Claim No: 287468

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
ON APPEAL FROM AN ORDER OF THE DIRECTOR OF RESIDENTIAL TENANCIES

Cite as: Colley v. Transglobe Properties, 2007 NSSM 68

BETWEEN:

CHANNELLE LATRICE COLLEY

Tenant

- and -

TRANSGLOBE PROPERTIES

Landlord

APPEAL DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on November 13, 2007

Decision rendered on November 15, 2007

APPEARANCES

For the Tenant	Cole Webber, Dalhousie Legal Aid
For the Landlord	Tanya Guilderson, property manager Kelly King, property manager

BY THE COURT:

[1] This is an appeal from an Order of the Director dated October 24, 2007, ordering the Tenant to give up vacant possession of the premises located at 15 Leaman Drive, Apt. 210, Dartmouth, Nova Scotia on Friday November 3, 2007.

[2] The stated basis for the eviction was that the Tenant had been the subject of noise complaints and was in breach of one of the statutory conditions contained in Section 9 (1) of the *Residential Tenancies Act*, namely:

> 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: .....
>
> 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.

[3] The Tenant did not attend that October 23, 2007 hearing. She claims that she was never served with notice and did not know it was proceeding. While in the final analysis it may not matter much, given the absolute right to an appeal hearing on the merits, I find on a balance of probabilities that she was not properly served and the hearing before the Residential Tenancies Officer was irregular. I am reinforced in that view by the fact that the Tenant was already being represented by Dalhousie Legal Aid in her dispute with the Landlord, and it is difficult to believe that she would have ignored a hearing notice and not simply referred it to her legal

representative. The Landlord knew that she was represented, and did not communicate notice to her representative, which one might have expected had the Landlord been having trouble serving her, as it alleges.

The Tenancy

[4] The Tenant is a young woman who lives alone with her two-year-old child. She attends school full time and works part time. The Tenant is also black, which would not be significant but for the fact that there were accusations that the Landlord was racially motivated in some of its actions.

[5] The building in question is said to be mostly occupied by older, in many cases retired people, who are also almost all white.

[6] The Tenant moved into the building in March 2006. According to her evidence, she was told at that time by one of the property managers (who was not one of the ones present in court) that there were three months remaining on an existing tenant's lease; that she could sublet for the remainder of that term, and that thereafter she would be on a year to year tenancy from July 1, 2006 to June 30, 2007, and so on, year after year. It is uncontested that she never signed, or was asked to sign, a written lease. Her tenancy was based upon an oral lease.

[7] The nature of the term becomes a critical issue, because if she is a year to year tenant the Landlord's ability to terminate her tenancy is much more limited than it would be if she were month to month. It is clear on the facts of this case that the Landlord delivered a notice to quit on three months' notice, which would have expired on October 31, 2007, in addition to its

attempt to evict her because of her alleged breach of the statutory condition.

[8] The relevant sections of the Act respecting termination are these:

> **Notice to quit**
>
> 10 (1) Notwithstanding any agreement between the landlord and tenant respecting a period of notice, notice to quit residential premises shall be given
>
> (a) where the residential premises are let from year to year, by the landlord or tenant at least three months before the expiration of any such year;
>
> (b) where the residential premises are let from month to month,
>
> (i) by the landlord, at least three months, and
> (ii) by the tenant, at least one month,
>
> before the expiration of any such month;

[9] It should be noted that there is an overriding discretion in the Director or this Court to refuse to enforce a Notice to Quit, where the Landlord is found to be retaliating against the Tenant's assertion of her rights:

> 20 The Director or the Small Claims Court may refuse to exercise, in favour of a landlord, the powers or authorities under this Act or may set aside a notice to quit if the Director or 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.

[10] This section is alleged to apply here, as the Tenant argues that she is the subject of retaliatory action by the Landlord. I will consider this argument below.

[11] The Landlord's position is that the tenancy is and always was month to month, although no witness was produced to take issue with the Tenant's version of her negotiation and the oral lease. The Landlord's position is based solely on the fact that there is no written lease in the file, and a vaguely defined alleged practice to offer month to month tenancies.

[12] On a balance of probabilities, I find as a fact that the tenancy is year to year, and that it commenced on July 1, 2006 and was renewed automatically for another year on July 1, 2007.

Grounds for termination

[13] The Tenant admits that in May 2006 she created a noise disturbance when she was locked out of her apartment and had to knock loudly to try to wake her babysitter who was in the apartment with her child. She apologized for this incident at the time, and there was no reason to believe that it would come back later to haunt her.

[14] In June 2007, the Tenant fell behind in her rent because she had a disruption to her income. She tried to assure the Landlord that this was temporary but it appears that this marked the beginning of a serious deterioration in the relationship. For one thing, the Landlord has a policy of contacting delinquent tenants on a daily, or almost daily, basis until the rent is paid. This may be experienced by some Tenants as slightly harassing, and it appears that this particular Tenant did not appreciate such frequent reminders. She felt that she was doing the best she could and hoped for a little patience on the part of the Landlord.

[15] On June 26, 2007, a letter was slipped under her door requiring her to give up vacant possession by July 31, 2007. No reason was given. She did not even see the letter until July 8, 2007 as she was out of town when it was delivered.

