

Claim No: 347505

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

Cite as: Tynes v. Killam Properties Inc., 2011 NSSM 31

BETWEEN:

VALERIE TYNES

Tenant (Appellant)

- and -

KILLAM PROPERTIES INC.

Landlord (Respondent)

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on May 10, 2011

Decision rendered on May 12, 2011

APPEARANCES

For the Tenant Kelly Buffett, counsel

For the Landlord Vicki Kaiser, property manager

REASONS FOR DECISION

[1] This is an appeal by the Tenant from an Order of the Director dated April 14, 2011, which granted the Landlord vacant possession of the premises at 4 Old Ferry Road, Upper Unit, in Dartmouth, as of May 31, 2011.

[2] The basis for the Order was that the Tenant had been the subject of noise complaints by another tenant in this 4-unit building, and the Landlord alleged that this was a breach of the quiet enjoyment provisions of the lease. The Residential Tenancy Officer heard evidence from several witnesses and evidently preferred the evidence of the other tenants, and in particular the tenant who had made the complaints, Deborah Fraser. Ms. Fraser lives in the unit directly below the Tenant, who lives there with her 19-year old great niece, Eleanor, who she is raising.

[3] With all due respect to the Residential Tenancy Officer, I completely disagree with his findings and propose to rescind his order. In the interest of expediency I will give briefer reasons for my finding than I might otherwise have done.

[4] The Tenant has resided in the subject unit for twelve years, and was before that a long-standing tenant of the company that owned the building before Killam, living elsewhere. She is a mature woman who has raised children of her own, and has taken on the task of raising her great niece, Eleanor, who has special needs and requires a lot of attention and nurturing. The Tenant is employed in a responsible position with the federal government. She appears to work hard and takes her parenting role very seriously. She is also a member of the black

community and has friends who she entertains at home from time to time, who occasionally like to sing, dance and listen to music.

[5] The other tenants in the building are all nice and decent people who are, however, from different cultural backgrounds, which fact may be playing a subtle role in why such a rift within the building has occurred. They may resent me for suggesting that, but it is hard not to suspect that cultural differences play a role in fostering misunderstanding.

[6] The Landlord is somewhat caught in the middle and appears to have concluded that it owes a duty to its other tenants to seek termination of the Tenant's lease.

[7] While I will briefly recite the particular incidents that underlie the complaint, I will first make some general observations.

[8] What started as a complaint by Ms. Fraser about excess noise from the apartment directly above her (in a building that appears to be weak in its noise insulating capability), has escalated into a broad conflict pitting the three other tenants and some of their friends against the Tenant and some of her friends and supporters, and Eleanor. This conflict is real, in the sense that it is affecting the lives of everyone in the building, and it is a real problem for the Landlord in the sense that it must play referee and also is at risk of losing one or more tenants.

[9] However, from my observations the conflict is also totally overblown when the underlying facts are seen.

[10] In my opinion, both sides have lost all objectivity and perspective. The other tenants, in particular, have demonized the Tenant and interpret every action of hers in the absolute worst light. This is a well-recognized phenomenon in conflict theory and is known as “attribution.” Because the parties are already in conflict, they interpret events and attribute the worst possible motives to the other person, which in turn further fuels and escalates the dispute.

[11] In the case here, the other tenants have come to believe that the Tenant is pathologically angry, or hates them, and that she has been retaliating, and will seek further vengeance on them for having taken sides against her in this dispute. They assume that every annoying thing that she or Eleanor does is deliberate and targeted at them, when in fact it may be accidental or nothing at all. Their index of suspicion is running so high that they have lost their critical faculties. This is further aggravated by the fact that they appear to have bonded over this conflict and support each other in their worst suspicions.

[12] This is not to suggest that the suspicions of the other tenants are totally unfounded. The Tenant may, in fact, have anger toward them and may now dislike them. She also may do some annoying things. That however is not the issue, as I will emphasize.

[13] As noted, the dispute has escalated beyond the building. Other people are getting involved, and people are starting to suspect that they are being bad-mouthed behind their backs.

