is no coverage under the policy.

[24] Hallett, J. further states at p. 1041:

> The plaintiff's house was vacant according to the plain meaning of the word for an excess of thirty days prior to the loss and the plaintiff had knowledge of its vacancy. The dwelling was therefore excluded from coverage under the terms of the policy.

[25] Vacancy is not defined within the language of the policy. Being an insurance contract, vacancy must be defined narrowly and the court must examine all the circumstances with particular reference to the use of the property and intentions of the insured. The Killicks were advised in no uncertain terms by the independent insurance broker, D. Cormier, that leaving the property vacant while they were attempting its sale required a Vacancy Permit. Even without this evidence, I am satisfied that Mr. Killick in particular was such a meticulous person that he knew of the exemptions to his policy and indeed admitted such in cross-examination.

[26] It is clear that from approximately October the 1st, 1991 to the date of February the 17th, 1992, a period of approximately four and half months, the Killicks wished to sell this property. They were residing outside the Province and apparently had only asked their co-worker, Brian Skahar, to look after the property during the summer. They terminated their

Rental Agreement with Century 21 expert/Kathy LeBlanc. The property contained no furniture, no food, no clothing and no arrangement had been made by the Killicks for reasonable or adequate inspection of the property. The Killicks retained onto themselves the security and management of the property with respect to utilities, etcetera. They went on with their own lives and literally sat back hoping that the property would sell, all the time knowing that it was empty. The Killicks had directed their minds as to the consequences of walking away from the property as early as late 1991. In these circumstances, it is my view that the insurance company has met the requirement of establishing on a balance of probabilities that the property was vacant with no occupancy and no intention of any occupancy, unless and until the property was sold.

1B. (iv) If the property was vacant, there was no material change in risk and therefore no violation of Statutory Condition 4.

[27] *MacLean v. Dominion Insurance Corporation*, above, Hallett, J. at p. 1040 stated:

> The fact that the property became vacant was a material change to the risk within the control and knowledge of the plaintiff and as the insurer was not notified in writing, the contract is avoided.

[28] At p. 1041:

> The plaintiff failed to notify the insurer of the vacancy which, under the circumstances, was a change material to the risk and the policy on this ground is avoided.

[29] The solicitor for the Killicks in his brief refers to *Pentagon Investments Ltd. v. Canadian Surety Co.* (1991), 108 N.S.R. (2d) 148. I apply the same onus on the insurance company

and with respect to whether "vacancy" can apply to a rental property, I agree partially with the submission advanced by the Killicks' solicitor that some vacancy time is reasonably expected with respect to a rental property and it will likely occur between tenancies. I have already found as a fact that the Killicks were clearly aware of, from the very outset, the thirty day vacancy exclusion in their policy when the property was sitting vacant for sale. In this situation, however, there was no possibility of a renewed tenancy by virtue of the determination of the Killicks to sink or swim on the sale of the property and this determination was made no later than December the 12th, 1991 and quite probably at an earlier date and the extent of the vacancy leaving this property empty, eliminating its availability throughout that time period for rental, rendered the property vacant for such a period of time as to result in the establishment of material change and risk and violation of Statutory Condition No. 4 by the Killicks.

1C. If the Defendants violated the policy exclusions, then no payment should have been made to CIBC under the Standard Mortgage Clause, as CIBC had knowledge of the vacancy.

[30] It is the evidence of Mr. Killick that he advised Mr. Bayne that the property was vacant. Mr. Bayne emphatically denies having been told any such thing and his evidence is that the Company had no knowledge that it was vacant until the discovery of the damage in February, 1992. I accept and prefer the evidence of Mr. Bayne and find that neither CIBC nor Canadian Bank of Commerce Mortgage Corporation had any knowledge whatsoever that the property was vacant during the period October to February the 17th, 1992.

1D. If the CIBC had no knowledge, then relief should be granted to the Defendants pursuant to s. 171 of the *Insurance Act*, as the policy exclusions create an unjust or unreasonable result.

