

2006/03/31

Claim No: SCCH 263412

Registry: Halifax

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as Williams v. Gonedre, 2006 NSSM 11

BETWEEN:

Darlene Williams

Appellant

Mathias Gonedre

Respondent

Adjudicator: Patrick L. Casey, Q.C.

Heard: March 21, 2006, Dartmouth, Nova Scotia

Counsel: Appellant - Self-Represented

Respondent - Self-Represented

ORDER AND DECISION

Nature of Proceedings

- (1) This is an appeal by the Tenant, Darlene Williams, from a decision of the Residential Tenancies Officer dated March 1, 2006.
- (2) The appeal was heard on March 21, 2006.
- (3) The Landlord, Mathias Gonedre, and his wife, Ngozi Gonedre, testified as did the Tenant, Darlene Williams, and her mother, Donna Lapierre.

Facts

- (4) The Landlord, Mathias Gonedre, and Tenant, Darlene Williams, entered into a Standard Form of Lease on November 23, 2005, with respect to the premises at E.A., Dartmouth, Nova Scotia.
- (5) The Tenant has since paid rent of \$465.00 each month.
- (6) On December 28, 2005, the Landlord delivered to the Tenant a written Notice expressing concerns about garbage removal and the condition of the backyard of the property. The Notice also contained the following statement:

“We live in a good neighborhood. It is important to maintain a good social and healthy environment by:
-Avoiding any excessive noise that can disturb others such as banging on floors and walls, shoving furniture around in the night, loud arguments and conflicts that can attract public attention or the police.”
- (7) An incident had occurred on December 18, 2005, at which time, the front entrance door to the Tenant’s apartment unit was damaged.
- (8) A further incident occurred on February 11, 2006. During the night, a number of windows were broken, including those on the main entrance door, the side doors, the main window, and side windows on the side where the Tenant’s unit is. From the nature of the damage, I conclude that the windows were broken deliberately.
- (9) On February 13, 2006, following the second incident, the Landlord served a written Notice to Quit on the Tenant, giving notice to the Tenant to deliver up possession of the one bedroom apartment at E.A., Dartmouth, Nova Scotia, effective Sunday, February 19, 2005.
- (10) The Landlord invoked Section 10(7A) of the Residential Tenancies Act, R.S., c. 401, s.1, which provides as follows:

“10(7A) Notwithstanding subsections (1), (6) and (7), where a tenant poses a risk to the safety or security of the landlord or other tenants in the same building on account of the contravention or breach by that tenant of any enactment, notice of termination may be given to the tenant effective not earlier than five days, or such shorter period as the Director may direct, after the notice is given.”

(11) The Notice to Quit reads in part as follows:

“The 5 days quit notice is because your tenancy exposes my family, my self as the landlord and the entire neighborhood to the **risk of safety and security**. This is as a result of social affiliations and the people that harbor in your apartment. The insecurity of life and properties associated with these social affiliations has been manifested in the series of violent fights, breakages and threats that has continuously been taking place in and outside your residence. Thus, the need for an urgent action in order to protect the lives and properties in and the around the neighborhood.

Reflecting on some of the incidences brings to mind major breakages and police involvements in these cases as witnessed on the **December 18th 2005** (18 days after you moved into the apartment) and the most recent one that took place on the **11TH OF JANUARY 2006** usually at ungodly hours of the night.

- (a) The first fight on December 18th 2005 resulted to the breaking of the main entrance door of the apartment in the night.
- (b) The second occurred in the night of the 11th of February 2006, between 1am-3am resulting also to the breaking of:
 - The main entrance door glasses
 - The main window glasses
 - The side two doors glasses
 - And the two side windows glasses

In addition, it is your responsibility to repair all the damage on the property as a result of these fights and also vacate the above mentioned apartment by the expiration of the quit notice.

For further details on these cases, please refer to the police file reports **#0617261-11th December 2006**.

