2021 Claim No. 505969

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Curry v. Metropolitan Regional Housing Authority*, 2021 NSSM 22

BETWEEN:

KERRI CURRY

Appellant/Tenant

- and -

METROPOLITAN REGIONAL HOUSING AUTHORITY

Respondent/Landlord

ORDER and DECISION

[1] This is an appeal of an Order of the Director dated April 27, 2021, heard on June 17, 2021, by video hearing. Jecca Lewis and Curtis Coward spoke for the Landlord. The Tenant gave evidence and was represented by Tammy Wohler.

[2] In the Order of April 27 the Residential Tenancies Officer concluded that the Tenant had failed to abide by the terms of a Mediated Settlement dated Marcy 29, 2021, and in the result, ordered vacant possession.

[3] For the reasons that follow, I am setting aside the Order of the Director.

[4] I start with the Mediated Settlement which the parties confirmed was agreed to on March 29, 2021. The operative part of the Mediated Settlement reads as follows:

> **We agree that**
>
> Applicant by Metropolitan Regional Housing c/o Erin MacIsaac and Respondent Kerry Curry consent and agree to an outcome respecting this application to the following terms:
>
> - Kerry Curry agrees to uphold good behaviour and not interfere with the Landlord and neighbouring tenants respectively. Ms. Curry agrees not to use abusive language with her interactions with the Landlord or Landlord's representatives.
>
> - Both parties agree to uphold a respectful manner while corresponding with each other.
>
> - Both parties agree that failure to comply with this Agreement may result in termination of tenancy and an Order of the Director being issued.
>
> Note:
>
> Both parties consent to email.
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> This settlement is binding and cannot be appealed. If either party fails to comply with any term of this Agreement, it may be made an Order of the Director.

[5] Section 16 of the *Residential Tenancies Act*, R.S.N.S. 1989, c. 401, concerns mediated settlements. It reads as follows:

> 16 (1) Upon receiving an application pursuant to Section 13, the Director shall investigate and endeavour to mediate a settlement of the matter.
>
> (2) Where a matter is settled by mediation, the Director shall make a written record of the settlement which shall be signed by both parties and which is binding on the parties and is not subject to appeal.
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> (3) Where a matter is settled by mediation and a party believes another party has failed to comply with the terms of the settlement, the party may apply to the Director for an order in accordance with subsection (4).
>
> (4) An application made under subsection (3) must
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> (a) be completed in a form published by the Director;
> (b) include specific details on the non-compliance with the mediated settlement;
> (c) provide supporting documentation, if applicable;
> (d) include any other information requested by the Director to determine whether the other party to the mediated settlement has failed to comply with one or more of the terms of the mediated settlement; and
> (e) be filed with the Director.
>
> (5) An applicant shall send a copy of the completed application form to the forwarding address or last known address of the other party or to an electronic address provided by the other party.
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> (6) Where the Director receives an application under subsection (3), the Director may
>
> (a) require the party requesting the order to provide additional information before determining whether to make an order requiring the other party to comply with the mediated settlement; or
>
> (b) make an order pursuant to Section 17A if the Director is satisfied that the other party has failed to comply with the terms of the settlement.

Landlord's Evidence and Analysis

[6] At the hearing before me the Landlord's first witness was Jecca Lewis, Property Manager for the Landlord. She put forward four pieces of evidence to support the contention that the Tenant had not complied with the terms of the Mediated Settlement. The first one related to an incident at the MRHA Site Office either on the day of or the day after the Mediated Settlement which was March 29th. I will return to this.

[7] The second one was a letter of June 10, 2021, from Zack Doyle which was in evidence. Mr. Doyle is apparently the Operations Manager for Five Star Bailiff and Civil Enforcement Services who works in the subject building. In his letter Mr. Doyle states:

> We as a company have had several encounters with Ms. Curry throughout the past year. None have been positive. Ms. Curry has been uncooperative and verbally abusive towards my staff on every occasion. She has slammed her unit door in my Bailiff's face and has called the police for harassment when attempting to serve her documents.

[8] Apart from the obvious issue that this was an out of Court statement which was not subject to cross-examination, it is a generalization and it is conclusory. No specifics are given. And when I look at Exhibit 1 which is the Tenant memos, I see a Landlord who appears to keep very detailed notes of all incidents that it has with its tenants. This was confirmed by Ms. Lewis. Yet, there were no entries for 2021 concerning the Tenant . Further, the Landlord did not offer any specific incidents of misbehavior since March 29, 2021.

[9] I should note here that I agree entirely with the submission of Ms. Wohler that all that is relevant here is what has happened since March 29, 2021, being the date of the Mediated Settlement. That is because the only issue before me is whether or not the Tenant breached the terms of that Mediated Settlement. What has gone on before that is effectively water under the bridge. Indeed, that is one of the central concepts of entering into a Mediated Settlement in my view.

[10] So in summary, on this piece of evidence, I find it of no persuasive value.

[11] The third item mentioned by Ms. Lewis was what she stated was ongoing abusive language when Ms. Curry called the service team. Two names were mentioned, Shawna Prince, the receptionist, and John Towers, a maintenance supervisor. While Ms. Curry stated that these incidents were since March 29th there was no specifics given of the dates and there were no notes or memos put into evidence of these alleged incidents.

[12] Neither of these two people testified. And Ms. Lewis confirmed that none of this was done to her directly.

[13] For similar reasons to the second item, I consider this evidence far from compelling.

[14] The fourth item was that there was an "alert" on Unit 605. What this means apparently is that two staff have to go into the unit when there is a service call both for their own safety and in case there are any allegations. My understanding was this "alert" status had been in place for some time and again, I find that wholly unconvincing since it would have related to previous incidents which, for purposes of the Mediated Settlement, are no longer relevant.

