SCCH 253019

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Kans Holding Ltd. v. McGrath, 2006 NSSM 52

Between:

KANS HOLDINGS LTD.

APPELLANT

- and -

GREGORY MCGRATH

RESPONDENT

Adjudicator: David T.R. Parker

Heard: April 13, 2006, at Dartmouth, Province of Nova Scotia

Decision: April 19, 2006

Counsel: The Appellant was represented by Counsel David R. Melvin.
The Respondent was represented by Counsel Clair McNeil and senior student-at-law Neil Chanter.

This is an Appeal from an Order of the Director of Residential Tenancies whereas it was ordered that the Appellant pay the Respondent $1395.00 and that the Respondent retains the security deposit of $232.21.

The reasons for the Appeal was that the evidence did not support the Director's Order, that the Respondent made no contact with the Appellant from October 20, 2004 [until] January 1, 2005,

and that the Department of Community Services paid for the rent and no rent was paid from January 2005 to June 2005. These reasons were signed by the Appellant's property manager.

I have reviewed the Order of the Director and it states inter alia that the tenant was seeking $2,790.00 for losses arising from unlawful eviction.

There is no indication in the Order as to how the Director arrived at the amount finally determined or what evidence supported any amount in any event.

Notwithstanding these comments, the Appeal became a Trial de Novo.

I am going to start with the claim amount being advanced by the Respondent which might give some indication or be a reference point as to where the original claim of $2,790.00 originated.

(1) The Respondent is claiming return of its rental payments for the months of October, November and December 2004, which rental per month was $465.00. That total rent being claimed would therefore be $1,395.00.

(2) The Respondent is also claiming $100.00 as the value of his property disposed of by the Appellant.

(3) The Respondent is requesting return of his security deposit in the amount of $323.50.

(4) The Respondent is requesting an award of $500.00 as general damages for the anxiety and depression the Respondent suffered.

(5) The Respondent is seeking an award of $1,000.00 in punitive damage.

That makes a total claim of $3,318.50.

The Appellant contends that the lease was terminated by the Respondent's own actions and that

Section 10(7A) comes into play which provides the Appellant with a means for terminating the lease.

The Appellant, in his book of documents entered as Exhibit A-2, shows that Urchin Property Management Inc. ("UPMI") was property managers for the Appellant landlord. The lease commenced on June 1, 2003, and the monthly rental was $465.00 with payment made to the Appellant directly from Community Services.

Constable Carr of the Regional Police was called to the Appellant's apartment building on October 25, 2004, by a tenant in the building who had experienced a break and enter or at least an attempted break and enter into her apartment unit by persons unknown. The peace officer in going to his police vehicle to retrieve his flashlight noticed the Respondent in the common hallway, breathing hard and sweating profusely. The Respondent had a knife in his hand. The Respondent told Constable Carr he was cleaning his apartment. The Constable then went to the Respondent's apartment unit and found it "ransacked with everything strewn about" and cut up. The Respondent told the officer Jesus and Satan were fighting in his apartment and he was cleaning his apartment of demons. He also told the officer that other tenants in the building were out to get him and one of the female tenants tried to poison him. The Respondent was then taken to the Nova Scotia Hospital. The Respondent was co-operative in going to the hospital but not so after being admitted to the hospital where he spent the next several months.

On October 26, 2004, UPMI sent a letter to the Respondent that they were changing the locks on the apartment for security reasons and to contact them for the new keys and to return the previous keys upon obtaining the new ones. It is also stated in the letter, "Each tenant will have to sign for his/her new apartment key(s)…." The letter is directed to the Respondent; however, it appears, at least from the wording, that all tenants' locks might be changed by UPMI.

The Respondent's mother picked up the letter and later went into the apartment after making an appointment with the Superintendent. The Respondent's mother removed the Respondent's "stuff". She took bags of clothes, chesterfield chair and his cot. She left a chesterfield. She confirmed the apartment was in a shambles much as described by Constable Carr and the

Appellant's property manager.

