

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
cite: *Landlord DL v. Tenant RM*, 2020 NSSM 25

SCCH 501134

Between:

Landlord DL

Appellant/Landlord

— and —

Tenant RM

Respondent/Tenant

Adjudicator: Augustus M. Richardson, QC
For the Appellant Landlord: Melissa P. MacAdam, counsel
For the Respondent Tenant: RM, self-represented
Heard: December 3rd, 2020 (by teleconference)
Decision: December 7th, 2020

DECISION and ORDER

Introduction

[1] It has been said that while a tenants’s unit is their castle, they are not entitled to do and say as they please once they exit their door: *Colley v. Metro Regional Housing Authority* 2019 NSSM 24 at para.26. But what if they are driven by mental illness that leads to conduct which would in normal course be considered bad behaviour? Are the landlord or neighbours obligated to live with and endure such conduct? This is the question addressed in this case.

[2] Given the nature of the evidence and issues in this matter I have decided to anonymize the identity of the parties and witnesses in the version of this decision that is released online.

The Background

[3] The respondent tenant (the “Tenant”) lives in the bottom level unit of a house that has been divided into three units on Alex Street in Halifax, Nova Scotia. This is an appeal by the landlord from a Residential Tenancy Order dated October 7, 2020 (the “RTO Order”). The Landlord had applied for an order terminating his lease with the respondent tenant for unpaid rent and for, as the RTO Order, put it, “behaviour issues.” The issue of whether rent was due was adjourned by the Residential Tenancy Officer; the issue of whether the lease should be terminated by reason of a breach of the statutory condition requiring good behaviour was heard and was dismissed. It is from that decision that the Landlord appeals.

[4] The hearing took place by way of teleconference due to the court shutdown imposed by the COVID-19 pandemic. On behalf of the appellant Landlord DL (the “Landlord”) I heard the testimony of

- a. Ms HG, a neighbour who occupies a house immediately adjacent to the Landlord’s triplex;
- b. DG (no relation to Ms HG), the tenant living on the second floor unit directly above the Tenant;
- c. BS, the tenant living in the third floor unit above DG and, for some period of time, a co-worker of the Tenant; and
- d. the Landlord.

[5] The Landlord also put into evidence a bound Book of Evidence (“BOE”), which included, amongst other things, copies of text or email messages between the witnesses and the Landlord.

[6] I also heard from the Tenant. He conducted limited cross examination of the witnesses as well as providing his own testimony. He introduced no documents and called no witnesses, although he had been advised in an earlier pre-hearing conference of his responsibility to obtain any witnesses or documents that he thought relevant to the appeal.

[7] The following findings of fact are based on all of the above testimony and documents.

The Facts

[8] The Landlord and the Tenant entered into a standard form of lease commencing April 1, 2020. It was a periodic lease with a term of one year. The rent was said to be \$825.00 a month and included utilities: BOE, Tab 1.

[9] The Landlord operates a landscaping company. It appears as of April 2020 the Tenant was the Landlord's employee, having been hired at some point as a landscape/general labourer. The Tenant had apparently started working for the Landlord roughly two years ago in a part-time position doing snow removal. He said that he and the Landlord, as employer, had an arrangement wherein the Tenant could bank his hours and get paid out later. The Tenant has also alleged that his rent was deducted directly from his pay cheques. He was apparently terminated in June, but he alleged his bank of hours was sufficient to carry his rent through to the end of August. It was hence not until September 2020 that he had to start paying rent directly: BOE, Tab 23 (RTO Order), paras.4-9: see also Tab 22.

[10] Starting in May 2020 the Tenant's conduct became erratic. Ms HG, Mr DG and Mr BS all testified as to this conduct in May, June, July and August 2020. The conduct included abusive and aggressive language directed at Ms HG and the other tenants; loud music playing at all hours of the night; and, at one point, a threat to burn down the triplex. The police were called at least twice, resulting in him being taken away in handcuffs.

[11] On one of these occasions he was admitted to the hospital.

[12] Some idea of the Tenant's conduct during this period was captured in a long email to the Landlord from Ms HG that was sent on July 9, 2020. She wrote of an incident the previous month when she and some friends were sitting on her porch. The Tenant came out of his unit and started pacing in the driveway by her house.

