IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: Mandaville Court v Muise, 2008 NSSM 11

Date: 20080214
Claim: SCCH 290099
Registry: Halifax

Between:

Mandaville Court

Appellant

v.

Lisa Muise

Respondent

Adjudicator: W. Augustus Richardson, QC

Heard: February 5, 2008 in Halifax, Nova Scotia.

Appearances: Heather Scott, Property Manager, for the Appellant
Robert Kennedy and Megan Lesley, Dalhousie Legal Aid, for the Respondent Lisa Muise

By the Court:

[1] This is an appeal by a landlord of a decision of the Residential Tenancy Officer dated December 21, 2007. The appeal raises the following issues:

a. does a landlord have to have a reason for its decision to refuse to renew (that is, to issue a Notice to Quit) a year to year lease in respect of a tenant who lacks tenure (that is, who has been a tenant for less than five years)?

b. if not, does the landlord have to offer a reason where the tenant alleges that the landlord has issued the Notice to Quit in retaliation for the tenant exercising his or her rights under the *Residential Tenancies Act*, RSNS 1989, c.401, as amended (the "Act"), contrary to s.20 of the Act; and

c. who has the burden of establishing that the landlord is acting (or not acting) in retaliation of such an exercise?

[2] For reasons set out below it is my decision that:

a. the onus of establishing retaliation lies on the tenant making the allegation;

b. a landlord is not required to offer an explanation for the issuance of a Notice to Quit to defend against such an allegation, though the failure to do so may *in some cases* mean that the landlord has nothing to counter any *prima facie* case that may have been made out by the tenant;

c. if the landlord was required to offer reasons, there was on the evidence adequate reason for its refusal to renew the lease; and

d. the tenant in this case had failed to establish on a balance of probabilities that there was retaliation.

History and Background to the Appeal

[3] Star E. Havill, operating as a landlord under the name Mandaville Court (the "Landlord") entered into a standard form of lease with Lisa Muise and Derek Chambers as tenants on or about November 1, 2004. The lease was for Apartment 308 at 11 Mandaville Court. The monthly rent was $725.00. It was a year to year tenancy, with an anniversary date of November 1st each year. Pursuant to its terms the tenancy "continues until the landlord or the tenant gives proper notice to terminate:" Exhibit A-2, clause 6. (By the time of the appeal Mr Chambers had moved out and was no longer a resident of the rented premises.)

[4] Ms Muise paid her rent on time. No evidence was introduced at the hearing of any problems with the tenancy during the first year. The lease automatically renewed itself on November 1, 2005 and again on November 1, 2006.

[5] I am satisfied on the evidence and so find that at some point after November 1, 2006 the landlord began to receive complaints regarding Ms Muise and noise. The noise was connected to or associated with by her and her children. She has two children. As of the date of the hearing they are 7 and 4 years of age. They would have been younger a year ago. She also babysits two

children, one a 3 1/2 year old, the other a one year old. She admitted on cross that that meant that by times she would have four young children in her apartment.

[6] On March 26, 2007 Ms Heather Scott, the landlord's property manager, sent a letter to Ms Muise. It stated that the landlord was "receiving complaints about your activities." It noted that as reported to the landlord, Ms Muise had "been shouting and, generally, loud in the third floor hallway." There were also complaints "regarding the amount of noise coming from within your apartment – loud voices, foot stomping and unnecessarily noisy children." Ms Scott concluded with the observation that "this is a quiet building where residents have the right to enjoy peace and quiet in their homes." She added that "[t]his type of activity cannot be tolerated" and expected that "these activities will stop immediately" and that "we will receive no further complaints:" Exhibit A-5.

[7] Ms Muise replied to this letter on March 31st. She explained that the "shouting" had been an "isolated incident" caused by her discovering the smell of marijuana smoke issuing from the apartment across the hall from her. Turning to the issue of her children, she stated as follows:

> "First of all my children are 6 and 2 years old. My kids have extremely busy schedules that keep us out late many days. For the short time we are home between supper and bed time ***I will not stop my kids from being kids***. They have the right to play in their home. However with that said I recognize there is a level of noise that is unacceptable and in the future my children and I will maintain that level." (emphasis added)

[8] Ms Muise added in her letter that she understood that there had been a complaint "a few weeks ago regarding my kids being too loud." She understood that the superintendent had been called to ask her if "we would quiet down." However, since she had not received any such call she could not "recall what we were doing nor can I resolve this." She added that "[a] simple courtesy call could have prevented this issue from going this far."

