

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Connors v. Mood Estate, 2011 NSSM 6

Between:

Stephan Connors

APPELLANT

-and-

RESPONDENT

The Estate of June Mood

DECISION AND ORDER

Adjudicator: David T.R. Parker

Heard: February 9, 2011

Decision: February 25, 2011

Counsel:

The Appellant was represented by **Duane Rhyno**

The Respondent was represented by **Denny Pickup**

Parker: -This is an appeal from an Order of the Director of Residential Tenancies dated January 14, 2011 and being file number 201003916.

The background to this appeal is further to an Application to the Director under the Residential Tenancies Act by the Public Trustee of Nova Scotia. A hearing took place on November 1, 2010 and as a result the parties entered into a mediated settlement agreement whereby the Appellant was to pay \$200.00 to the Public Trustee towards operating costs of the premises located at 73 Kings Road. Further the Appellant was to provide a key to the premises and to vacate the said premises on January 2, 2011. On January 11, 2011 the Public Trustee sought an Order enforcing the terms of the mediated settlement agreement. A Director's Order was issued on January 14, 2011 requiring the Appellant to vacate the premises on January 28, 2011. The Appellant Stephan Connors filed a Notice of Appeal dated January 26, 2011.

The Notice of Appeal stated "there was no landlord/tenant relationship that existed as I [Connors] was living common-law with June Mood at the time she became ill from a brain tumor and eventually died. I am claiming as a common-law spouse in the alternative as a creditor under her estate as she died without a will. There is no jurisdiction for the Director's Order and I would request the Order be stayed."

The Order of the Director dated January 14, 2011 stated *inter alia* that no determination has been made on whether or not a landlord/tenant relationship exists and also no determination has been made on whether a common-law spousal relationship exists.

The Respondent in response to the appeal argues that this court cannot deal with the Director's enforcement of the mediated settlement as it is not subject to an appeal pursuant to section 16(2) of the Residential Tenancies Act.

The second matter put squarely before this court by the Respondent is that a landlord/tenant relationship existed and that the Appellant is in violation of the Act by not paying rent and therefore the Respondent is requesting an Order for payment of outstanding rent due plus vacant possession of the premises.

This is more than an interesting case not only on the facts but also the legal issues before this court.

FACTS:

Mr. Connors met Ms. Mood in 1996 through a friend of his and he moved into the current residents 73 Kings Road, Wellington Nova Scotia in 1997.

Ms. Mood is the owner of the premises in question.

On February 1, 2005 a lease was signed between Ms. Mood and Mr. Connors.

On February 1, 2008 a further lease was signed between Ms. Mood and Mr. Connors.

The February 1, 2005 lease under the description of the premises stated "Unit 1, 73A Kings Road, transferred from 73B Kings Road Wellington, in December 2003."

The February 1, 2008 lease under the description of the premises stated: "changed to unit 3 from unit 1 as of February 2008. 73A Kings Road Wellington Nova Scotia."

ANALYSIS:

Mr. Connors told the court "the reason for the leases was so I would get rent from community services. I had to have a room that looked like mine to get \$800 per month.

Mr. Connors signed over the monies he received from community services to Ms. Mood. Mr. Connors said that Ms. Mood entrusted him with everything. He said that there was a big time trust issue and a big time love issue between him and Ms. Mood.

M. Estella Theriault's is the Public Trustee of Nova Scotia and has been so for over 30 years. The public trustee was granted administration of the estate of June Shirley Mood on August 23, 2010. As a result she made inquiries as to the assets owned by Ms. Mood which apparently were considerable and included some 12 or 13 properties which she owned. In Ms Theriault's inquiries she contacted Mr. Connors who confirmed with her that June Mood was his landlord and that he needed notification to move out. Mr. Connors according to the public trustee said he also owed rent for July. Mr. Connors did not recall this conversation. Ms. Theriault's recall was based on her memory of the telephone conversation and on her notes which she provide the court and which notes were taken at the time of the telephone call.

The question is quite simply, was Ms. Mood a landlord and was Mr. Connors a tenant of Ms. Mood as envisaged by the common law and legislation.

The applicable sections of the Residential Tenancy Act of the following:

2 In this Act,

(b) "landlord" includes a person who is deemed to be a landlord, a lessor, an owner, the person giving or permitting the occupation of premises and his and their heirs and assigns and legal representatives;

(h) "residential premises" includes any house, dwelling, apartment, flat, tenement, mobile home, mobile home park, mobile home space or other place that is occupied

or may be occupied by an individual as a residence or that part of any such place that is or may be occupied by an individual as a residence, but does not include

3 (1) Notwithstanding any agreement, declaration, waiver or statement to the contrary, this Act applies when the relation of landlord and tenant exists between a person and an individual in respect of residential premises.

