IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation*: Alderwood Village v. Uwins*, 2018 NSSM 40

Claim No: SCCH 474615

BETWEEN:

ALDERWOOD VILLAGE

Appellant/ Landlord

-and –

MICHELLE UWINS

Respondent/ Tenant

Date of Hearing: April 5, 2018;

Date of Decision: April 9, 2018.

Appearances:

Heather Scott appeared on behalf of the Landlord, "Alderwood Village".
Michelle Uwins appeared on her own behalf.

Editorial Note: The electronic version of this judgment has been edited for grammar, punctuation and like errors, and addresses and phone numbers have been removed.

DECISION

(1) This is an appeal from the decision and order of Residential Tenancies Officer, Jason Warham, dated March 22, 2018 denying the Landlord's claim for payment of money on the grounds that the issue is *res judicata* as the matter had been previously considered in an application and appeal involving the Landlord and Georgina Stanhope and Dale Kilburn, the previous owners of the mobile home and lot. That matter was heard by Adjudicator Augustus Richardson, QC, who rendered a decision on June 15, 2017 in favour of those tenants. (2017 NSSM 17). At the conclusion of the hearing, I stated that I found Mr. Warham's reasons compelling.

(2) The matter was appealed by the Landlord on the grounds that the Tenancy Officer failed to "properly recognize (the) signed contract (between the Landlord and the Tenant)". I found that issue more relevant and determinative of the issue, particularly if I were wrong on the issue of *res judicata*. I chose to base my decision on the provisions of the contract.

(3) At the conclusion of the hearing, I provided oral reasons for dismissing the appeal, essentially that the plain language of the lease, the "Community Standards" and the note contained on the Inspection Report all lead to the conclusion that the Tenant is not liable for the installation of the vinyl siding. I dismissed the appeal and indicated I would provide brief written reasons. These are those reasons.

(4) The Appellant has been referred to by various names throughout this proceeding and the Stanhope matter. At the hearing, I asked Ms. Scott the proper name which yielded a different answer again. The Appellant was named in the Notice of Appeal as "Alderwood Village". I have used this name for this decision and order, particularly where I found for the tenant. Should she wish to appeal this decision or bring any applications or appeals in future, Ms. Scott must use the correct name as found in the records of the Registry of Joint Stock Companies.

Background

(5) The background to this matter is well described by Adjudicator Richardson in paragraphs 3-14 in *Stanhope v Alderwood Trailer Village*, *supra*. It is important to note that I am constrained to findings based on evidence tendered at the hearing of the matter before me. Some of the evidence considered by my colleague was not before me in this hearing.

(6) The Tenant, Heather Uwins, purchased a mobile home located on a lot known as [address removed], Lakeside, Nova Scotia. The lot contains a shed which at the time of purchase, was sided with cedar shingles. The Landlord and Tenant signed a document entitled "Alderwood Village Land-Lease Community" which purports to be part of any lease that may be in effect. No other lease was tendered into evidence. Likewise, the parties did not provide a copy of the Agreement of Purchase and Sale between the Tenant and Ms. Stanhope and Ms. Milburn. I am limited to the documentation before me in interpreting "their lease".

(7) The Community Standards document provides as follows:

> 5.7 Tenant(s) is responsible to maintain the appearance of his/her home and lot at all times. The yard must be free of car parts, litter, garbage, junk or other unsightly condition.
>
> 6.1 Before a home is listed for resale, sub-leased or refinanced, the Landlord will complete an *Outside Lot Inspection* (an exterior inspection of the home and site, including an *Under the Home Inspection*.). If any violation of these Rules or the Residential Tenancies Act is found, the Landlord may refuse to accept the application for resale or sub-lease until all violations have been corrected. The Tenant hereby acknowledges that such a refusal by the Landlord will be a valid

reason for withholding consent to the sub-lease by the landlord.

6.4 All homes sold or rented on Community premises must comply with COMMUNITY STANDARDS (SCHEDULE "A") before the sale or rental agreement is finalized.