[9] Ms Muise then suggested that the conduct of other tenants and their children in the building was such that the landlord's time would be better spent dealing with that conduct as well as various "safety issues" which she then outlined. She observed that "[a]ll of these issues should outweigh my outburst of being fed up with the smell of marijuana and my kids noise." She concluded with the statement that "[i]n future, if there is a concern about myself or my children, please call to discuss before sending such an offending letter."

[10] This letter was consistent in tone and approach with the evidence that Ms Muise gave on the stand. On the one hand she admitted, somewhat grudgingly, that her children may have been noisy: “I can’t say they never run around, I try to quiet them down, I try to keep the noise level down ... but they were 2 and 6 at that time.” On the other hand and at the same time she tended to deny outright that there was any noise, and to suggest that the real problem lay with a “failure to communicate” on the part of those making the complaints: “I don’t think that my kids are misbehaved in any way, I think the noise complaints are unfounded, a phone call could have solved the issue without a letter which I found very offending to me.”

[11] On April 3rd Ms Scott responded to Ms Muise. She appreciated Ms Muise’s “comment that you would endeavour to keep the noise under an acceptable level” but noted that “I have since received further complaints.” The complaints were “the same–that your children are unnecessarily noisy in the hallway and in your apartment.” She repeated her request that Ms Muise “show respect to those living around you and keep the noise down both in the hall and in your home.”

[12] Ms Scott added that she had reviewed the other issues raised by Ms Muise in her letter and stated that they “were already being addressed.” (At the hearing she explained, by way of example, that the tenants across the hall who had been smoking marijuana were no longer tenants.) She concluded with the observation that “the fact that others are disturbing residents, does not release you from your responsibility.” She asked that Ms Muise do “[her] part to ensure this building is a pleasant, quiet place to live.”

[13] Ms Muise did not respond in writing to this letter. Instead she went to the landlord directly and spoke to his wife. In her evidence at the hearing she said that she“explained I got these letters–I said that I found it offending that I was getting these letters–I asked why aren’t we communicating better–I didn’t feel that my children were being unnecessarily noisy–there were other children in the building that ran through the building. I said that my kids were the only ones on the third floor, and maybe there was a mistaken assumption that the kids were mine instead of others on other floors–I wanted the dates of the complaints so I could see if it was my kids, but I never got that information–I wanted to know if it really was my kids.”

[14] There was no evidence presented as to the date of this meeting. Given that Ms Muise responded quickly the first time I find that the meeting took place within a week or so of the letter of April 3rd.

[15] On May 26, 2007 there was a fire alarm at 11 Mandaville Court. Ms Muise's evidence was that the superintendent silenced the alarm. She thought she smelled smoke and accordingly used a neighbour's phone to call the fire department. The fire department attended the scene, investigated but did not find a problem. The fire department did, however, strongly caution the superintendent that he was not to silence an alarm without the authorization of the fire department: see also Exhibit R-1, Tab10. Ms Scott's evidence was that the landlord did not become aware of this incident until the December 2007 hearing before the Residential Tenancy Officer, when Ms Muise's representative put it into evidence in support of their allegation of retaliation. She entered into evidence as support for her evidence on this point a letter dated August 29th, 2007 from the fire department to the landlord referring to an alarm call to 15 Mandaville Court (which is adjacent to 11 Mandaville Court) as being the "first free false alarm at this address within the past twelve months:" Exhibit A-4.

[16] Ms Scott's evidence at the hearing was that the noise problems did not change following the letter of April 3rd. As a result the landlord decided not to renew Ms Muise's lease. On July 10, 2007 Mr Havill signed a letter to Ms Muise indicating that "we will not be renewing your lease and respectfully request that you vacate your apartment by October 31, 2007." The letter was served on Ms Muise on July 24, 2007: Exhibit A-7.

[17] Ms Muise responded by way of a letter dated August 10th to Mr Havill. She stated that she was "very surprised and confused about receiving such a letter, as I am not aware that I have done anything to warrant this decision." She explained that she and her children "have built a home here and it is central to my son's school and all of their activities." They did not want to leave. She requested the opportunity to meet "to discuss the reasoning for your decision," adding that "[t]his would mean a lot to my family and me and would hopefully allow us to clear up any misconceptions or misunderstandings."