[15] That leaves the issue of the incident on March 29th or March 30th when apparently Tim Curtis Grey, a friend of Ms. Curry's, went into the office in an aggressive manner because he had seen someone ripping decorations off of Ms. Curry's door. Police were later called by Ms. Curry. According to Ms. Lewis, video showed that someone was actually sanitizing the door area, presumably for COVID related reasons. In this case Ms. Lewis was in the office at the time and her evidence is to be accepted of the unacceptable behaviour.

[16] I do note the evidence of Ms. Curry which stated that Mr. Grey thought that the individual who was at the door was the same individual who had previously assaulted Ms. Curry and had been convicted in regards to that. Ms. Lewis indicated that it was subsequently determined that the man on the video was not the man who had previously assaulted Ms. Curry.

[17] Leaving aside whether or not Mr. Grey was somehow justified in responding the way he did, I note that Ms. Curry herself did not go to the main office. And, she stated that it was Mr. Grey's decision to go over to the office and she did not ask him to go. So, even if what took place that day was unacceptable behaviour, I fail to see how it should, as a matter of law, be attributed to Ms. Curry particularly where it is the only incident that has any post-Mediated Settlement relevance and would be relied on to justify a vacant possession.

[18] Curtis Coward, a Manager with the Landlord, gave evidence as well. His evidence was general in nature and to the effect that there were ongoing complaints regarding the Tenant. Again, there was nothing specific and nothing about what she was alleged to have done since March 29, 2021.

[19] Based on my review of the evidence, the Landlord has failed to prove a breach of the Mediated Settlement.

Procedural Issues

[20] The foregoing is sufficient to dispose of this matter and I would, as indicated, allow the appeal and set aside the Order of the Director. However, I feel some comment about the process and the filings made on behalf of the Landlord should be made.

[21] First, it is noted that there are actually two Form DR3's filed. This is the document issued under the regulations for an application under Section 16(3) of the *Act*. The first DR3 was dated April 6, 2021, and in the details section states as follows:

> *Tenant and guest showed up at MRHA site office the same day the Mediated Settlement was issued. They were yelling and cursing at MRHA staff regarding missing decorations from Tenant's door.*

[22] Given the evidence of Jecca Lewis and Ms. Curry, it is clear to me that the statement in this DR3 that the "Tenant and a guest showed up at MRHA site office" was inaccurate. This is a significant misstatement of the facts. One must question the due diligence that was exercised in putting together the form DR3 which, obviously can have very serious consequences for a tenant, including an order for vacant possession. It is vital that this information be completely accurate.

[23] The second form DR3 was dated April 26th and in the details section the following is stated:

> *Tenant continues to use abusive language towards MRHA staff daily. Calling police and site office belligerent and aggressive demeanor*.

[24] I have already commented on the lack of any direct evidence that would support these conclusions or any notes and memos made by the Landlord that would support these statements.

[25] I turn now to the Director's Order of April 27. The first thing that is to be noted is that the language of the Director's Order seems to very closely mirror the language in the Form DR3 dated April 26th. There was nothing else in the record and it would appear that all the Residential Tenancies Officer relied on in coming to the decision to order vacant possession was the Form DR3. With respect, I find that unsatisfactory as a matter of law.

[26] I repeat subsection 16(4) and subsection 16(6):

> (4) An application made under subsection (3) **must**
>
> (a) be completed in a form published by the Director;
> **(b) include specific details on the non-compliance with the mediated settlement;**
> **(c) provide supporting documentation, if applicable;**
> **(d) include any other information requested by the Director to determine whether the other party to the mediated settlement has failed to comply with one or more of the terms of the mediated settlement**; and
> (e) be filed with the Director.
>
> [Emphasis added]
>
> (6) Where the Director receives an application under subsection (3), the Director may
>
> (a) **require the party requesting the order to provide additional information before determining whether to make an order requiring the other party to comply with the mediated settlement**; or
>
> [Emphasis added]
>
> (b) make an order pursuant to Section 17A if the Director is satisfied that the other party has failed to comply with the terms of the settlement.

[27] The ***Act*** mandatorily requires that the application "…**include specific details on the non-compliance with the mediated settlement".** The details section of Form DR3 dated April 26th, quoted above, does not satisfy this requirement.

[28] In my opinion the Residential Tenancies Officer should have insisted on "specific details of the non-compliance with the mediated settlement" and requested further information before proceeding to the step of ordering vacant possession. These are all statutory requirements.

[29] In saying this I am mindful that the Section 16 process for a Mediated Settlement does not require a hearing. Indeed, it may be contrasted with Section 17 where there is explicit reference to the Director holding a hearing. At a hearing, obviously the tenant gets the opportunity to tell their side of the story.

[30] Under Section 16 it appears that the tenant does not have the right to tell their side of the story. In administrative law and other areas of the law generally, there is a doctrine known as *audi alteram partem* which basically means, "hear the other side." It is an important principle of natural justice. Where, as here, it would seem that the legislation dispenses with the *audi alteram partem* requirement, a decision maker in the position of a residential tenancy officer should be all the more exacting in requiring an applicant to appropriately prove the alleged breach or breaches of a mediated settlement and specifically, here, in accordance with the requirements in the legislation, specifically subsections 16(4)(b), (c), and (d) and subsection 16(6)(a), quoted above.

[31] For all the above reasons, I find that the Director's Order must be set aside.

[32] While perhaps self-evident I would nevertheless mention that the Mediated Settlement of March 29, 2021, remains in place and with continuing effect.

ORDER

[33] It is hereby ordered that the Order of the Director dated April 27, 2021, is hereby set aside and the order of vacant possession is, likewise, set aside.

DATED at Halifax, Nova Scotia, this 8th day of July, 2021.

MICHAEL O'HARA
ADJUDICATOR