

**DECISION AND ORDER**

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**  
**Cite as: Arnaout v. Ferla, 2004 NSSM 47**

BETWEEN:

Name: AZMI ARNAOUT

- APPELLANT

Name: SHELLY M. FERLA

- RESPONDENT

DATE OF HEARING: May 11, 2004

**Revised Decision:** The text of the original decision has been revised to remove addresses and phone numbers of the parties on August 23, 2007.

**DECISION**

- [1] The landlord, Azmi Arnaout, appeals a decision of the Director of Residential Tenancies dismissing his claim for lost rent and costs, and for cleaning the premises. The tenant, Shelly Ferla, appeared in person on the appeal. Mr. Arnaout also appeared in person. He was accompanied by his solicitor, Lloyd Robbins.
- [2] Ms. Ferla entered into a written year-to-year lease with the landlord beginning September 1, 2003. She took occupancy of the premises on August 24<sup>th</sup>, 2003. Her mother, June Ferla, lived with her, but was not a party to the lease. They have a 12 year old Shetland Sheep dog who also lived in the premises. The premises are the top of an over/under duplex built in 1999.
- [3] The downstairs is occupied by a couple, Mr. and Mrs. Wayne Twiss, and their adult daughter. Mrs. Twiss smokes. Ms. Ferla claims that cigarette smoke filtering into her environs caused a "significant deterioration in

health". She obtained a statement of her doctor, George Lee, in confirmation, and gave the landlord approximately eight weeks' notice under section 10 C of the *Residential Tenancies Act*. She and her mother moved out November 30, 2003. The landlord was unable to find a tenant through the winter and early spring. A new tenant is taking occupancy on June 1, 2004.

- [4] The issue, in my opinion, is whether the a doctor's check in the box on the form provided by the Director of Residential Tenancies, or indeed any other certificate or statement by a doctor, to the effect that a tenant has suffered a "significant deterioration of health" is conclusive and entitles a tenant to vacate on one month's notice. In other words, is all other evidence irrelevant to the question of a tenant's right to quit under section 10 C of the *Act*. The Director's opinion is that the form completed by a doctor is conclusive of a significant deterioration in health and that since it had been supplied to the landlord with a proper notice to quit, there were no other issues to be decided. The Director dismissed Mr. Arnaout's claim for rent.

The Act says:

*10C Notwithstanding Section 10, where a tenant or a family member of a tenant in a year-to-year tenancy has suffered a significant deterioration in health that, in the opinion of a medical practitioner, results in the inability of the tenant to continue the lease or where the residential premises is [are] rendered inaccessible to the tenant, the tenant may terminate the tenancy by giving the owner*

*(a) one months notice to quit; and*

*(b) a certificate of a qualified medical practitioner evidencing the significant deterioration of health.*

I am not obliged, in my view, to accept the check in the box, or indeed any other doctor's statement or certificate. In my opinion, the proper construction of section 10C is that the certificate "evidences" the significant deterioration in health. In many cases, the doctor's statement will, of course, provide compelling evidence, but I conclude from a reading of the section and the Act as a whole that it was not the intention of the legislature to delegate to the medical profession the decision whether a lease should be terminated because of ill-health.

The intention of the legislature, in my opinion, is to provide tenants who suffer a significant deterioration in their health an opportunity on short notice to move out of premises which they can no longer use because of the significant deterioration.

The purpose of the legislation was not to give tenants a right to terminate leases if they could convince their doctors to check a box in a pre-printed form.

I am satisfied as a matter of fact, furthermore, that Ms. Ferla has not suffered a significant deterioration in health. First of all, the form signed by Dr. Lee does not support that conclusion.

The form is not a certificate in any event. It is headed "Physician's Medical Condition Report". The doctor is asked, as a first question, whether "After examination of the patient, have you determined that there is a significant deterioration of health?" Then there is a box for "yes" and a box for "no". Checking a box is not much evidence.

The form provides room for the doctor's comments in response to the first and other questions and which I quote in full as follows. The questions are in italics.

*After examination of the patient, have you determined that there is a significant deterioration of health?*

patient reports nausea, headaches, nasal congestion and slight shortness of breath when exposed to cigarette smoke - much worse since moving into flat above smoker 1 1\2 months ago

*Has the patient had a previous history of the problem? If yes please indicate the date the medical condition first appeared?*

sensitive to cigarette smoke, scents, perfumes in the past (nausea/headache) by patient report

*In your opinion, do you believe the patient's condition relates to their living accomodations? If yes, please provide the evidence.*

patient reports smoker living in flat below - symptoms appear when smoke present

Dr. Lee testified at the hearing. He pointed out the temporal relationship between the reported symptoms and the reported cause, but could not add any objective determination of an illness or condition. He depended on Ms. Ferla's own report of symptoms.

The report and testimony of Dr. Lee, in summary, simply reiterates Ms. Ferla's statements of symptoms and the cause of them. I do not find Ms. Ferla's recital of her own symptoms to have acquired any more weight by virtue of its audience. The question was not asked, but I wonder if Dr. Lee's checking of the box was simply another restatement of his patient's self-report.

I am not satisfied that Ms. Ferla suffered a significant deterioration in her health. The most that can be said, if one accepts Ms. Ferla's evidence, is that she suffered transient discomfort. Ms. Ferla's kind of affliction, in my opinion, does not qualify as a "significant deterioration in health".

I reject Ms. Ferla's evidence in any event. I will explain why, not because I wish to sound harsh about her, but the facts seem to me to show how the obtaining of a medical certificate may be abused by tenants to break leases.

