Claim No. 273563

# IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Hillyard v. Baker Drive Developments, 2007 NSSM 84

Between:

**HARRY & EVELYN HILLYARD**

**APPELLANT**

-and -

**BAKER DRIVE DEVELOPMENTS - J. DIAB**

**RESPONDENT**

**Decision: January 22, 2007**
**Adjudicator David TR Parker**

Parker:-This was an Appeal from a decision of the Director of Residential Tenancies dated October 31, 2006.

The Appellants made an Application to the Residential Tenancies Board for a return of a security deposit of $657.50 paid to the Respondent.

The facts of this case are as follows:

(1) The Appellants put themselves on a list to become tenants in an apartment complex under construction by the Respondent.

(2) The Respondent agreed to put them on the list and as time grew near to completion the Respondent asked the Appellants to provide money. The Respondent's property manager drafted up a document called "Information needed for lease for Royal Oak Estates". The document outlined the apartment the Appellants were to rent, the monthly rental, and it stated "Security Deposit paid $657.50." Both parties signed the document. The Respondent also told the Appellants that they would only get their security deposit back if there was some sickness that prevented them from moving in.

(3) The Appellants did not move in and the Respondent has refused to return the money.

***Analysis***

The Appellants admit the idea of putting down the money was to hold the apartment for them.

The Respondent's managers in their testimony said that the Respondent wanted to know who was seriously committed and told his manager to contact everyone on the list and have them put up money to secure the apartment.

These facts of this case fall within the ambit of considering the money advanced as an application fee. One of the property managers said he told the Appellants that the security deposit would turn into a damage deposit once the Appellants moved into the Apartment complex. However since they could lose the money put up front and the fact that they where required to provide same to support their application, these funds could very well fall within the scope of an application fee which is prohibited under the legislation. I refer to the case, Alliance Property Group Limited and Scott Gouthro [1993] N.S.J. No. 267, and make reference to s6 of the *Residential Tenancies Act*, R.S.N.S. 1989 c. 401 as amended.

The $657.50 was an application fee which landlords are forbidden to take by section 6(1) of the said Act.

IT IS THEREFORE ORDERED that the Order of the Director of Residential Tenancies, dated October 31, 2006, File No. 200603183, be hereby rescinded and IT IS HEREBY FURTHER ORDERED that the Respondent pay to the Appellants the sum of $657.50.

Dated at Dartmouth, Nova Scotia, this 22nd day of January, A.D., 2007.

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David T.R. Parker
Adjudicator of the Small Claims
Court of Nova Scotia