[18] The landlord did not respond to this letter. Nor did he respond to any subsequent overtures to enter into mediation.

[19] Ms Muise then took her concerns to the press. On September 8, 2007 her story was reported in the *Chronicle Herald*. She was reported as saying that she had never been late with the rent "or caused any disruption since moving in nearly three years ago;" and that she thought her lease "was ended because the landlords just don't like her:" Exhibit A-2. Stories along similar lines were reported in the *Halifax West-Clayton Park Weekly News* on September 21st and November 2nd, with the exception that in the latter she was also reported as saying that she "has had just one complaint about her children making too much noise:" *ibid.*

[20] Ms Muise did not move out on October 31, 2007. The landlord filed an application to the Director of the Residential Tenancies Board for an order for vacant possession on the grounds that the tenant had been given three months notice to vacate and was now overholding.

[21] The hearing took place December 13, 2007. In the decision dated December 21, 2007 the Residential Tenancy Officer found that:

a. there had been an issue of noise but "eventually the matter resolved itself;"

b. landlords do not normally have to give a reason for issuing a Notice to Quit to a non-tenured tenant; however,

c. the tenant had alleged that the landlord's refusal to renew her tenancy agreement was an act of retaliation;

d. once a tenant "claims retaliation and puts forth a reasonable scenario that they were exercising their rights, as in this case" the landlord was "obligated to put forth a reason as to why they were issuing the notice to quit;"

e. the superintendent had been cautioned by the fire department on May 26, 2007; and

f. based on that fact "and the fact that the landlord chose not to defend their reasoning behind their notice to quit ... the notice to quit ... was retaliatory."

[22] The Officer accordingly set aside the Notice to Quit.

[23] The landlord then brought this appeal on the grounds that the Director "failed to fully consider the evidence showing adequate reasons for the landlord to decline renewal of lease for his untenured tenant."

The Landlord's Submission

[24] Ms Scott made two basic points:

a. a landlord was not obligated to give a reason for its decision not to renew a tenancy of less than five year's duration, and, in this case and in any event,

b. if a reason was needed Ms Muise had been consistently noisy and had failed to correct the problem.

The Tenant's Submission

[25] Mr Kennedy and Ms Lesley on behalf of Ms Muise agreed that in normal course a landlord did not have to give a reason for refusing to renew a tenancy agreement of less that five year's duration.

[26] However, that right was subject to this caveat: the motivation for refusing to renew could not lie in "retaliation" for a tenant's exercise of his or her rights under the Act. They argued that in this case the landlord's refusal to renew the lease was retaliation for:

a. Ms Muise's fire alarm call;

b. bad relationship with the superintendent; and

c. asserting her right to quiet enjoyment by way of her repeated requests for an explanation from the landlord as to why her lease was not being renewed.

Statutory Context

[27] In respect of a year to year tenancy (which is what we are dealing with here), notice to quit without cause under the Act can be given by the landlord or tenant three months prior to the anniversary date: s.10(1)(a). Notice to quit may be given before that date for certain types of cause: where the rent is in arrears: s.10(6), or where the tenant poses a risk to the health or safety of other tenants or property: s.10(7A).

[28] The Act then provides that a Notice to Quit "may not be given" to tenants who have resided in a residential premises for five consecutive years except in certain specified conditions, one of which is default on the part of the tenant of "any of his obligations under this Act, the regulations or the lease:" s.10(8)(e).

[29] Separate and apart from the issue of whether or not a Notice to Quit can be issued, a landlord (or a tenant) may apply to the Director of Residential Tenancies for an order terminating the tenancy agreement where it is alleged, *inter alia*, that one or the other is in breach of an obligation under the lease: s.13(1)(b), s.17A(e).

[30] Finally, on any application to enforce the provisions of the Act (and, for example, a Notice to Quit in respect of an overholding tenant), "[t]he Director or the Small Claims Court may refuse to exercise, in favour of the landlord, the powers or authorities under this Act or may set aside a notice to quit if the Director of the Small Claims Court is of the opinion that a landlord has acted in retaliation for a tenant attempting to secure or enforce the tenant's rights under this Act or the *Rent Review Act*:" s.20.

The Issues

[31] In my view this appeal raises the following issues:

a. who has the onus of establishing that a landlord is acting in retaliation pursuant to s.20;

b. what is it that has to be established; and

c. did the landlord act in retaliation for Ms Muise attempting to secure or enforce her rights under the Act?

