

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

Citation: *Majak v. Metro Non-Profit Housing Association*, 2018 NSSM 59

Claim No: SCCH - 479125

BETWEEN:

JOSEPH MAJAK

Tenant (Appellant)

- and -

METRO NON-PROFIT HOUSING ASSOCIATION

Landlord (Respondent)

REASONS FOR DECISION AND ORDER

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on September 4, 2018

Decision rendered on September 10, 2018

APPEARANCES

For the Landlord	Carol Charlebois, Exec. Director
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For the Tenant	self-represented
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REASONS FOR DECISION

[1] This is an appeal by the Landlord from a decision of the Director of Residential Tenancies dated July 25, 2018, which terminated the Tenant's tenancy as of August 31, 2018.

[2] The Landlord owns and operates an apartment building in North End Halifax. The Tenant has lived in the building for approximately four years. During that time, there have been a number of incidents where the Tenant has been loud and disruptive, and on several occasions, he was served with a Notice to Quit for breach of Statutory Condition 3 respecting good behaviour:

3. Good behaviour. The landlord or tenant shall conduct himself in such a manner as not to interfere with the possession or occupancy of the tenant or of the landlord and the other tenants, respectively.

[3] Determining whether or not this type of a condition has been breached is far more complex than, for example, determining whether or not a tenant is in arrears of rent. Up to recently, the Landlord did not follow through on any of its threats to evict the Tenant. However, in early July 2018 it brought this application which was heard by the Residential Tenancy Officer on July 24, 2018.

[4] Although served, the Tenant did not participate in the hearing, which was heard by way of telephone conference call. As such, the Residential Tenancy Officer only heard one side of the story and granted the termination order.

[5] The court had the opportunity to hear from the Tenant himself, as well as from another individual, Gary Erskine, who is a tenant in the same building and who has become friendly with the Tenant. Mr. Erskine was also helpful in assisting the court with understanding the Tenant's heavily accented English.

The Tenant is from an African country, and his English appears to be not only heavily accented but somewhat limited.

[6] As Mr. Erskine testified, there are many tenants in the subject building who have emotional and other problems, not just this Tenant. As he put it, "we are all disabled to some degree or another." He described the Tenant as someone who becomes rowdy when intoxicated, and who is in apparently unhealthy relationships with a woman in the building as well as another woman who lives in the community. It is his encounters and dealings with these women that have given rise to the most recent incidents. The Landlord has taken the unusual step of serving a notice on one of these women under the *Protection of Property Act* (prohibiting her from coming on the premises), which apparently has not always stopped her from forcing her way into the building and ending up in confrontations with the Tenant. According to Mr. Erskine, who I found to be a credible witness, the Tenant does not and should not bear all the responsibility for these incidents. It appears that there were two occasions in August 2018, when the police were called because of further incidents, both of which occurred after the hearing before the Residential Tenancy Officer, where the Tenant was taken away in handcuffs. It is not far-fetched to believe that the police might have focussed on the male participant in these disturbances and regarded him as the one who needed to be removed from the situation.

[7] As for other incidents, the Landlord came with some statements and other hearsay evidence that attests to there having been problems and complaints. However, there is not a lot of objective evidence of the Tenant's behaviour.

[8] The Tenant is not denying that he has behaved badly at times, but appears contrite, and is planning to enter a detox program to help him with his alcohol

problem. He also appears to understand that he needs to stay clear of these two individuals who have been involved in his problems in the past.

[9] Terminating a tenancy, particularly one that caters to people in challenging circumstances, is a big step. I am of the view that coming this close to being terminated may be enough of a message for the Tenant, and there is a reasonable prospect of him behaving properly in the future.

[10] Should further incidents occur, I have no doubt that the Landlord will seek his eviction. I would counsel them to come to a Residential Tenancies hearing, or this court, with more compelling evidence than they produced this time. I appreciate that other tenants may be reluctant to come forward and testify, for fear of reprisal or otherwise, but firsthand evidence of the complained of behaviour would be far more compelling than what the Landlord brought to court on this occasion.

[11] In the end, the order of the director is set aside and the application for termination of the tenancy is dismissed. I do not believe I have jurisdiction to impose conditions, because that would put the court in the undesirable position of supervising its order, but I trust the Tenant will appreciate that he escaped by the skin of his teeth and he must show much better behaviour than he has in the past, or this type of process will be repeated.

ORDER

For the foregoing reasons, the Order of the Director of Residential Tenancies is set aside and the application for termination of the tenancy is dismissed.

Eric K. Slone, Adjudicator