IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Martin v. Killiam Properties Ltd., 2007 NSSM 59

2007 Claim No. 284532
Date:20070920

BETWEEN:

Name: **Theresa Martin** Appellant/Tenant

- and -

Name: **Killam Properties Ltd.** Respondent/Landlord

Revised Decision: The text of the original decision has been revised to remove addresses and phone numbers of the parties on September 28, 2007. This decision replaces the previously distributed decision.

Appearances:

Appellant/Tenant: Patrick J. Eagan
Respondent/Landlord: Eric Thomson

D E C I S I O N

[1] This is an appeal of a Director's Order issued under the provisions of the Nova Scotia *Residential Tenancies Act,* R.S.N.S. 1989, c. 401 under date of August 9, 2007. The hearing of the appeal took place on Tuesday, September 4, 2007, in Halifax.

[2] At the conclusion of the hearing and the submissions of counsel, I gave a brief oral ruling allowing the appeal and overturning the Director's Order. These are the reasons for my decision.

[3] The evidence established that the Tenant had resided in the subject premises since February 2002. As such, and this is common ground between the parties, the Tenant

could not be given notice to quit except in one or more of the circumstances set out in subsection 8 of Section 10 of the *Residential Tenancies Act* which reads as follows:

> ***10 (8)*** *Notwithstanding the periods of notice in subsection (1) or (6), where a tenant, on the eighteenth day of May, 1984, or thereafter, has resided in the residential premises for a period of five consecutive years or more, notice to quit may not be given except where*
>
> > *(a) the residential premises are leased to a student by an institution of learning and the tenant ceases to be a student;*
> >
> > *(b) the tenant was an employee of an employer who provided the tenant with residential premises during his employment and the employment has terminated;*
> >
> > *(c) the residential premises have been made uninhabitable by fire, flood or other occurrence;*
> >
> > *(d) repealed 1994, c. 32, s. 1;*
> >
> > ***(e) the Director is satisfied that the tenant is in default of any of his obligations under this Act, the regulations or the lease;***
> >
> > ***(f) the Director is satisfied that it is appropriate to make an order under Section 17A directing the landlord to be given possession at a time specified in the order, but not more than six months from the date of the order, where***
> >
> > > *(i) the landlord in good faith requires possession of the residential premises for the purpose of residence by himself or a member of his family,*
> > >
> > > *(ii) the landlord in good faith requires possession of the residential premises for the purpose of demolition, removal or making repairs or renovations so extensive as to require a building permit and vacant possession of the residential premises, and all necessary permits have been obtained, or*
> > >
> > > ***(iii) the Director deems it appropriate in the circumstances.***
>
> [Emphasis supplied]

[4] This proceeding was initiated by an Application to the Director filed by the Landlord on April 26, 2007, seeking termination of a tenancy. In the details section the Landlord states "Tenant causing problem and damages to the building".

[5] The Director's order of August 9, 2007, granted the Landlord's application. In the concluding paragraph it states:

> *The hearing established this tenancy has deteriorated and has placed the landlord/tenant relationship in a precarious situation which is interfering with the landlord's effectiveness to the operations of the building/complex and to their other tenants. Therefore the request for termination of tenancy is allowed.*

[6] As will appear, I do not find that this is a sufficient basis to terminate a tenancy.

[7] The evidence established that the Tenant had filed a verbal complaint to the Landlord's after-hours phone line on April 21, 2007. In the message she indicated that she was being sexually harassed by other tenants and an employee of the Landlord and, as became apparent in her evidence at the hearing, it was her view that this was being done with the acquiescence and in some cases, participation, of employee(s) of the Landlord.

[8] It in evidence that the Tenant had exchanged words with one or more of the other tenants. It was also in evidence and the Tenant fully admitted that she did put broken eggs against Units 3B and 4B in response to statements and actions that she said had been made to or in relation to her by the occupants of those units. Also, there was evidence that at one point she denied access to building superintendent for the purpose of checking the smoke detectors.

[9] The Tenant apparently contacted the police who investigated her allegations. There appears to have been no follow-up by the police, as to what exactly were the results of

those investigations or what potential charges, if any, may have been contemplated. The Tenant in her evidence indicated that she never alleged that anyone assaulted her.

[10] I found the Tenant to be most credible and articulate. As well, I could see no motive for her fabricating the allegations that she had made with respect to harassment. Having said that, I would not be prepared to conclude on a balance of probabilities that she was harassed as she alleges or that the Landlord necessarily knew or participated through its employees in such harassment. I am merely making the observation that what was raised by the Tenant was not clearly to be discounted and certainly was not discounted by anything I heard from the witnesses for the Landlord.