1: Who Has the Onus?

[32] In my opinion the onus of establishing that a landlord, in issuing a notice to quit to a non-tenured tenant, is acting in retaliation for that tenant's attempt to secure or enforce his or her rights under the Act lies on the tenant. There are two reasons, one short and one long, for coming to this conclusion.

[33] First, as a general rule the onus of establishing any relevant allegation lies on the person making the allegation. If the Legislature intended to reverse this rule it could have said so.

[34] Second, to require the landlord "to defend their reasoning behind their notice to quit" (to use the Residential Tenancy Officer's words) would be to erode the landlord's normal right under the Act to refuse to renew a tenancy of less than five years. To understand how this might happen one must consider the statutory framework and what I consider to be the underlying policy reasons for that framework.

[35] As noted above (and as acknowledged by Mr Kennedy in this case), in normal course a landlord does not need to provide a reason for its refusal to renew a lease at the end of its term prior to the elapse of five years. In my opinion the Legislature's decision not to require cause for refusal to renew prior to five years, but cause thereafter, represents a result of the a balancing of two interests.

[36] On the one hand there is the interest of the tenant in security of tenure. The longer a tenant lives at an address the more he or she sets down roots and develops expectations that are based on the address of the "home" they have established. In Ms Muise's case, her children attend the local school and developed friends and activities in the neighborhood. This interest is one that is worthy of social support. It is difficult to create a sense of community where people are forced to move every year to a new location.

[37] On the other hand there is the interest of the landlord in securing tenants who are a "good fit." Creating a good fit requires (from the landlord's perspective) more than just a tenant who pays the rent on time. They have an interest in tenants who get along with the landlord (which is particularly important for landlords who are owner-occupiers) as well as with other tenants (which is perhaps more important for owners of large, multi-unit buildings). Moreover, what makes a "good fit" can be subjective and can depend on the particular personalities of the particular tenant, his or her co-tenants and the particular landlord. It is difficult to share one roof. People come and go at different times; they have different tastes in music, in food, in cleanliness. Some like music and parties, some do not, or at least not at the same times. Some have children or pets or both, some do not. Some make constant demands for attention, some are virtual ghosts. Some do nothing to maintain their premises, some do everything. These differences in lifestyle and attitude can create friction which leads to regret on the part of the landlord and the question "why do I have to share my roof with this person." But it may take time and experience–more than a year's worth–for a landlord to determine whether or not the "fit" is right for the landlord and (if there are any) his or her other tenants.

[38] These differences or irritations may not and often do not amount to a default on the part of the tenant of "any of his obligations under this Act, the regulations or the lease." And

economic reality being what it is landlords will no doubt in many cases be prepared to put up with such differences or irritations so long as the tenant is in compliance with their obligations under the lease. But the fact that this may be so in many cases does not mean that it must be so in all. There may be cases, particularly but not necessarily involving owner-occupiers, where the landlord is not prepared to accept those irritations. He or she discovers that they do not want to share their roof with that tenant.

[39] In my opinion the fact that the Legislature expressly refrained from requiring a landlord to give a reason for a notice to quit reflects a recognition of this fact. Some relationships–including landlord and tenant relationships– are just not meant to be. The reasons that might explain a landlord's desire to end the relationship may not constitute a breach of the lease. But they nevertheless deserve consideration.

[40] In my opinion the Legislature balanced those two interests by creating the regime that it did. Prior to five years a landlord may give a notice to quit at the end of a term without providing any reason. This weighs the landlord's interest in a "good fit" more strongly. But five years is enough time for a landlord to decide whether or not he or she can live with the tenant in relative harmony. Once that period is up the balance shifts to the side of the tenant, and makes paramount the tenant's interest (one that intensifies over time) in security of tenure. In such a case the landlord may give notice only for specified cause.

[41] The question then becomes whether this balance should be altered or amended by requiring the landlord in a non-tenured situation "to defend their reasoning" in the case of an allegation on the part of the tenant that the landlord is acting in retaliation. In my opinion to require the landlord to give a reason in such cases would be to erode the landlord's general right (prior to the tenant's obtaining tenure after five years) to refuse to renew a lease for any or indeed no reason at all. As discussed above, those reasons may be amorphous or subjective. They may not be particularly cogent in an objective sense, though they remain subjectively important to the landlord in question. To require a landlord to "explain" their conduct whenever a tenant alleges "retaliation" risks diverting the issue from one of retaliation to one of whether the landlord was acting reasonably–with the implication being that an "unreasonable" reason was "retaliation."