“The entire time [the Tenant] stood by my driveway not far from my deck and acted in a very angry agitated way shouting angry words at the people, calling us 9 pieces of shit on the deck over and over, calling us racists, even though there were 4 men on the deck it did not stop him from being abusive and shouting and running and pacing for hours. I finally called the police and he was so mentally unstable they took him away.”

[13] She describe a subsequent incident when she and a friend were digging holes to plant some vines in her front yard:

“On Tuesday evening as I was digging 3 holes to plant some vines by the fence [the Tenant] came out of his apartment and stood directly behind the chain link fence the entire time we dug the holes. He was talking and talking but my friend and I just kept digging. I told him he needs to be 6 feet away from me because of COVID, his reply go F&^K yourself old lady. Call the police as you always do, you called them earlier today they said the call came from outside this house. I said move away from me, and he started shaking my fence violently. He started talking about why are you digging holes, What’s in the well, do you hear voices in your head? How many voices to you hear? I know you are afraid of me. I can hurt you, I sense you are nervous ? I will be the judge, I am untouchable. I know you are trying to get me evicted but that is not going to happen. I know, I know, I know. I will burn this house down and nobody can stop me, there is gas over there, yeah, if no house can’t get evicted. I am the judge.”
BOE, Tab 9.

[14] There was similar testimony from Messrs DG and BS, most of which related to the Tenant playing loud music for upwards of 16 hours a day at all hours, and his refusals when asked to turn the music down. Mr BS also heard the threat to burn the house down. He texted the Landlord on July 8th as follows:

“Hey man you’re gonna flip the bill for the hotel tonight because I’m not staying here with [the Tenant] downstairs he just threatened to burn the house down:” BOE, Tab 21.

[15] The evidence as to whether Mr BS in fact stayed the night in a hotel was not clear. He did testify that he was concerned about the Tenant’s threat.

[16] In his testimony the Landlord admitted that the Tenant had been an employee, and that he had been terminated “for medical reasons.” He explained that he had received complaints that the Tenant, while driving the company truck, had been following random people around the city, frightening them so much that on one occasion they drove to a police station to avoid him. He also agreed that at some point—though he was vague as to when—he had spoken to the Tenant’s mother, who had advised that both the Tenant and his father had “some sort of mental health background.”

[17] It is clear on the evidence that the Tenant’s erratic and aggressive conduct started in May and that Ms HG and the other tenants were complaining about it to the Landlord over the period May through to the end of August: BOE, Tabs 3-22. It is also clear that the Landlord (who lives in

Prospect) did nothing about these complaints (other than to speak to the Tenant from time to time) until the end of July.

[18] It also seems to be the case that the Tenant's conduct appears to have quieted down since the end of August 2020. Mr DG testified that his last confrontation with the Tenant (over loud music) was about July 28th. Since then "he was quieting down ... after the first court case ... been quiet ever since actually." The last texted complaint introduced into evidence was dated August 31st—and most seemed to be in May, June and July: BOE, Tab 13.

[19] In any event, the Landlord had already elected to start the eviction process. On July 29, 2020 he gave a Form F Notice to Quit as of August 6th to the Tenant. The grounds set out were "because of safety and security issues [with?] other tenants and neighbours:" BOE, Tab 2. The Tenant did not vacate. The Landlord then made an application to the Residential Tenancy Board for termination and vacant possession. The Landlord also alleged at this time that the Tenant had not paid his August rent. The hearing took place on August 13, 2020 and resulted in the RTO Order dated October 7, 2020, now under this appeal. I note that because of the dispute between the Landlord and the Tenant over how and when his rent was to be paid (the issue of whether it was to be deducted from his pay or not) was adjourned to a later date. That being the case the issue of whether there were arrears and, if so, how much was not, strictly speaking, before me. (I also note that the evidence of the Landlord and the Tenant during the appeal was that he had not paid his December rent. I advised him that he should because he was required to.)