(2) For the purposes of subsection (1), the relation of landlord and tenant is deemed to exist in respect of residential premises between an individual and a person when an individual

(a) possesses or occupies residential premises and has paid or agreed to pay rent to the person;

(b) makes an agreement with the person by which the individual is granted the right to possess or occupy residential premises in consideration of the payment of or promise to pay rent;

(c) has possessed or occupied residential premises and has paid or agreed to pay rent to the person. *R.S., c. 401, s. 3.*

First let me deal with the issue of a common-law spouse. Mr. Connors in his testimony stated that he slept with Ms. Mood and that they were more than good friends. He said that in January 1997 they were getting pretty tight and they would go to the beach. They would have candlelight dinners and drinks although he said he did drink too much but she liked her wine although she didn't drink too often. Mr. Connors said he never bothered with her phone as it was a business phone. When she died Mr. Connors said the burial arrangements were a big mess and the hospital would not let him see her. He then went on to say she sat in the freezer for almost a week before he was authorized to get her body as there was no one else. He said it with a typical relationship we could holler but at the end of the day we were together.

Paul Stewart who had property near buildings owned by June Mood said that Mr. Connors and Ms. Mood were together when ever they were on the property. They were inseparable 90% of the time he was drinking, she would drive and he would go into the properties of Ms. Mood and fix whatever had to be done. He said at Council meetings he referred to Ms. Mood as his wife. Mr. Stewart said that Mr. Connors would come to her defense saying "you cannot talk to my wife like that" whenever he argued with me. Mr. Stewart said that Ms. Mood told him that she felt Mr. Connors was a companion even though he drank.

Brian Carlton wanted to purchase properties of Ms. Mood and when he asked her about her relationship with Mr. Connors she told him "he is income to me and we have a relationship and she had someone who loved her."

Based on the information I can only conclude that Mr. Connors was a companion of Ms. June Mood in the sense that she felt he loved her, and was a companion for her even though he drank too much. In a sense they were good friends that would have dinners together, drink together and she would drive him around to her properties to deal with issues related to her properties. While he may have felt she was his wife, the evidence before this court is that Ms. June Mood saw him as a companion who provided income for her and assisted her in dealing with her properties. However to say Mr. Connors was not a tenant in the premises known as 73 Kings Road and that Ms. Mood was not the landlord of that premises would be contrary to the evidence before this court

There is no question that Ms. Mood was a landlord and landlord to many tenants some of which resided at Kings Road. Mr. Connors resided in various units at Kings Road and the documentation clearly shows that he entered into a lease arrangement with Ms. Mood. They certainly had some sort of symbiotic relationship which appeared beneficial to them both. However based on the evidence of the independent witnesses, the documentation that was in place, the information provided to the public trustee by Mr. Connors, Stephan Connors was a tenant of Ms. Mood and paid June Mood rent while he stayed in her premises except for the last several months. Although there may have been rent due prior

to that period there is insufficient evidence before me except to conclude that rent has not been paid up to July 2010. Pursuant to the lease and information I have before me on the total amount due from July 2010 to the end of March 2011 and which has not been paid and taking into account the \$200.00 amount paid by Community Services in December of 2010 the total outstanding rent would amount to \$4274.00. The reason I indicate the end of March is because that is the date that the tenant will be required to vacate the premises pursuant to the Order of this court.

With respect to the first issue raised by the respondent on whether or not this court can hear an appeal of a Director's enforcement Order of a mediated settlement I do not have to deal with the issue at this time as a result of dealing with the matter on whether there was a landlord/tenant relationship. Although I would say strictly as *obiter* that section 16(2) of the Residential Tenancies Act does not preclude this court from dealing with an Appeal of an Order of the Director of Residential Tenancies. It would seem to me that if the parties could not appeal to the Director and to oust the jurisdiction of this court would seem incongruous with the changes in the legislation allowing the Small Claims Court to hear Appeals of Director's Orders in the form of a *Trial De Novo*. I just mention this as it may have to be dealt with in a more thorough analysis at some point in the future.

It Is Therefore Ordered That the Appellant, Stephan Connors shall pay the Respondent, The Estate of June Mood in care of the Public Trustee of Nova Scotia the following sum:

\$4274.00

It Is Further Ordered That the Appellant, Stephan Connors along with all occupants residing with the appellant vacate the premises known as 73 Kings Road Wellington Nova Scotia to the Respondent on Thursday, March 31, 2011 and the lease is terminated as of that date.