[42] This does not mean, however, that a landlord faced with a s.20 allegation need never give evidence as to its reasons for refusing to renew a lease in the case of a non-tenured tenant. There may be cases where the tenant's evidence is sufficient, on its own, to establish a *prima facie* case that there has been retaliation contrary to s.20. A landlord who remains silent in such a case will

have it decided against him unless he provides his own evidence to be weighed by the trier of fact.

2 and 3: What Is It That Has To Be Established and Did the Landlord Act in Retaliation?

[43] The tenant has to establish that the landlord issued its notice to quit in retaliation for Ms Muise "attempting to secure or enforce her rights under the Act."

[44] In my opinion this can only mean that the tenant must establish:

a. the existence of a particular right under the Act;

b. that she was attempting to secure or enforce that right; and

c. that the landlord was acting in retaliation of that attempt.

[45] Mr Kennedy submitted that Ms Muise's repeated demands for "particulars" as to the noise complaints or for the landlord to "communicate" with her and to enter into a mediated settlement with her constituted an assertion of her rights under the Act–and hence the landlord's refusal to enter into such a dialogue constituted an interference with those rights. This submission, as I understood it, went along the following lines:

a. pursuant to statutory condition 3 (Good Behaviour) of the lease, "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;"

b. a tenant's "possession and occupancy" of the premises must include the ability to defend that possession and occupancy;

c. Ms Muise needed to be able to communicate with the landlord, or to obtain particulars of the complaints against her, in order to defend her "possession and occupancy" by convincing the landlord to renew her lease; and accordingly,

d. The landlord's refusal to communicate its reasons for refusing to renew the lease constituted "interference" with Ms Muise's "possession or occupancy" because

she was not provided with the information she needed to convince the landlord to act otherwise.

[46] I do not accept this submission for a number of reasons.

[47] First, it conflates the position of a tenant under a subsisting lease with that of a tenant who wants to have his or her lease renewed. A tenant's right not to have his or her "possession and occupancy" interfered with by the landlord *during* the term of the lease is not the same as a right to have that lease renewed upon its expiry. And as discussed above, the Legislature expressly decided that prior to the elapse of five years a tenant did not have a right to insist that his or her lease be renewed.

[48] Second, it confuses a dispute over facts with a dispute over rights. In this case the landlord and Ms Muise had different opinions as to whether Ms Muise was noisy or was making any effort to control that noise. The fact that the landlord did not accept Ms Muise's opinion does not mean that it was denying her any of her rights as a tenant. Ms Muise clearly did not have a right to be noisy. Rather, it means only that the landlord was not persuaded by her arguments or assertions. It decided to act on its opinion, not Ms Muise's. To accept Mr Kennedy's submission would mean that a landlord who did not accept a tenant's denial that he or she was noisy was somehow denying the tenant's rights under the Act.

[49] The submission also focuses on what is in effect an irrelevant issue. To suggest that the landlord was wrong in refusing to communicate over the issue of noise is to suggest that the landlord in a case like this had to be correct about the existence of noise. But that is wrong. The landlord did not have to be right. It was not dealing with a tenured tenant. It did not have to prove that Ms Muise was noisy, as it would, for example, in the case of a tenured tenant. It merely had to decide, for whatever reason (absent retaliation), and regardless of whether that reason was right or wrong, that it did not want to renew the lease. To hold otherwise would in effect convert a non-tenured tenant into a tenured tenant, since it would mean that the landlord would have to have a valid (*i.e.* correct) reason for refusing to renew a lease–just as it needs a valid reason to terminate the lease of a tenured tenant. But if the Legislature had intended to put landlords in such a position it would have worded the Act differently.

[50] Finally, Ms Muise complains that the landlord's refusal to provide her with particulars of the complaints of noise meant that she could not approach the tenants who were complaining to attempt to resolve the matter. But this reluctance on the part of the landlord to involve the other tenants was not unreasonable. As Ms Scott observed in her evidence and submissions, the

landlord had to consider the interests of the other tenants as well. They did not want to be bothered or importuned by Ms Muise. They did not want to argue with her–they just wanted the noise to stop.

