

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
ON APPEAL FROM AN ORDER OF THE
DIRECTOR OF RESIDENTIAL TENANCIES
Citation: *Liao v. Li*, 2018 NSSM 74**

BETWEEN:

QUN LIAO

Tenant (Appellant)

- and -

DIANA TONG LI

Landlord (Respondent)

REASONS FOR DECISION AND ORDER

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on October 16, 2018

Decision rendered on October 17, 2018

APPEARANCES

For the Landlord self-represented

For the Tenant self-represented

REASONS FOR DECISION

[1] This is an appeal by the Tenant, Qun Liao, (hereafter “Ms. Liao”) from a decision of the Director of Residential Tenancies dated October 1, 2018. That decision awarded the Landlord, Diana Tong Li, (hereafter “Dr. Li”) the sum of \$5,700.00 for rent arrears on two properties for the month of August 2017. It also awarded the Landlord her costs of \$31.15.

[2] Ms. Liao did not attend the Residential Tenancies hearing. There is a dispute as to whether she was properly served with notice. I need not decide that question. However, I am satisfied that had she attended the hearing, she would have brought information to the attention of the Residential Tenancy Officer that likely would have affected the decision.

[3] There is quite a background to this case.

[4] In simplistic terms, Dr. Li owns two houses, 1590 Walnut St. and 5905 Rogers St. in Halifax. These homes each have a number of rooms. The "tenant" Ms. Liao operates a business renting out rooms mostly to Chinese exchange students living in Halifax, but also on short-term rentals through Airbnb.

[5] Ms. Liao essentially acted as an intermediary, holding the master lease on these two properties, and entering into leases or agreements of various descriptions with the students and others, who for purposes of this decision I will consider as subtenants.

[6] On July 4, 2017, Ms. Liao and Dr. Li signed an agreement covering these two houses, with rent payable at the amount of \$5,700.00 per month. There were

other provisions respecting utilities, upkeep and so forth, which are not germane to this appeal.

[7] That initial agreement covered the summer of 2017, and there was a separate lease for the next year, which also is not germane. For a variety of reasons, Ms. Liao never paid the \$5,700.00 in August 2017 rent. In fact, she claimed that Dr. Li owed her money for various things related to their agreement.

[8] Sometime in 2018 (unclear to me) Ms. Liao brought a claim in Small Claims Court seeking compensation from Dr. Li. In response to that claim, Dr. Li defended on the basis that Ms. Liao owed her \$12,000.00 for various amounts, including explicitly the \$5,700.00 for unpaid rent in connection with August 2017. Although not framed as a counterclaim, the court treated it as such.

[9] The matter came up for hearing in front of Adjudicator Angela Walker, who issued a written decision dated July 3, 2018. In that decision, Adjudicator Walker made a finding that the arrangement between the parties was in the nature of a joint venture to create illegal rooming houses in contravention of Halifax zoning bylaws. The following quotations from her decision are important:

I am satisfied that Ms. Liao and her company and Ms. Li were engaged in a joint endeavour or venture to rent out rooms to university students. From the evidence, this appears to be the day-to-day business of Ms. Liao. Ms. Li had two residential properties and entered into the agreement and then the lease, with Ms. Liao describing that Ms. Liao was the tenant. When the lease and the agreement were entered, I find that both parties were fully aware that there was never an intention that Ms. Liao would be the tenant in the premises. I find that both parties were fully aware that the plan, from day one, was to rent out individual rooms of each premise to university students.

I also find that both parties were fully aware that the properties were not zoned for this purpose and both parties were fully aware that the approval had not been sought or received from the Halifax Regional Municipality to use the premises for this purpose.

I have reviewed the relevant bylaws. I have considered all of the evidence I am satisfied, on balance, that the agreement and the "lease" were not legal contracts as their core intention was to circumvent the legalities associated with securing proper zoning approval to use these premises as rooming houses.

[10] The learned Adjudicator went on to cite authority for the proposition that the court will not enforce illegal contracts, and she concluded by stating:

I am satisfied that it would not be appropriate for either party in this case to benefit from any enforcement of the terms of the agreement or the lease. Accordingly, I dismiss both claims and each party shall bear her own costs.

[11] Dr. Li was obviously unsatisfied with this order, and on the face of it the result may appear somewhat harsh. However, she did not seek to appeal it, and it stands as a final, binding order.

[12] Instead, she decided to pursue her matter of the outstanding August 2017 rent by bringing a fresh application in Residential Tenancies, The Residential Tenancy Officer, having not had the benefit of any of the history of the matter, simply awarded Dr. Li her \$5,700.00, as asked. This is the order under appeal.

[13] It is a fundamental principle of the law in Canada that once a matter has been conclusively determined in any court of competent jurisdiction, the matter cannot be raised in another proceeding either in that court or in another forum. The principle is sometimes called *stare decisis*, which is Latin for "a thing decided", or sometimes it is referred to as the rule against double jeopardy.

[14] Put in its simplest terms, Dr. Li's claim for \$5,700.00 of rent covering the month of August 2017 was determined by Adjudicator Walker who decided, rightly or wrongly, that she had jurisdiction to consider the claim but dismissed it on the basis that she would not enforce an illegal contract. That dismissal was not merely procedural; it was a dismissal on the merits based on a particular legal principle that Adjudicator Walker had the authority to apply. Dr. Li's remedy, if any, was to have taken the matter on appeal to the Supreme Court of Nova Scotia, to have that court decide whether or not the claim ought to have been dismissed on those grounds. This step was not taken, and the time for such an appeal has long since passed.

[15] Dr. Li cannot seek to work around this inconvenient finding by pretending it never happened, and by bringing the matter up to a Residential Tenancy Officer seeking the very same sum of money for the same alleged debt.

[16] Accordingly, the appeal must be allowed and the application by Dr. Li for \$5,700.00 is dismissed, with costs. Those costs to Ms. Liao are limited to her filing fee \$199.35.

[17] I note that Ms. Liao has asked for \$500.00 of compensation for her own time in pursuing and preparing this matter. I have no jurisdiction to order such compensation. It is very common that litigants will spend time preparing their matters. This court has never seen itself as having the discretion to begin to put a value on people's time and seek to hold other parties responsible for that.

ORDER

The order of the Director dated October 1, 2018 is set aside, and the Landlord's application for payment of rent in the amount of \$5,700.00 is dismissed. The Landlord is ordered to pay the Tenant her costs in the amount of \$199.35.

Eric K. Slone, Adjudicator