[20] At the appeal the Tenant testified that he was bipolar (and had been diagnosed as such). He explained that he took medication for the condition. However, the unfortunate side affect of taking medication to control his symptoms was that he would end up believing that he was better—which in turn led to him to stop taking his medication. His symptoms would then return. That cycle could be aggravated by stress. All of this resulted in manic behaviour—behaviour which he often could not remember. He did not deny the behaviour that the other witnesses complained about, but did say that it could be controlled by medication. He explained that he had been admitted to the hospital in late July 2020, and that as a result had been placed on a regime that involved monthly injections of his medication (rather than taking it orally). He also explained that he has been receiving those injections from a nurse at the Connections Halifax site of Nova Scotia Health. The Connections program is designed to provide support, programs and services to those suffering from mental illness. The Tenant explained that because of the police interventions he was now required "by law" to have the monthly injections—and that since they had started he "had not done anything to cause any grief ... I have avoided people ... I keep the music low or listen with headphones."

Analysis and Decision

[21] I should say first that the Tenant's behaviour in the late spring and summer of 2020, without more, would have been grounds for termination of his lease. His conduct—disruptive of the other tenants and well as the neighbours—clearly breached the Statutory Condition of Good Behaviour: *Colley, supra*; and see *Lindsay v. Metropolitan Regional Housing Authority* 2019 NSSM 61.

[22] Having said that, and notwithstanding the very able submissions of counsel for the Landlord to the contrary, I am also satisfied, notwithstanding the absence of any medical evidence, that the Tenant does in fact suffer from a bipolar disorder. I say this in part based on the testimony of both the Tenant and the Landlord. The conduct described by those witnesses—the pacing, the yelling, the irrational comments—are classic examples of manic behaviour caused by uncontrolled mental illness. I am also satisfied that the Tenant's mental illness is currently under control, and has been since at least some time in September 2020. The question then becomes this: should the Tenant's prior conduct, caused as it was by his mental illness, be grounds for termination?

[23] The Nova Scotia *Human Rights Act* (the *HRA*) forbids discrimination by landlords in the provision of housing on the basis of “physical or mental disability:” *HRA*, s.5(1)(b) and (o). It would be a violation of that prohibition for a landlord to terminate a lease merely because a tenant had a mental illness. It would arguably also be a violation for a landlord to seek to terminate the lease because the tenant had in the past suffered a breakdown of their treatment leading to periodic outbursts or manic or inappropriate behaviour: *Walmer Developments v. Wolch* (2003) 67 OR (3rd) 246 (Div Ct); *Beaverbone v. Sacco* [2009] AJ No. 1096 (Alta QB).

[24] There are two possible exceptions to this duty on a landlord's part not to discriminate because of mental illness:

- a. “where the nature and extent of the physical disability or mental disability reasonably precludes performance of a particular employment or activity:” *HRA*, s.6(e), and
- b. “where a denial, refusal or other form of alleged discrimination is (i) based upon a bona fide qualification, (ia) based upon a bona fide occupational requirement; or (ii) a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society:” *HRA*, s.6(f).

[25] It is not immediately clear to me that s.6(f) would apply. I do not see the absence of mental illness being a bona fide qualification for tenancy; nor could I see such a condition as being a reasonable limit that as can be demonstrably justified in a free and democratic society.

[26] However, s.6(e) does appear to provide an exception, at least within prescribed limits. Where for whatever reason the mental illness results in the type of behaviour exhibited by the Tenant in the late spring and summer of 2020, and that behaviour persists, then it might be said that the “nature and extent of the ... mental disability reasonably precludes the performance of [being a tenant subject to a duty of Good Behaviour].” This exception might also apply where the tenant refuses to acknowledge the existence of a mental illness or condition, which condition has caused ***and is continuing to cause*** bad behaviour or significant property damage; or refuses to seek help for the condition causing such behaviour: see, for e.g., *Lindsay, supra*; see also Ontario Landlord and Tenant Board, File No TNL-78798-16; 2018 LNONLTB 4589 File No TSL-74673-16, 2016 LNONLTB 1239.