[16] It is my finding that this June 26, 2007 letter was legally ineffective. First of all, any notice to quit without just cause would have had to be delivered three months before the expiry of the year. If the reason were non-payment of rent, the rent would have to have been in arrears for thirty days, by virtue of s. 10 (6) of the Act:

> 10 (6) Notwithstanding the periods of notice in subsection (1), where a year to year or a month to month tenancy exists or is deemed to exist and the rent payable for the residential premises is in arrears for thirty days, the landlord may give to the tenant notice to quit the residential premises fifteen days from the date the notice to quit is given.

[17] It is clear that she was only in arrears for 26 days at that time.

[18] That letter could not have been for bad behaviour because it made no such claim. Accordingly, the letter was a nullity. The Landlord probably realized this because it did not act on the letter, but rather sent another letter to the Tenant, dated July 31, 2007, giving notice to vacate on October 31, 2007. This notice could have been legally enforceable, subject to s.20, had the tenancy been month to month, but given my finding that it was not month to month, but year to year, and the term now does not expire until June 30, 2008, this notice was similarly ineffective.

[19] In the meantime, there was bad blood brewing as a result of incidents where the Tenant felt she was being singled out because she was black.

In a letter to the Landlord dated August 7, 2007, Mr. Webber from Dalhousie Legal Aid protested such treatment on the Tenant's behalf. Mr. Webber had recently written to the Landlord about the efforts to evict her, and had asked the Landlord to cease and desist from those efforts.

[20] Apart from the written notices referred to above, there had apparently been an earlier verbal notice given on July 30, 2007, asking the Tenant to vacate by September 1, 2007, on the basis of alleged noise complaints. This was accompanied by a suggestion from the Landlord that the Tenant might be happier in one of its other buildings. This other building is on a street notorious for drug activity and other rough trade. The Tenant found the suggestion offensive and expressed no interest in moving.

The Noise Complaints

[21] Although the Landlord had made reference to noise complaints on or about July 30, 2007, there was only one specific evidence of a complaint in addition to the May 2006 incident, up to that time. The evidence about that incident was sketchy. It had apparently occurred on December 23, 2006. No witness was called to substantiate it.

[22] On the other hand, the Tenant called as a witness a neighbour in the building who testified that she was home on that entire day and had heard no unusual noise coming from the Tenant's unit. She also testified that there <u>was</u> noise (loud music) coming from apartment 110 precisely one floor below the Tenant.

[23] I appreciate that noise complaints are difficult to substantiate, but I must find as a fact that there is no reliable evidence that the Tenant was responsible for excessive noise on that occasion.

[24] There was evidence of additional complaints which formed the backbone of the Landlord's complaint at the hearing before the Officer and before me. It is alleged that on August 15, 2007 the police had to be called because of excessive noise at about 1:00 a.m. The Tenant admitted that the police did show up, but there was no noise at that time and they took no action. It was not clear to me what kind of noise was alleged, or who called the police. Again, it is hard to prove and the Landlord has not proved that this was a valid complaint.

[25] Then on the weekend of September 28, 29 and 30, 2007, it was alleged that there was consistently loud noise and raucous behaviour taking place at the Tenant's apartment, in the nature of all-night partying. It was suggested that the Tenant's brother may have been the one actually in the apartment and responsible. The Tenant testified that both she and her brother were in New York that entire weekend for a family reunion, and that she had not allowed anyone access to her apartment. She produced a hotel receipt to corroborate that she had not been in Nova Scotia at that time.

[26] The evidence of those complaints proffered by the Landlord consisted of four handwritten statements, only one of which even contained the identity of the author. I accept the submission of the Landlord that tenants are afraid to be identified, for fear of retaliation of some kind, but the

consequence is that it is difficult to place any weight on unsigned, unsworn statements from unidentified persons.

[27] On the other hand, I found the Tenant to be a straightforward witness and I accept her testimony, for the most part. I see her to be a hardworking individual with a young child who is not likely partying at all time of the day or night. I accept that it is possible that she is not well liked or respected by other tenants, who may be jumping to conclusions whenever they hear noise. I do not know whether it is because she is black, young, a single mother, or all of the above, or for some other reason.

[28] I do not feel that the Landlord has made out a case of excessive noise, reaching anywhere near the threshold of a breach of the statutory condition. Accordingly, its attempts to sever the tenancy by any of the means attempted are ineffective.

[29] It is accordingly not necessary for me to decide whether she is being singled out by the Landlord for retaliatory action. I make no findings that the Landlord is doing anything other than asserting its rights as it believes them to be. I have only found that those rights did not exist.

[30] Another ground in the application to the Officer was that the Tenant was allegedly in arrears of rent at that time. There is nothing in the Order which refers to arrears, nor was there any evidence before me to the effect that she is in arrears. If she is, then it is incumbent upon her to place the lease into good standing within a reasonable time.

[31] In the result, the appeal is allowed and the Order of the Director is rescinded. The Tenant is lawfully in possession of her apartment on the year to year tenancy which I have referred to.

Eric K. Slone, Adjudicator