[14] Getting back to the incidents in question and the background facts. Ms. Fraser moved into the unit below the Tenant in June of 2010. It appears that she and the Tenant were friendly at first, and in fact it was from the Tenant that Ms.

Fraser first heard about the availability of the unit. That relationship changed on August 13, 2010 when Ms. Fraser heard loud music coming from the Tenant's apartment and called upstairs to complain. When that did not produce a satisfactory result she called the Landlord and eventually the police were called to issue a warning to the Tenant. The Tenant admits that she had friends over and that they may have been listening to the music at too high a level, but she insists that she took the cue and reduced the level.

[15] Ms. Fraser says that after the police came, there was loud banging coming from upstairs which she attributed to the Tenant retaliating against her. The Tenant denies doing anything deliberately to annoy or disturb the Tenant. She conceded that some of her guests, including her grown son, have a tendency to walk heavily - which she says she has since tried to prevent. Ms. Fraser says that after that incident she did her best to stay out of the way of the Tenant.

[16] A further incident occurred on October 9, 2010. There were activities going on in the Tenant's apartment, as well as in the apartment of her second floor neighbour Stephanie Butterill. The latter was holding a birthday party for her boyfriend Dave. At various times during the evening the Tenant was at that party, or at her own apartment where she had a couple of people over. Because they share a back deck, there was cross-over activity going on outside involving people from both apartments. Ms. Fraser was not upstairs at any time during that evening, although the other downstairs tenant Kim Fizzard was a guest at the party.

[17] At some point during the evening Ms. Fraser made a complaint about loud music coming from the Tenant's apartment. The police were called and warned the Tenant. After they left, according to Ms. Fraser the Tenant went on a

rampage, banging on the floor and making a racket for the sole purpose of venting her anger and annoying her. The police were called again. They arrived and found the Tenant next door in Ms. Butterill's apartment, and issued a summary offence ticket under the Halifax noise bylaw.

[18] It was on the basis of those incidents that the Landlord commenced its *Residential Tenancies Act* application in March of 2011. No explanation was offered as to why it took four months from the last alleged incident for the Landlord to take an action as drastic as terminating a long-standing tenancy, although I infer that the Landlord was responding to the fact that the conflict in the building was getting worse, and not better, and it felt that it had to do something.

[19] The Tenant's view of the October 9, 2010 event was that there was noise coming from the upper level, but it was a combination of the party next door and her activities in her apartment. It was a Saturday night and it was not that late; in fact it was not even 11:00 p.m. when the police came the second time. She said that she had already taken to keeping her music at a lower level because of the earlier complaint, and denies that there was any deliberate noise being made other than perhaps one time when she slammed her hand on her kitchen table out of frustration.

[20] The bylaw offence was eventually tried by Provincial Court judge Flora Buchan in April 2011, after the Residential Tenancy hearing. The Residential Tenancy Officer did not have the benefit of the findings made by the court. Judge Buchan delivered oral reasons and acquitted the Tenant, finding that there was reason to believe that Ms. Fraser was exaggerating her evidence and also finding that it was impossible to attribute all of the noise to the Tenant given everything else that was going on in the building.

[21] While I appreciate that Judge Buchan was applying a standard of proof beyond a reasonable doubt, which is not the civil standard that I must apply, those reasons are nevertheless entitled to respect and I should not lightly conclude otherwise. Even so, I have independently come to the conclusion that the evidence of Ms. Fraser is unreliable given what I believe to be her inclination to hear and suspect the worst. Again I would emphasize that I do not believe she is deliberately skewing the truth. I just believe she had already lost her objectivity.

[22] It is significant, in my view, that no one else in the building heard anything untoward that evening - not even the people who have since sided with Ms. Fraser.

[23] It is my express finding on all of the evidence that there is insufficient proof of any deliberate noise-making by the Tenant that would come anywhere near the threshold required to find her in fundamental breach of her obligations under the lease. She is a long-standing tenant with security of tenure under the *Residential Tenancies Act*, and is not lightly to be denied that security.