On November 24, 2004, the Appellant wrote a letter to the Respondent advising that it would be terminating the lease pursuant to section 10(7A) of the *Residential Tenancies Act*. The Respondent was at this time and for several months thereafter at the Nova Scotia Hospital and the letter was delivered to the hospital. The November, December and January month rents were paid to the Appellant. Repairs to the apartment had to be made to the walls and fixtures torn from the walls, the apartment had to be cleaned and painted. The cost of the repairs was $670.00. The Appellant also returned $30.99 to Community Services who had been paying rent on behalf of the Respondent.

The focus of this Appeal is whether the Appellant could terminate the lease of the Respondent pursuant to the provisions of the Residential Tenancies Act.

Section 10(7A) states as follows:

(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.

The Respondent through its Counsel raised a number of interesting and thoughtful reasons why the Respondent should succeed in its claims. They raised a human rights argument in that the purpose of the *Residential Tenancies Act* is flavoured with human rights objectives and the Act was not followed properly by the Appellant.

The Respondent suggested the Appellant unilaterally changed the locks thereby barring the Respondent from the leased premises contrary to section 5(a) of the Act. The Respondent also suggested the Appellant was in contravention of the Statutory Conditions. The Respondent argued that the Notice to Quit under 10(7A) is an ongoing requirement of posing a risk and that there is no evidence of the risk now existing. The Respondent also argued that mental illness is

not a valid reason for eviction.

There was no evidence before me that the lease was terminated because of a mental illness. There is no doubt, however, that the Respondent on the night of October 25th was in a state that would cause any reasonable person to be concerned, whether it be a tenant or a landlord, of their safety and security. Is that a continuing risk is the question that I must answer. The Respondent's mother testified that the Respondent was off his medication for some time and did not want to be on it. The result of that was what Constable Carr ran into on October 25th. The Respondent also claimed tenants were out to get him and one of the female tenants was trying to poison him. In this case the Respondent did not provide any testimony himself or any medical evidence to show that this was no longer the case. The Appellant landlord has an obligation to all tenants and the evidence in this case would indicate that the Respondent poses a risk. I understand he is no longer in the hospital; however, there is no evidence that anything has changed since October 25th. The Appellant also indicated that the Respondent in effect abandoned the premises, and while it may well have been that leaving the demised premises was beyond his control, the landlord is obligated to mitigate any foreseeable damage. If there was abandonment it happened on October 25th.

I would also indicate the landlord, on changing the locks, did not deny the Respondent access, at least until it gave the tenant/Respondent notice of termination effective November 30, 2004.

The lease ended on that date and any monies forwarded for rent after that date do not belong to the landlord. The Appellant collected rent for December in the amount of $465.00 and returned $30.99. The damage to the apartment was $670.00 and the security deposit was $232.50. Community Services was responsible for direct payment under the lease and it is not unreasonable that the security deposit which it paid and money attributed by Community Services for rent for December should also be paid towards damages. The Appellant did use the security deposit and interest thereon and the December rent payment towards damages to the unit, and did return the remainder to Social Services.

Therefore, the decision of this Court is that the Notice to Quit was valid, the Respondent

damages were paid and there is no evidence of any losses incurred by the Respondent. I realize that the Respondent lost a chesterfield; however, there is no evidence as to its value and the Respondent was given the opportunity, through his mother, to have it removed, which did not happen.

Therefore, pursuant to the provisions of the *Residential Tenancies Act*, specifically section 17(d)(1), the Director's Order shall be rescinded and varied as follows:

> IT IS HEREBY CONFIRMED that the security deposit and payment by Social Services of $465.00 be applied against the damages to the Respondent's unit caused by the Respondent and that the remainder amount of $30.99 be paid back to Social Services AND IT IS FURTHER ORDERED that the Director's Order of August 16, 2005, be rescinded in that the Respondent does not owe any amount to the Appellant.

Dated at Dartmouth, this 19th day of April, A.D., 2006.

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