This is a modern duplex. Ms. Ferla did not say that cigarette smoke penetrated the interior of her living unit generally, but rather said there were two places where she encountered it; a vestibule and from an exterior deck. She said she encountered cigarette smoke in the vestibule as she came and went and it made her nauseous, congested her sinuses and so on.

The door leading to the Twiss unit from the vestibule is a sealed fire door. It does not even lead into the Twiss living quarters but to another vestibule and another door. Ms. Ferla lived at the top of the stairs. I am not satisfied smoke in any amount penetrated the area between in the vestibule she passed through or that even if it had it could affect her as she passed.

Ms. Ferla also says she was affected by cigarette smoke rising from the Twiss balcony below and flowing into her unit. I am not satisfied that this could be anything more than the merest whiff of smoke or that such a whiff could produce the symptoms she complains of. Closing a window would have stopped even the whiff.

To the extent that Ms. Ferla claimed it to be so, I do not accept that cigarette smoke would move in a general way from the unit below to her own.

Ms. Ferla moved in at the end of August. She gave her landlord notice at the beginning of October. Mr. Twiss testified, and I accept, that he and his wife work in Digby during the tourist season and were only home two days a week during September. In other words, she was almost never home to smoke during September.

Ms. Ferla did not complain about the smoke to the rental agent, nor to the

landlord, nor to the Twisses themselves. Ms. Ferla is not the sort of woman who remains quiet either. She is feisty. She complained aggressively about the condition of the carpets. Ms. Ferla, I conclude, would certainly have vociferously complained if the smoke had been any problem.

The duplex has an air exchange system. One can close windows and condition the air. Ms. Ferla says she did not know that she could operate the system during the summer. I am satisfied that if she had complained about the smoke she would have been told more about the system.

The landlord agreed to spend approximately \$600.00 to replace the carpet in one room. On September 24, some 10 days before she gave her notice, she obtained an estimate to replace more at a cost of almost \$2,000.00. One does not have a landlord replace carpets if one is going to move out as soon as possible.

Mr. Twiss is not happy that his wife smokes. He says, and I accept, that his wife is sensitive to his wishes and those of others and is careful about where and when she smokes. He says, and I accept, that his wife one day when Ms. Ferla's mother was visiting, lit up having asked and received permission. Ms. Ferla Sr. would, I conclude, have spoken to Mrs. Twiss about the smoking if it had been any problem.

Dr. Lee has no history from Ms. Ferla of complaints of sensitivity to scents and smoke prior to October, 2003.

Ms. Ferla remained in the premises for eight weeks after giving her notice. I cannot accept that anyone suffering "a serious deterioration in health" because of the condition of the premises would put up with them for that long. Health is all important. I would have expected Ms. Ferla and her mother to make other arrangements and sort out the financial aspects later.

Mr. Arnaout stuck me as a reasonable man. The leasing agent testified that he was. He agreed to replace some carpet, not because he believed replacement was needed but in order to accommodate Ms. Ferla. I conclude he would have responded had Ms. Ferla complained to him about the smoke.

If Ms. Ferla genuinely had such a sensitivity to cigarette smoke, then I would have expected her to have been diligent in stipulating to the rental agent that she could not live near or adjacent to other tenants who smoked. Ms. Ferla says only that she herself was asked whether she or her mother smoked and that she relied on that to conclude the landlord would not permit smokers. I conclude she had no pre-existing aversion to cigarette smoke. I conclude further that she could not

have spontaneously contracted it in September, 2003.

Ms. Ferla simply chose upon the cigarette smoke as a pretext to break the lease. She had no justification. The landlord is entitled to his rent as claimed. Ms. Ferla moved out at the end of November, three weeks before Christmas at the beginning of a brutal winter. I agree that premises are more difficult to rent during the winter. Summer is best. I have no trouble accepting Mr. Aranaout's testimony that he was unable to find a new tenant until the beginning of June.

Mr. Aranaout has sought a pro-rated portion of the leasing agent's fees. This is a cost of the landlord's business that is properly born by himself and not a damage that can be passed on.

I am not satisfied, on balance, that Ms. Ferla soiled the carpet. The landlord has claimed \$226.55 to clean the carpets. The leases provides:

*Tenants promises to have carpets professionally cleaned at the end of the lease.*

I acknowledge my view on this is unorthodox, but I have never thought that the tenant's duty to maintain premises under the statutory condition included, or could be made by contract to include, a requirement to steam clean carpets on vacating. The statutory condition provides:

*Obligation of the Tenant - The tenant is responsible for the ordinary cleanliness of the interior of the premises and for the repair of damage caused by wilful or negligent act of the tenant or of any person whom the tenant permits on the premises.*

The standard is ordinary cleanliness. The tenant cannot be obliged to steam clean if the premises are left clean to that standard. Ordinary cleanliness does not require steam cleaning especially after a short tenancy.

## **ORDER**

Shelly Ferla owes the landlord, Azmi Aranaout, the lost rent in the amount of \$7,500.00, less the security deposit in the amount of \$625.00. Mr. Aranaout is also entitled to his costs as claimed in the amount of \$77.00. I allow the appeal and order Shelly Ferla to pay to Azmi Aranaout the sum of \$6,952.00.

Dated at Halifax, Nova Scotia  
this 17<sup>th</sup> day of May, 2004.

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**J. WALTER THOMPSON, Q.C.**  
**ADJUDICATOR**

Original	Court File
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