[31] Both the Canadian Imperial Bank of Commence and the Canadian Imperial Bank Mortgage Corporation treated the Killicks reasonably and fairly throughout. Initially, the Killicks, after signing the mortgage, wished partial releases for lots and they were accommodated. The General Insurance agent, David Cormier, advised the Killicks in no uncertain terms that the insurance coverage changes when a property is vacant and I have already found that neither CIBC nor the Mortgage Corporation had any knowledge of the vacancy of the property from October, 1991 to February the 17th, 1992. The Killicks directed their own destiny, they retained the operational management of their home, they decided to give the tenant Notice to Quit based on their hope that a Conditional Offer to Purchase would crystalize, they declined to rent the property, even though Kathy LeBlanc conveyed to them in December, 1991 of the availability of a tenant who would be interested in considering purchase of the home in due course. They deliberately created the vacancy on the strength of a Conditional Offer and continued the vacancy in the hope of sale. The Killicks failed to arrange any adequate inspection of their property, continuation of oil or other utilities, discontinuance of water, drainage of the system, etcetera, and have brought upon themselves the consequences of this action. People like Ms. West and Vernon Whynot went out of their way, as did others from time to time, in bringing to the attention of the Killicks the need for them to make decisions with respect to the operational care of their home. Overall, the

Killicks have been treated extremely fairly by all persons involved. Their own conduct over such a prolonged period does not bring them anywhere near the appropriateness of judicial discretion and relief under s.171 of the *Insurance Act*.

1E. If the Defendants are liable, then the amount paid to CIBC was in excess of the policy terms and the required Actual Cash Value payment.

[32] Halifax Insurance secured an estimate of the cost of repairs of the damage caused by water. The extent of the damage has been fully canvassed in the evidence and it was substantial, requiring removal of basics such as ceilings, walls, etcetera. The estimate I find as a fact was much less than the cost of the actual damage done because, for some reason, it did not include the plumbing damage which was subsequently addressed by a subsequent purchaser who had to replace various pipes, hoses and the toilet. The estimate of damage substantially for basics such as the removal or replacement of gyproc**,** Burobond filler moulding, plus painting and wallpapering which would essentially put the property back in the shape it was prior to the water damage but not to make improvements by way of changes or otherwise. Some doubt was cast on the requirement of cushion floor in the main kitchen, an item in the amount of $391.57 and it will be disallowed.

[33] Stephen Johnston, a claims analyst with Halifax Insurance, contacted the Killicks who had been located in Hull, Quebec through the services of a tracing firm. The Killicks advised Mr. Johnston to deal with a solicitor by the name of Robert Pitzeo and Mr. Johnston wrote to him June the 7th, 1993 referencing the Standard Mortgage Clause and requesting an early response to several inquiries about the vacancy of their property. No response was received

to this letter and on July the 8th, 1993, Stephen Johnston wrote again enclosing a copy of Mr. Colpa's Statutory Declaration which, amongst other things, set out that CIBC Mortgage Corporation was never aware that the insured property had been vacant beyond thirty days. The letter specifically requested Mr. and Mrs. Killick to view the Statutory Declaration and respond. This letter brought an acknowledgment July the 16th, 1993 from the lawyer indicating he had passed it on to the Killicks' attention and was awaiting a response. Mr. Johnston wrote again July the 15th and Mr. Pitzeo on July 22nd acknowledged and advised that he had no instructions from the Killicks in this matter. He confirmed the Affidavit (Statutory Declaration) was forwarded to the Killicks for comment. Mr. Johnston wrote the Killicks; solicitor again September 21st advising that the Company found the repair estimate to be reasonable and that they would be paying out the cost under the previously referenced Mortgage Clause on September the 24th and specifically requesting that if the Killicks had any differences of opinion with respect to the Statutory Declaration, that he be contacted prior to that date. Mr. Johnston provided a copy of the repair estimate and concluded his letter with "prior to the initiation of such action, I will still be open to a compromise in this matter. I await your response."

[34] All of this correspondenc**e** produced silence from the Killicks.

[35] I am satisfied as to the reasonableness and that the terms of the policy have been met in relation to the repair estimate which is less than the total repairs necessary flowing from the water damage and after deducting the deductible cost of premium and the one disallowed item of $391.57, the amount of recovery is $13,832.86.

