

Claim No: SCCH -10-326227

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Classic Property Management Ltd. v. Greenwood, 2010 NSSM 54

BETWEEN:

CLASSIC PROPERTY MANAGEMENT LTD.

CLAIMANT

- and -

SHERRY GREENWOOD and CURTIS LANGILLE

DEFENDANTS

ORDER AND DECISION

DATE OF HEARING: May 11, 2010

DATE OF DECISION: May 21, 2010

PLACE OF HEARING: Dartmouth, Nova Scotia

HEARD BEFORE: Patrick L. Casey, Q.C.
Small Claims Court Adjudicator

COUNSEL: Blair MacKinnon, on behalf of the Claimant

Sherry Greenwood, Defendant, appeared on her
own behalf

Curtis Langille, Defendant, did not appear

FACTS

- (1) Classic Property Management Ltd. (“Classic”) commenced an Application before the Director of Residential Tenancies. The Respondents to the Application were Sherry Greenwood (“Greenwood”) and Curtis Langille (“Langille”).
- (2) A hearing was held before a Residential Tenancies’ Officer on February 23, 2010. Although there is no Affidavit of Service proving service upon Langille (only Greenwood) in the Residential Tenancies’ file, it is agreed by the parties to this Application that both Respondents were served with the Application before the Director.
- (3) A written decision was rendered by the Residential Tenancies’ Officer on March 4, 2010.
- (4) Greenwood had requested of the Residential Tenancies’ Officer that the decision be mailed to her as she was going to be away. She returned to the area on March 17, 2010, and at the time reviewed the decision which had been mailed to her. On March 22, 2010, she attended at the office of the Small Claims Court of Nova Scotia for purposes of filing an Appeal. Since the appeal period had expired, she was advised to file a Notice of Application for Extension of Time For Filing an Appeal and in fact did so that day. A hearing date for the Application for Extension of Time was scheduled for April 6, 2010, before the Small Claims Court of Nova Scotia.
- (5) On April 6, 2010, Norah Landry (“Landry”) the owner of Classic and Greenwood attended at the Small Claims Court of Nova Scotia.
- (6) At that time it was brought to Landry’s attention that the Order of the Residential Tenancies’ Officer was against the Defendant Greenwood but not the Defendant Langille. Landry had read the decision but the fact that the Order was against one Respondent and not the other had escaped her attention. She indicated that she wished to appeal the decision. She was directed to apply for an Extension of Time For Filing an Appeal.
- (7) Greenwood’s Application for an Extension of Time was adjourned by agreement, to be heard on the same date as the Application by Classic, on the understanding that her Application would not be prejudiced by the further delay.
- (8) Classic filed an Application for an Extension of Time to appeal the decision. Both Applications were heard on May 11, 2010, in the Small Claims Court of Nova Scotia.
- (9) Classic served both Greenwood and Langille with Notice of the Application for Extension of Time. Greenwood appeared at the appeal hearing but Langille did not.

THE LAW

(10) The law concerning Applications for Extension of Time is set out by the Nova Scotia Court of Appeal in the case of *Sun v. Lu*, 2008 N.S.C.A. 77, and I quote from paragraph 6 of that case as follows:

“This Court’s test for granting an extension historically involves three steps:

1. The appeal has sufficient merit, on the basis that it is arguable that the Trial Judge made a clear error in his perception and evaluation of the evidence;
2. There was a bona fide intention to appeal while the right to appeal existed;
3. A reasonable excuse for the delay in launching the appeal is advanced.”

(11) Paragraph 8 of the decision clarifies that the test is flexible and involves some degree of judicial discretion. I quote as follows:

“8. In recent years, however, we have viewed this three pronged approach as more of a guide as opposed to a rigid test; the ultimate goal being a just result in circumstances of each case.”

(12) In *Doug Boehner Trucking and Excavating Ltd. v. W. Eric Whebby Ltd.* (2007) N.S.C.A. 26, The Honourable Justice Saunders further elaborates on the discretionary element of the test as follows:

“15. The granting of an extension to file an appeal pursuant to *Civil Procedure Rule* 62.31(7)(e) is discretionary. The objective must always be to do justice between the parties. The test is simple: does justice require that the Application succeed? In making that determination my assessment should be flexible and take into account all relevant circumstances.”

(13) The authority of the Small Claims Court of Nova Scotia to grant Extensions of Time to Appeal decisions of this nature is not specifically set out in the governing statute, however, this Court has received some direction from the Supreme Court of Nova Scotia on this point, in particular, that the power to grant such extensions can be found in Section 29(1)(a)(ii) by reference to the remedial powers set out in that section.