[51] Mr Kennedy also suggested (as did the Residential Tenancy Officer) that the landlord was acting in retaliation for Ms Muise's call to the fire department in late May 2007. He suggested that the reprimand issued by the fire department to the superintendent provided the real motive for the landlord's decision to refuse to renew the lease.

[52] The submission here, as I understood it, was that a tenant had a right to a safe premises operated in a safe fashion; and that Ms Muise's call to the fire department was an exercise of that right. But accepting that that is correct does not mean, on the evidence, that the landlord's decision to issue the notice to quit was taken in retaliation for the exercise of that right. There was no evidence from Ms Muise that the landlord (as opposed to the superintendent) was aware of the reprimand. Ms Scott herself gave evidence that neither she, as the property manager, nor the landlord, was aware of the incident; and that they only became aware of the incident in December 2007 when Ms Muise raised it as a possible reason for the issuance of the notice to quit for the first time. Ms Scott was not challenged on this point in cross examination.

[53] Moreover, there was nothing in Ms Muise's evidence to the effect that the superintendent had taken this reprimand personally or in a bad way; or that he blamed her in any way for what had happened. Indeed, there was no evidence that the superintendent (or through him the landlord) had developed any personal animus against Ms Muise. And the fact that Ms Muise did not raise this particular incident as a possible motivation in her correspondence with the landlord, or in the interviews she gave to the press, suggest that she herself did not feel threatened in any way by the superintendent as a result of this incident. But if the incident was neutral in its impact on the landlord how can it establish a desire to retaliate on the part of the landlord?

[54] In a similar way (and with similar results) Ms Muise made some attempt in her evidence to establish the existence of personal animus between herself and the superintendent. She suggested that her initial relations had been cordial. However, she expressed dismay at what she thought was the superintendent's failure (when she visited him to drop off her rent payments) to guard the privacy of other tenants because he had left various papers (such as overdue notices) "out in the open" on his table where she could see them. She also said that she had suggested to the other superintendent that she not smoke in a vacant room she was painting because it was a

“public area” and the superintendent “sort of laughed it off.” In my view such evidence falls far short of establishing any personal animus on the part of the superintendent against Ms Muise.

[55] If I am wrong in my conclusion as to the onus, and if the Landlord is required to establish that it was not motivated by retaliation, I was satisfied on the evidence and so find that the Landlord refused to renew the lease because Ms Muise was, from its viewpoint, a problematic tenant. I am satisfied and so find that she or her children or both were noisy. They did disturb other tenants from time to time. The issue was made worse by the fact that her basic reaction to the complaints was combative and defensive. Rather than apologize or attempt to correct the problem she variously denied that she or her children (or those she babysat) were noisy; or grudgingly admitted their noise but claimed that they were entitled to be noisy; or asserted that other children in the building were noisy as well; or demanded particulars so that she could argue the case with either the landlord or the tenants who had made complaints. Some flavour of her attitude (which was evident on the stand) may be found in her repeated assertions to the press as well as to the landlord himself that there was “no reason” that she could think of that the landlord would not renew the lease. These assertions, made in the face of two letters from the landlord and two responses (one written and one in person) from her over the issue, struck me as disingenuous.

[56] This is not to say that the noise and Ms Muise’s response to the complaints would have been grounds under s.17A of the Act for an order terminating the lease. They may not, in other words, have constituted breaches of the lease sufficient to warrant termination in mid-term for cause. But I am satisfied that prior to the five year mark they did constitute sufficient “reason” (if reason be required) for the landlord to exercise his right to decide not to renew her lease. I am also satisfied and so find that this reason was not a retaliation to any exercise by Ms Muise of any of her rights under the Act.

[57] I am accordingly satisfied that the Order of the Residential Tenancy Officer should be set aside, and an order should issue terminating the tenancy and requiring vacant possession. However, given the fact that Ms Muise’s son is in a school that caters to his needs and is roughly two-thirds through his school year, and given the fact that the application and appeal process, through no fault of Ms Muise, has taken her well into that school year, I am prepared to stay the order for vacant possession until June 30th, 2008 to permit her son to complete his year. The stay is conditional on Ms Muise paying her rent on time and on discharging any current arrears in rent immediately.

Dated at Halifax, this 14th day of February, 2008

Original: Court File)
Copy: Claimant)
Copy: Defendants)

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W. Augustus Richardson, QC
ADJUDICATOR