- (12) The dates referred to in the Notice to Quit document are erroneous and should have referred to February 11, 2006.
- (13) Following a hearing on February 22, 2006, at which time Mathias and Ngozi Gonedre, Darlene Williams and Donna Lapierre were present, the Residential Tenancies Officer found, in part, as follows:

“3. The landlords’ request for termination of tenancy is accepted based on the evidence presented at the hearing which centered on the windows in the tenant’s unit being deliberately smashed inward by a person or persons acquainted with the tenant and her unit. It is determined that the person or persons who broke the tenant’s windows were exact in their actions of breaking the tenant’s windows only, otherwise they would have broken the windows in the landlords’ unit which were only short distances from the tenant’s window. Furthermore there were other concerns expressed by the landlords regarding the tenant which substantiated their request for termination of tenancy including damage to the unit, noise, and fighting which were disruptive and disturbing.”

- (14) The Tenant appeals from that decision.

Issue

- (15) The issue is the application of the test in Section 10(7A) of the Residential Tenancies Act to the facts of this case.

The Legal Test

- (16) The Notice to Quit given in this case is not sufficient unless Section 10(7A) applies.
- (17) The legal test under Section 10(7A) was considered in the case of Ocean Equities v. Colley (2005) CarswellNS 397, a decision of Adjudicator W.A. Richardson of the Small Claims Court of Nova Scotia.
- (18) This authority is not binding, however, I find it persuasive.
- (19) I quote from the case as follows:

“37 A landlord who seeks to rely on s.10(7A) must accordingly prove on a balance of probabilities two things:

a. that there is a contravention or breach of an enactment *by that tenant*; and

b. the contravention or breach poses *a risk* to the safety or security of other tenants or the landlord.”

- (20) In the Ocean Equities v. Colley case, the allegation was that the Tenant was selling drugs from her apartment and, further, that her friends were gathering to sell and smoke drugs in the stairwell of the building.
- (21) Adjudicator Richardson found in that case that the test had not been met by the Landlord.
- (22) I quote from the decision as follows:

“45 First, insofar as the stairwell congestion is concerned, there was no evidence that Ms Colley knew of the problem or caused, condoned or encouraged it in any way. The evidence appears to be that the people involved always left once the security guard approached them. Nor was there any evidence that anyone appeared to be unduly

alarmed by the people. While they might have been justifiably irritated by noise, such irritation is not in my mind sufficient on itself to support a finding that there was a risk to safety or security.

46 Second, there was no evidence that Ms Colley was herself selling drugs in her apartment. The fact that an acquaintance of hers might do it after he left her apartment but before he left the building is not in my view alone sufficient to trigger the provision. Section 10(7A) requires the tenant to be evicted to be the one contravening an enactment. There was no eyewitness evidence of Ms Colley selling or providing drugs. Nor was there any clear evidence of her permitting the sale of drugs out of her apartment. Nor was the evidence sufficient to warrant a finding that Ms Colley was letting drug sellers into the building with the intent of abetting their activities inside the building.

47 In my opinion these types of activities would certainly justify an application under s.10(7A). However, the evidence here fell short of establishing any of these facts. The best that could be said was that an acquaintance of hers was contravening an enactment outside of her apartment.”

- (23) The threshold test in these cases is twofold. The Landlord must prove, firstly, that the Tenant has contravened or breached an enactment and, secondly, that the Tenant poses a risk to the safety or security of the Landlord or the Tenants in the same building on account of the contravention or breach by the Tenant of the enactment.
- (24) The Landlords reside in the same building. As indicated, I conclude, as did the Residential Tenancies Officer, that the actions of the person or persons who broke the windows were deliberate. This incident has understandably created a great deal of apprehension and fear for the Landlord and his wife.
- (25) However, in order to find in favor of the Landlord in this case, it must be proven that the risk to the safety or security of the Landlord is on account of the contravention or breach by the Tenant of an enactment.
- (26) The term “enactment” is not defined in the Residential Tenancies Act.
- (27) The natural meaning of the word “enactment” connotes the passing of a law or statute.

