

Claim No: SCCH - 479535

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Curtis v. Groves*, 2018 NSSM 73

BETWEEN:

JOHN CURTIS

Claimant

- and -

JOHN GROVES

Defendant

RULING ON JURISDICTION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on October 15, 2018

Decision rendered on October 17, 2018

APPEARANCES

For the Claimant

self-represented

For the Defendant

Joseph Joukhadar
Articled student

BY THE COURT:

[1] This claim arises under an agreement whereby the Claimant leased a luxury house in Bedford to the Defendant on a short-term basis, as documented in a rough written memorandum signed by both parties. One of the terms of the deal was that the Claimant would continue to pay the utility bills, and would seek reimbursement from the Defendant. This arrangement made sense because of the likely short duration of the tenancy, which did not justify having the bills put in the Defendant's name.

[2] While it is clear that many of the niceties of a residential tenancy were not present, this transaction was in every important respect a residential tenancy. The *Residential Tenancies Act* in s.3 defines the things that must be present to constitute a residential tenancy:

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.

[3] There is no question that the Defendant and his family occupied the home and paid rent. So the *Residential Tenancies Act* would apply, on its face.

[4] For reasons which were not explored in this preliminary proceeding, the Defendant and his family vacated the premises without notice at the end of January 2018, and have refused to pay the last two months of an electric bill and the last four months of the water bill. I know generally that the Defendant has some complaints about the condition of the house, but we did not hear any evidence on those matters as we concentrated on the question of jurisdiction.

[5] Before starting a proceeding, the Claimant had a question in his mind as to whether his correct forum for attempting to collect these monies was Residential Tenancies or the Small Claims Court. He advised the court, and I have no reason to doubt this, that he spoke to two separate people at Residential Tenancies who told him that he had to bring his claim directly to Small Claims Court and not to Residential Tenancies. The ostensible reason was that he himself had paid the utility bills, as opposed to the bills being paid directly by the tenant.

[6] This distinction makes no sense to me. I have had pass over my desk many scores of residential tenancy files where the landlord pays some bills, and seeks reimbursement from the tenant. This has never been an obstacle to the landlord bringing the matter up in Residential Tenancies and seeking a payment order against the tenant.

[7] The Defendant has argued, and I fully agree, that the Small Claims Court lacks original jurisdiction in this matter to consider the claim for expenses

associated with a residential tenancy. I know the Claimant must feel a certain amount of frustration, as this has all the hallmarks of the run-around, but the *Small Claims Court Act* is quite clear when it states in paragraph 10(d):

10 Notwithstanding Section 9, no claim may be made under this Act

.....

(d) which involves a dispute between a landlord and a tenant to which the *Residential Tenancies Act* applies, other than an appeal of an order of the Director of Residential Tenancies made pursuant to Section 17C of that Act

[8] As such, I am dismissing this claim without prejudice to the Claimant's right to pursue the matter directly in Residential Tenancies where I am confident that all of the claims and counterclaims arising from this residential tenancy can be dealt with in the ordinary way.

Eric K. Slone, Adjudicator