[27] These cases also suggest that where a landlord is aware that the underlying cause of the bad conduct is mental illness then some steps ought to be taken by the landlord to try to accommodate or mitigate the conduct—such as, perhaps, by asking the tenant’s family members to intervene, or seeking the assistance of mental health providers. Where such steps are taken but are not successful in alleviating the conduct then s.6(e) of the *HRA* may be satisfied and termination of the tenancy warranted. By way of example, I note that in the *Walmer* case the Divisional Court made the following order when it allowed an appeal against an eviction based on conduct associated with a mental illness:

- a. The tenant or her family shall forthwith provide the landlord with the telephone numbers of her brother and her mother and shall keep such information current;
- b. Upon the occurrence of any conduct on the part of the tenant which the landlord considers is disturbing, or may escalate to the point of disturbing, the reasonable enjoyment of other tenants, the landlord shall forthwith notify the brother and mother of the tenant so that they may intervene, and
- c. If the problem is not rectified promptly, the landlord may proceed under [Ontario’s version of the *Residential Tenancy Act*] as it may be advised.

[28] I note here the evidence that the Landlord was aware at some point of the Tenant’s history of mental illness. As well, the lease did contain the name and number of an emergency contact who, by her last name, appears to have been his mother. Yet there was no evidence that the Landlord made any attempt to contact that person to obtain assistance. I also found it odd that the Landlord did not serve his Notice to Quit until July 29th (some time after the Tenant’s early July threat to burn the house down), even though complaints about his conduct had been made to him in May, June and early July. It may be that the Landlord delayed because he was trying to accommodate the Tenant in some way, but there was no evidence before me to say that was the case.

[29] I should also say that I had come concern about the Landlord's conduct. This concern has its origins in the Notice of Rent increase of \$600.00 a month that the Landlord served very recently on the Tenant. That increase represents roughly a 75% increase in the current rent of \$825.00, and is one the Tenant says he cannot meet. While the Landlord testified that he served it because of the four month notice of rent increase required by the *Residential Tenancy Act*, the chronology and circumstances of this case gave rise to a suspicion of an ulterior motive. The hearing at the Residential Tenancy Board took place on August 13, 2020. The RTO Order was issued on October 7th, 2020. The Landlord filed his appeal with this court on October 13, 2020. The pre-hearing conference with respect to this appeal took place on November 17th, 2020. It was about this time that the Landlord served the Tenant with the Notice of Rent increase. A landlord might in ordinary course be entitled to raise rents by any amount for any reason (at least prior to the rent freeze that was recently introduced by the Nova Scotia Legislature). However, the circumstances of this case give rise to the possibility that the Notice of Rent increase is in fact a disguised notice to terminate. In the absence of evidence substantiating grounds for such a drastic increase in rent I would have concerns that the Landlord was trying to do indirectly what he could not do directly—that is, terminate the lease by using a rent increase when the real goal was to terminate the lease for conduct caused by mental illness. However, I do not have to determine that issue as it is not before me.

[30] By way of summary then I am satisfied on the evidence before me that

- a. the Tenant suffers from a bipolar mental illness;
- b. in the period May-August 2020 the Tenant had conducted himself in such a way as would ordinarily warrant termination for breach of the Statutory Condition of Good Behaviour; however,
- c. that conduct was caused by the Tenants' failure to take his medication, such failure leading to the conduct in question;
- d. the Landlord knew that the Tenant suffered from a mental illness but took no steps to contact the Tenant's family, or seek the help of mental health services;
- e. by September if not before the Tenant had regained control of his mental illness by way of undertaking a regime of monthly injections conducted by a nurse from Connections Nova Scotia;
- f. the Tenant is under an obligation to continue with these monthly injections, and will continue to present himself for such injections; and

g. such injections appear to have been successful in controlling the bad conduct.

[31] With these findings in mind I am not persuaded that termination *at this point in time* would be appropriate. The Tenant is entitled to remain a tenant so long as he maintains his medication regime, and so long as he refrains from any further conduct similar to that in May-August 2020. If he fails in either, and if the Landlord is unable to obtain the intervention of the Tenant's emergency contact, or the health authorities, then the Landlord ought to be at liberty to apply for and to obtain termination of the tenancy agreement.

[32] With these comments in mind the appeal is accordingly dismissed.

[33] I add that Counsel for the Landlord is to be commended for a forceful representation of her client, one which nevertheless remained respectful of the Tenant and his condition. The facts of this case were and are difficult and novel, involving as they do a complex intersection between the rights of her client and those of a person suffering from mental illness. It was a representation that was true to the best qualities of her profession.

DATED at Halifax, NS
this 7th day of December, 2020

Augustus Richardson, QC
Adjudicator