(28) Black's Law Dictionary provides the following definition:

“ENACT. To establish by law; to perform or effect; to decree. The usual introductory formula in making laws is, “*Be it enacted.*” In re Senate File, 25 Neb. 864, 41 N.W. 981”

(29) Section 9(1) of the Residential Tenancies Act provides as follows:

“Statutory conditions

9 (1) Notwithstanding any lease, agreement, waiver, declaration or other statement to the contrary, where the relation of landlord and tenant exists in respect of residential premises by virtue of this Act or otherwise, there is and is deemed to be an agreement between the landlord and tenant that the following conditions will apply as between the landlord and tenant as statutory conditions governing the residential premises:

Statutory Conditions

.... 3. Good Behaviour - A landlord or tenant shall conduct himself in such a manner as not to interfere with the possession or occupancy of the tenant or of the landlord and the other tenants, respectively.

4. 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....”

(30) As the statutory conditions which are incorporated into every residential lease are part of the applicable legislation, I find these constitute an “enactment” for purposes of Section 10(7A).

(31) Consequently, the breach of any statutory condition by the Tenant is sufficient to form the basis of a breach of an enactment pursuant to Section 10(7A) so long as the second part of the threshold test is met, namely, such breach must pose a risk to the safety or security of the Landlord or other Tenants in the same building on account of the contravention or breach.

- (32) The issue in this case is whether the Tenant has breached the “good behavior” or “obligation of the tenant” statutory conditions (none of the other statutory conditions would appear to be relevant) and whether if such breach has occurred, then on account of such breach, there is a risk to the safety or security of the Landlord.
- (33) I would state at this point that there were some discrepancies between the evidence of the Landlord and his wife and the Tenant and her mother.
- (34) The Landlord and his wife had various complaints about the Tenant, including:
- (a) The damage to the main entrance which occurred in the December 18 incident described above;
 - (b) The February 11 incident;
 - (c) Noises coming from the apartment at all hours of the evening;
 - (d) Other people living in the apartment, including the Tenant’s mother.
- (35) The Tenant and her mother deny the allegations.
- (36) Where there is a discrepancy between the testimony of the Landlord and his wife and the Tenant and her mother, I accept the evidence of the Landlord and his wife.
- (37) The evidence that is most persuasive is the telephone call which the Tenant’s mother placed to the Landlord several days after the February 11 incident. In that telephone call, she indicated, in part, that she had information that her daughter, the Tenant, knew the people who damaged the windows, that they were involved in illegal activities, and that she had called the Police and that the Police would not act.
- (38) I conclude on the balance of probabilities that the Tenant did know who caused this damage, and it is more than likely that the damage was caused deliberately as a form of retaliation for some action or activity that the Tenant was involved in with the individual or individuals in question.
- (39) There is no other reasonable conclusion to be drawn from the totality of the evidence.
- (40) The Landlord and his wife described how they are genuinely afraid for their safety and they are unable to sleep at night. In my view, it is not necessary for any further incidents to occur, there is already sufficient risk to their safety.

- (41) Consequently, I am prepared to conclude based on the balance of probabilities that the Tenant in this case has breached Statutory Condition 3 and, as a result of her breach of this enactment, a risk has been posed to the safety or security of the Landlord, and I find therefore that the Landlord has proven both parts of the threshold test as set out in Section 10(7A) of the Act.
- (42) As a result of my findings, the Notice to Quit is proper and the Tenant must vacate.
- (43) I would direct the Tenant to provide vacant possession of the premises known as E.A. on or before Monday, April 10, 2006, and the tenancy is terminated effective that date.

Dated at Dartmouth, Nova Scotia,
on March 31, 2006.

Patrick L. Casey, Q.C., Adjudicator

Original	Court File
Copy	Appellant
Copy	Respondent