[24] Although not specifically stated in the Residential Tenancies complaint, there have been other incidents which the Landlord brought forward to support the eviction. One of those incidents happened only two days before the hearing before me. These include:

- a. Ms. Fraser has complained that the Tenant uses the back stairs and crosses unnecessarily over part of her deck. She believes this is only being done to annoy her. In fact, the Tenant had the express

permission of the Landlord to do this, which she only does when she needs to access the laundry facility which I believe is in the basement. The Tenant says that she now uses the front stairs whenever possible.

- b. Ms. Fraser has accused the Tenant of interfering with her mail by throwing it in the trash bin. She has never seen the Tenant do this, but cannot think of who else might have done it, therefore it must have been the Tenant. The Tenant totally denies doing such a childish thing.
- c. Ms. Fraser has accused the Tenant of deliberately spilling water on her deck which splashed on her when she was innocently sitting out on her deck below. The Tenant says she was watering plants in a new planter which she did not realize had holes in the bottom, and that she is now more careful. Ms. Fraser (and her witnesses) cast doubt on this theory because they claim that the plants in the planter are fake and therefore do not need watering; therefore it must have been a deliberate attempt to annoy Ms. Fraser. The Tenant countered with evidence that the planter contained both real and fake plants - the fake ones being there until the small plants grew to a more respectable size - and that the real ones needed to be watered.
- d. On Sunday, May 8, 2011 Ms. Fraser found some milk spilled down the deck, covering part of her screen door, which she attributed to the Tenant or Eleanor deliberately targeting her. She called the Landlord and photos were taken. The Tenant testified that she was

not home at the time and that Eleanor had accidentally spilled some milk.

- e. Ms. Butterill accused the Tenant of deliberately leaving unsecured garbage bags on their mutual deck.

- f. Ms. Butterill's boyfriend Dave accused the Tenant of spreading malicious gossip about him, and accused her friend Donnie Fairfax of snubbing him and calling him an unflattering word. Mr. Fairfax admitted that he was not kindly disposed to Dave and the other tenants because of their behaviour, particularly at the Residential Tenancies hearing where he thought they were being overly jovial and disrespectful of the fact that the Tenant faced a serious threat to her home and family security.

[25] I am unable to find any real substance to these complaints, or to some of the other innuendos contained in the testimony of the Landlord's witnesses. The fact is that the tenants in this building are in serious conflict and have become polarized. They are hyper-sensitive to each other and, as noted, apt to read too much into situations.

[26] I also note that there was no evidence offered in support of the Landlord's contention that other tenants have left the building on account of the Tenant - which was one of the findings of the Residential Tenancy Officer upon which he based his order.

[27] While I would like nothing better than to try to solve these people's problems and alleviate what appears to be unnecessary suffering by all

concerned, that is not my job. The legal rights of the Tenant are not to be sacrificed just to make peace.

[28] The Landlord sought to terminate the tenancy of this long-standing tenant, partly (I believe) to placate the other tenants and also because it fears that other tenants will leave. If the Landlord could have mustered sufficient legal grounds to terminate, it would have been entitled to succeed and that would probably have resolved the conflict. Absent such legal grounds, however, its application must fail, with the inconvenient result that nothing gets resolved in terms of the greater conflict.

[29] As already noted, I find that the evidence falls far short of proving that the Tenant is in breach of her lease. In so finding, I am not pinning any medals on her, because she must take some responsibility for this conflict having gotten out of hand. I am also quite aware that she is not enjoying this conflict, and that it has had a detrimental effect on Eleanor.

[30] I take some small comfort in the fact that the Tenant claims to be now much more careful not to disturb the other tenants, since all of this erupted, and that she has tried to get Eleanor to be careful as well. I sincerely believe that if the Landlord and the other tenants in the building just allow a little time and space, this situation may yet become tolerable for everyone.

Eric K. Slone, Adjudicator