(14) Section 29(1) provides as follows:

“29 (1) Subject to the provisions of this Act, not later than sixty days after the hearing of the claim of the claimant and any defence or counterclaim of the defendant, the adjudicator may

(a) make an order

(i) dismissing the claim, defence or counterclaim,

(ii) requiring a party to pay money or deliver specific personal property in a total amount or value not exceeding twenty-five thousand dollars, and any pre-judgment interest as prescribed by the regulations, or

(iii) for any remedy authorized or directed by an Act of the Legislature in respect of matters or things that are to be determined pursuant to this Act;”

- (15) I refer to the decision of The Honourable Justice Scanlan in the case of *McNeil v. Meech*, 2003 N.S.S.C. 108.
- (16) The ultimate determination is one of seeing that there is justice between the parties and ensuring that there is no denial of natural justice.

ANALYSIS OF APPLICATION FOR EXTENSION OF TIME BY GREENWOOD AND LANGILLE

- (17) As indicated Langille did not appear at this hearing.
- (18) Langille is Greenwood’s father.
- (19) Greenwood acknowledges that Langille was served with Notice of the Residential Tenancies Hearing. This is contrary to a specific finding in the Order of the Director.
- (20) Applying the test to the Application by Greenwood (and by inference to Langille if Classic’s Application for an Extension of Time is granted) as soon as she became aware of the decision she promptly made arrangements to attend at the Court and has proceeded with dispatch.
- (21) The only possible issue I would have with her Application is whether there is an arguable case. One of the unique features of appeals from Residential Tenancies’ Orders is that they are heard on a *de novo* basis. This does not mean, however, that this particular requirement should be ignored altogether. The Court must be satisfied that there is some evidence available upon which a different decision might be made on appeal. The burden is not a particularly high one. The onus is on the Applicant to bring such evidence to the attention

of the Court. I find in this case that the burden has been met as Greenwood has raised some facts and circumstances, which might lead the Court to come to a different conclusion.

- (22) For these reasons I am prepared to exercise my discretion to grant the Application for an Extension of Time by Greenwood and direct that an Appeal Hearing be set down before any Adjudicator.

ANALYSIS OF APPLICATION FOR EXTENSION OF TIME BY CLASSIC

- (23) Although the same legal test applies with respect to Classic, the circumstances of their Application differ somewhat. Landry, although she had read the decision, did not pick up on the fact that the Order specifically refers to only one Respondent being liable.
- (24) As stated, the decision recites only one of the Respondents having been served, whereas both parties were served with notice of the hearing.
- (25) Based upon this factor and all of the other surrounding circumstances, counsel for Classic urges the Court to exercise its discretion and grant their Application for an Extension to Appeal, as well.
- (26) I am persuaded that it is right and just to do so.
- (27) While I understand that Landry is very experienced in Residential Tenancies proceedings and, at first glance, one would expect having looked over the document that she would notice what had occurred, I am persuaded by the fact that this circumstance is really out of the ordinary. I accept her explanation that she looked at the decision without carefully reading the recitals or the operative part of the Order, the recitals erroneously stating that Mr. Langille was not served and the Order reciting that only one of the Respondents was responsible. She was genuinely surprised when these circumstances were brought to her attention on April 6, 2010. She immediately expressed an intention to appeal.
- (28) I am also persuaded by the thrust of the submission on her behalf that, particularly, if the Court is extending the time for Greenwood (and by inference Langille) to file their appeal, that it would be unjust to disallow the Application for Extension of Time by Classic in these circumstances, on a matter which was totally unexpected and could easily be overlooked, and further that there is no real prejudice to Greenwood in granting the Application for Extension of Time since she says that she is going to pay whatever amount is ultimately found to be owing anyway. To dismiss Classic's Application for Extension for Time while granting it on behalf of Greenwood and Langille would be an unduly technical result in my opinion.
- (29) For these reasons, I am also prepared to grant the Application for Extension of Time to Appeal on behalf of Classic.

- (30) Both parties are directed to contact the Clerk of the Court to arrange an Appeal Hearing before any Adjudicator.
- (31) Both appeals should be heard at the same time.

Dated at Dartmouth, Nova Scotia,
on May 21, 2010.

Patrick L. Casey, Q.C., Adjudicator

Original	Court File
Copy	Claimant
Copy	Defendants