[11] The accusations she made had the ring of believability to them and she is not to be somehow faulted for making these accusations. I do not think that because she is not able to prove her allegations on a balance of probabilities that somehow means she has breached her statutory conditions under the lease. Indeed she has not in my view.

[12] As noted above, there was evidence and an acknowledgment by the Tenant that she had placed broken eggs at Units 3b and 4B. While, I do not think that is serious enough to warrant being evicted for cause, that type of conduct if repeated could support a finding that the tenant had breached the statutory condition of good behaviour to an extent justifying termination of the tenancy. In this case, I do not think it is cause for termination of the tenancy.

[13] I turn now to the submissions on behalf of the Landlord. Mr. Thomson refers to and states that the termination here can be justified under either clause (e) or (f)(iii) of subsection 10(8), which I again cite:

> ***10 (8)*** *Notwithstanding the periods of notice in subsection (1) or (6), where a tenant, on the eighteenth day of May, 1984, or thereafter, has resided in the residential premises for a period of five consecutive years or more, notice to quit may not be given except where*

> *(e) the Director is satisfied that the tenant is in default of any of his obligations under this Act, the regulations or the lease;*
>
> *(f) the Director is satisfied that it is appropriate to make an order under Section 17A directing the landlord to be given possession at a time specified in the order, but not more than six months from the date of the order, where*
>
> *(iii) the Director deems it appropriate in the circumstances.*

[14] The submission with respect to clause (e) is that the Tenant has breached the statutory condition in Section 9(1) 3. of "good behaviour" which reads:

> *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.*

[15] As I have already said, I do not consider that the words and incidents that have taken place between the Tenant and other tenants are such to constitute a breach of this statutory condition. Based on her evidence, I am satisfied that in each case, there was a reason for why she had words or actions with other tenants and, in all events, and considering all of the circumstances here, I do not think the evidence meets the level that would justify termination of the tenancy under subsection 10(8) (e) of the *Residential Tenancies Act.* At the end of the day the Landlord has the burden to show, on a balance of probabilities, that the Tenant has breached the statutory condition. The burden has not been met.

[16] I turn then to the further argument that was made that under clause (f)(iii) of subsection 10(8) it would be appropriate in the circumstances of this case for the Landlord to have possession of the unit. Counsel's submission, as I understand it, is that under this clause the Director has an overriding legal authority to terminate a tenancy when he "deems it

appropriate in the circumstances" and that this is a very broad authority exercisable by the Director in his discretion. For the reasons that follow, I reject that submission.

[17] In my view, clause (f) (iii) of subsection 10(8) is to be interpreted by reference to the preceding two subclauses of (f) and by reference to "*ejusdem generis*". Case law in this Province supports this approach. I refer first to the case of ***Workers' Compensation Board of Nova Scotia v. O'Quinn*** (1997), 157 N.S.R. (2d) 282 (C.A.), 1997 CanLII 9901, in which Bateman, J.A. stated as follows with respect to the interpretation of Section 70 of the Nova Scotia *Workers' Compensation Act (p. 8, CanLII)*:

> *The threshold issue is whether s. 70 admits of the interpretation imposed by the Board of Inquiry. The Board found that the words "or otherwise" could be interpreted to permit the Workers' Compensation Board to re-open a claim for compensation on account of the change in the legislation. Those words must, however, be interpreted in context. This the Board of Inquiry failed to do. Applying the principle of ejusdem generis , "or otherwise" is modified by the words and phrases preceding it. While the phrase, taken alone, is broad enough to include a change in legislation, it is clear, upon a reading of the whole of section 70, that it is directed to changes in the following context:*
>
> *1) where the injury proves to be more or less serious than originally thought;*
>
> *2) where new evidence arises;*
>
> *3) where the condition of the worker or the number, circumstances or condition of the dependents change.*
>
> *These concepts are linked in that they are all changes to a person's individual situation, not changes in the law. In my view, s. 70 does not admit of the interpretation applied by the Board of Inquiry.*

[18] In the case of ***Future Inns Canada Inc. v. Nova Scotia Labour Relations Board*** 1996 CanLII 5322, reversed on other grounds at 160, N.S.R. (2d) 241 (C.A.), the Supreme

Court was considering Section 8(3) of the Regulation made under the Nova Scotia *Trade Union Act* which reads:

> *An Application for Reconsideration of any decision or order of the Board made within the preceding twelve months shall not be made without leave of the Board, which will normally be granted only where it clearly appears that*
>
> > *(a) the order or decision was made in ignorance of some material fact;*
> >
> > *(b) the order or decision was made by reason of some technical irregularity; or*
> >
> > *(c) there is similar good reason.*

[19] Justice Hamilton states (p. 15 of CanLII):

> *Counsel for the Board argued that the discretion of the Board under subsection 8(3) is much narrower than that suggested by counsel for Future Inns. She argued that the ejusdem generis principle applies so that paragraph 8(3)(c) is restricted by and takes colour of meaning from the more narrow grounds in clauses 8(3)(a) and (b). I agree with her position and feel it is relevant in considering whether the legislation contemplates that some of the same people who made the original decision can made the decision as to whether it should be reconsidered. Given the nature of the matters to be reconsidered that are specified in (a) and (b), namely ignorance of a material fact or technical irregularity respectively, I find submissions in support of reconsideration and would not necessarily be criticisms of the original decision, but rather indication of information that has come to light after the decision that the Board may wish to take into account to ensure a just result.*

[20] In ***Robertson v. Robertson*** (2007), N.S.S.C. 128 (S.C.), Forgeron, J. refers to and quotes approvingly from the British Columbia Supreme Court case of ***Maynard v. Maynard*** in interpreting Section 7(3) of the Child Support Guidelines (par. 34):

> *18 I find application of the ejusdem generis principle appropriate to interpretation of "benefit"in s. 7. The word "benefit" is much more general in its meaning than are the surrounding words "subsidy" and "income tax deductions or credits". Accordingly, the meaning of "benefit" in s. 7(3) must be confined to things of the same kinds as "subsidy" or "income tax deductions or credits". The defining common characteristic of "subsidies" and "income tax deductions or credits" is that they are net transfers of resources to an individual, made without expectation of repayment.*

[21] Finally, in ***Frontec Corp. v. Halifax Regional Municipality*** (1999), 182 N.S.R. (2d) 130, Justice Moir was interpreted the term "security holder" in Section 128 of the *Municipal Government Act* and states as follows (p. 9 of CanLII):

> *...Thus, there is reason to interpret the incorporation by reference of the very general definition of "security interest" and the general words "other security interest" ejusdem generis with "bill of sale, chattel mortgage, debenture, installment payment contract, hire purchase agreement". That is to say, "holder of ... a security interest" in s. 128(1) is restricted to those who hold consensual rather than statutory security.*

[22] I have referred to several case authorities on this issue as I believe the issue of the proper interpretation of subsection 10(8) (f) (iii) has not previously been canvassed at this level or in the Supreme Court.

[23] Based on these case authorities I have cited, it would seem that where there is a statutory provision such as in subsection 10(8)(f) of the *Residential Tenancies Act*, the proper approach is to look for the common characteristic or linkage between the more specific provisions - in this case, clauses (i) and (ii) - and then apply that common characteristic in interpreting the more general provision - in this case, clause (iii). It seems to me that the common characteristic between clause (i) and clause (ii) is that they envisage situations where the landlord, in good faith, requires possession of the premises because

of changed circumstances relating either to the condition of the premises or to living arrangements of the landlord's family It would be these and analogous types of circumstances in which I would understand the Director to have discretion under subsection 10(8)(f) (iii) to order that the landlord be granted possession. The conduct or fault of tenant would not be the type of circumstance to be considered under this provision.

[24] If it is a matter relating to the tenant's conduct then that would seem to fall squarely under subsection 10(8)(e) which covers situations where the landlord alleges that the tenant is in default of her or his obligations under the *Act*, the regulations or the lease. If the Director were to have authority to evict a tenant based on the tenant's actions or conduct because it was deemed to be "appropriate", that would create a much lower standard than having to demonstrate a breach of the provisions of the *Act* in subsection 10(8)(e). That would render 10(8)(e) essentially meaningless. In my view, this cannot have been the intention of the Legislature.

[25] I find therefore that clause 10(8)(e)(iii) is not to be interpreted in as broad a sense as advanced by the Landlord or as apparently viewed by the Director in the Decision of August 9th.

[26] For all these reasons the appeal is allowed and the Director's Order of August 9th is set aside.

DATED at Halifax, Halifax Regional Municipality, Nova Scotia on September 20, 2007.

Michael J. O'Hara
Adjudicator

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