(8) The relevant sections of Schedule A provide the following:

"**Sheds**

1.1 Size may be no larger than 10' x 10', 8' high plus peak, constructed of new lumber, pitched or barn style, shingled roof, vinyl siding only.

1.5 Base of she had to be skirted worth height exceeds 8".

1.6 Wood doors, or wood trim, are to be painted with two coats of exterior paint or stain.

1.8 Sheds not in compliance with the Community Standards will have to be repaired or removed from the park."

(9) The document was signed by the tenant on April 15, 2016.

(10) Prior to the sale of the home, the Landlord completed a document entitled *Home for Resale Lot Inspection*. That document lists a number of items too lengthy to list here. It was addressed to Ms. Stanhope and dated February 17, 2016. The document was copied and notes written thereon indicating a number of items which were not finished, including the storage shed. The note included the need to have vinyl siding installed and replace rotten eaves and trim. In the top right-hand corner of the document appears the following notation:

"April 13/16" "All items not complete are to be done by June 15/16 & by signing below become responsibility of purchaser."

(11) The notation is initialed by Ms. Scott. The document is signed on April 15, 2016 by Michelle Uwins.

(12) According to the parties, the vinyl siding was installed on April 22, 2016. The work was paid by Ms. Stanhope and Ms. Milburn under protest but at the insistence of the Landlord. Those tenants took exception and filed an application with the Director of Residential Tenancies. The Residential Tenancies Officer dismissed the application. The tenant successfully appealed the application before Adjudicator Richardson. He awarded them their money back ($1079.17) together with costs of $100, for a total judgment of $1179.17.

(13) The Landlord demanded payment from the tenant on the strength of the notation contained on the Lot Inspection Report. Ms. Uwins refused to pay. The application was

made by the landlord before Mr. Warham.

(14) An appeal from the decision of a Residential Tenancies Officer is a new hearing based on the evidence presented before the Small Claims Court Adjudicator. The evidence presented usually consists of that presented to the Residential Tenancies Officer (in whole or in part) and any additional evidence the parties seek to adduce. An Adjudicator may confirm the Order of the Residential Tenancies Officer or vary it as he

or she considers just and appropriate based on this evidence.

Issues

- What were the Tenant's responsibilities with respect to the siding on the shed on the property?

- Were those obligations fulfilled?

The Law

(15) There are several issues for consideration before me. Like Adjudicator Richardson in the *Stanhope* case, I am not certain if the conditions sought to be imposed upon the Tenant are reasonable and enforceable in accordance with the *Residential Tenancies Act*. As noted at the outset of this decision, I am of the view that the matter can be resolved by the plain language of the documents signed. Firstly, I shall briefly comment on the application of the doctrine of *res judicata*.

Res Judicata

(16) The doctrine of *res judicata* is designed to prevent plurality of actions. It creates two forms of estoppel, cause of action estoppel and issue estoppel. They were succinctly summarized by Justice Jill Hamilton in *Saulnier v Bain*, 2009 NSCA 51:

"When an issue has been the subject of previous adjudication were when a party had an opportunity to raise an issue in a previous action, and in all the circumstances, should have raised that issue, a cannot be the subject of another action."

(17) In other words, the Tenant contends the issue had been previously decided by Adjudicator Richardson in the *Stanhope* case, and therefore, the matter must not be decided again. That would decisively conclude the matter regardless of any contractual term.

(18) As noted previously, I found Mr. Warham's decision on behalf of the Director of Residential Tenancies to be compelling. Essentially, by seeking the same payment from Ms. Uwins, the Landlord is seeking to recoup that which it was unsuccessful in recovering from the previous tenants. Curiously, Ms. Scott somehow included the costs award in her application and appeal which would not have been awarded in any event.

(19) The circumstances in this case involve similar issues to those decided in that case but there also a number which are different. As noted above, I have dismissed the appeal on the basis of the language of the documentation used in the inspection.