ADDITIONALLY

[36] The Killicks in argument raise a question as to the entitlement to subrogation. This was not pleaded in the Defence, however, I will comment. The Contract of Insurance included the Standard Mortgage Clause and, in my view, it is to be interpreted as authorizing the subrogation claim of the Halifax Insurance Company. The file record is clear that there is absolutely no duplication and the damage to the security arises from the negligence of the owners and they should not be allowed to escape their Contractual Agreement. In any event, the Halifax Insurance Company amended its pleading to claim in contract and I find in the alternative clear entitlement in contract for recovery by the Halifax Insurance Company.

Issue No. 2: If the Defendants are liable, have the Defendants met the burden of proving on a balance of probabilities that the Third Party, Century 21, should indemnify them for the Plaintiff's claim, because of breach of contract and/or negligence in their dealings with the Defendants?

[37] I addressed this issue in the Third Party motion for non-suit. The Killicks did not establish any *prima facie* entitlement in contract or negligence against the Third Party. *Barrett, et al v. Gaudet* (1994), 134 N.S.R. (2d) 349 (N.S.C.A.). The evidence discloses a rental arrangement entered into by the Killicks with Century 21 expert/Kathy LeBlanc which was intended to provide authority for the acquisition of satisfactory tenants in return for a fee in part based upon the rental income achieved. The Killicks retained onto themselves all

responsibility for the security of their home, total responsibility with respect to the utilities - heat, electricity and water and, for a period of time, made arrangements for a co-worker to apparently attend upon the property and it is clear that whatever reliance, if any, they had on this individual in the period October to February, 1992 was not fulfilled. The actions of people such as Rod Lusby, Kathy LeBlanc and David Cormier were efforts to assist but the Killicks very clearly retained the authority and responsibility for the policing inspection as related to the security and utilities for their home. The Killicks presented no evidence except their own subsequent stated belief that their Rental Agency Agreement was something more than what I found as a fact was intended by the parties.

[38] The evidence clearly establishes that the Killicks had an initial preference for sale and with the passage of time were developing an interest in walking away from the property. Tenants had been found under the Rental Agreement, however, the Killicks gave notice and created the final vacancy in the hope and expectation of accepting a Conditional Offer to Purchase. This did not materialize and on or about December the 11th, 1991 Cathy Kent provided Ms. LeBlanc with a security deposit in the amount of $250.00 and a rental cheque of $500.00 which represented a $50.00 a month increase over the previous rental terminated by the Killicks. The Killicks refused the rental and I found as a fact without any reservations that no later than December the 11th, 1992 the Killicks had decided it was a sale or abandonment and had effectively terminated the Rental Agreement. I find absolutely no negligence or contractual liability on the Third Party.

[39] In addition, there was no evidence whatsoever that the Third Party had any knowledge, let alone responsibility, for any Rental Agreement. Goldmark Properties Limited took over the

responsibility for the existing agreements of Purchase and Sale from its predecessor but I repeat, there is no evidence that it had any knowledge or assumed any responsibility, in any event, in relation to the inspection or otherwise of the Killicks' property.

PRE-JUDGMENT INTEREST

[40] Payment was made by the Halifax Insurance Company October 27th, 1993 in the amount of $14,224.43. I have found the recoverable loss to be $13,832.86. Halifax Insurance is entitled to pre-judgment interest, however, the question arises as to the term of entitlement. Normally, as a practical matter, pre-judgment interest is allowed for a four year period. *Thomas-Canning v. Juteau* (1993), 122 N.S.R. (2d) 23. I feel compelled to raise this issue because the Killicks are self-represented. I did not provide an opportunity for the parties to advance argument on this point and therefore would ask that they do so in conjunction with their various representations on the issue of costs.

COSTS

[41] Counsel and the Killicks are entitled to be heard on the matter of costs and disbursements and I would ask all parties to exchange and file their views with respect to costs and disbursements, including any responses they have to each other as soon as possible.

RESULT

[42] The Plaintiff is entitled to judgment in the amount of $13,832.86.

J.