Interpretation of Documents

(20) The documentation in this landlord-tenant relationship consist of the document entitled *Alderwood Village Land-Lease Community* including the schedules pertaining to Community Standards and pets. For the purposes of this hearing, I find this to be the entire lease. In addition, it includes the "Lot Inspection" completed on April 15, 2016. The law pertaining to interpretation of contract has been quoted numerous times by the courts in Nova Scotia and elsewhere across Canada. I had occasion to summarize the case law in Nova Scotia in *Bank of Montreal v.Kincade*, 2014 NSSM 50:

> There are several legal principles for consideration when interpreting a contract. The general rule is as stated by the Supreme Court of Canada in *Eli Lily and Co. v. Novapharm Ltd.*, [1998] 2 S.C.R. 129, where Justice Iacobucci stated the following for the majority of the Court:
>
> "The contractual intent of the parties is to be determined by reference to the words they used in drafting the document, possibly read in light of the surrounding circumstances which were prevalent at the time. Evidence of one party's subjective intention has no independent place in this determination....
> ...Indeed, it is unnecessary to consider any extrinsic evidence at all when the document is clear and unambiguous on its face....
> ...When there is no ambiguity in the wording of the document, the notion in *Consolidated-Bathurst* that the interpretation which produces a "fair result" or a "sensible commercial result" should be adopted is not determinative. Admittedly, it would be absurd to adopt an interpretation which is clearly inconsistent with the commercial interests of the parties, if the goal is to ascertain their true contractual intent. However, to interpret a plainly worded document in accordance with the true contractual intent of the parties is not difficult, if it is presumed that the parties intended the legal consequences of their words."
>
> However, when considering the wording of standard form agreements, in the event of ambiguity, one turns to the principle of *contra proferentum* whose purpose, as stated by Iacobucci, J. in *NovaPharm* at paragraph 53, is:
>
> "to protect one party to a contract from deviously ambiguous or confusing drafting on the part of the other party, by interpreting any ambiguity against the drafting party."
>
> As stated by the Nova Scotia Court of Appeal in *Ryan v. Sun Life Assurance*, 2005 NSCA 12, per Cromwell, JA (as he then was):
>
> "Its operation depends, therefore, on a finding of ambiguity in the language to be interpreted. Ambiguity in this context means that a term in the contract is reasonably capable of more than one meaning: see for example *Chilton v. Co-operators General Insurance Co.* (1997), 143 D.L.R. (4th) 647 at 654 (Ont. C.A.)."

(21) Previous decisions of the Small Claims Court are not binding on me. However, the cases of superior courts cited within them certainly are. The objective in this matter is to consider the wording of the notation, "All items not complete are to be done by June 15/16 & by signing below become responsibility of purchaser".

(22) In my view, the document is clear and unambiguous on its face. The plain meaning of the document was to impose on the tenant the requirement to complete those items not finished by June 15, 2016. The subjective intent of one party is not

relevant. There must be mutuality of agreement. If it had been the intent of the parties for Ms. Uwins to indemnify the Landlord for the siding regardless of when the work was completed, a stipulation to that effect could have been made. However, it was not.

(23) In the event that I had found the document to have been ambiguous rather than clear, I find this is a proper case to apply the doctrine of *contra proferentum* and interpret the language against the drafter, in this case, the Landlord, in favour of the Tenant.

(24) Accordingly, I find the condition had been met, namely the work was completed by June 15, 2016 and therefore no liability for the repair is found against the Tenant.

Summary

(25) Based on the foregoing, the appeal is dismissed.

(26) As stated during the hearing, s. 17D(2) of the *Residential Tenancies Act* limits costs awarded to filing fees for the appeal and the application to the Director of Residential Tenancies. Both of these costs were borne by the Landlord. Therefore, each party will bear their own costs.

(27) An order shall be issued accordingly.

Dated at Halifax, NS,
on April 10, 2018;

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Gregg W. Knudsen, Adjudicator

Original: Court File
Copy: Landlord(s)
Copy: Tenant(s)