

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Cyr v. Richards*, 2022 NSSM 57

ON APPEAL FROM AN ORDER OF THE
DIRECTOR OF RESIDENTIAL TENANCIES

Date: 20221108

Docket: SCCH 518220

Registry: Halifax

Between:

Paul Cyr

Appellant (tenant)

- and -

Janice Richards (Arm Terrace Properties)

Respondent (landlord)

REASONS FOR DECISION AND ORDER

Adjudicator: Eric K. Slone

Heard: Via zoom in Halifax, Nova Scotia on November 4, 2022

Appearances: For the Appellant,
Self-represented

For the Respondent,
Self-represented

BY THE COURT:

[1] This is an appeal by the tenant from a decision of the Director of Residential Tenancies dated September 26, 2022, concerning premises at 2393 Robie Street, Apt. 203 in Halifax, Nova Scotia. That order essentially ratified the landlord's position that it no longer was bound to any tenancy with the tenant after June 30, 2022. It allowed the landlord some rental arrears and allowed it to offset the security deposit, with a net result that the tenant was ordered to pay to the landlord the sum of \$2,588.00.

[2] The case highlights an issue that has received some media and government attention, that some landlords are allegedly only offering fixed-term leases in order to circumvent protections that tenants in periodic leases have from eviction and exorbitant rent increases.

[3] It is indeed arguable that the *Residential Tenancies Act* lacks any meaningful protection for tenants in fixed-term leases. Especially in tight rental markets, tenants may have little recourse and have no choice but to take fixed-term leases, in the hope that they may enjoy a stable tenancy with no nasty surprises. But that is a matter for legislation to address. Landlords cannot be blamed for using the law to their advantage, though courts may still hold their feet to the fire and ensure that they are "crossing their t's and dotting their i's."

[4] The tenant first rented the subject unit under a one-year fixed-term lease commencing July 1, 2020. The rent was set at \$1,725.00 per month and a security deposit of \$862.50 was taken by the landlord. Under that lease the landlord paid for electricity.

[5] As the lease term was coming to an end, the landlord was initially willing to renew but was proposing to shift responsibility for paying the electric bill to the tenant. Mr. Cyr was not happy with that prospect, as the electric bill would have amounted to a substantial rent increase which far exceeded the 2% cap that the government had temporarily put in place during that phase of the Covid pandemic.

[6] The landlord then rescinded its offer of a new lease and took the position that the tenant had no further right to occupy the unit after June 30, 2021, and it studiously avoided accepting any rent for the next couple of months in order to avoid any inference that the tenancy had become month to month.

[7] The tenant brought an application to Residential Tenancies, claiming that the landlord had improperly rescinded the offer of a new lease. The case was

heard by a Residential Tenancies Officer on July 21, 2021, with all parties participating. A decision was rendered on August 4, 2021.

[8] The Residential Tenancies Officer sided with the landlord and found that no new lease had been agreed to. Because the tenant was still in possession, she extended the termination date to September 30, 2021, and ordered the tenant to pay rent for July, August and September 2021. The tenant was exempted from paying an additional charge for the use of electricity because it would have contravened the 2% cap under the government's Declared State of Emergency.

[9] The tenant appealed this order to Small Claims Court and remained in occupation pending the appeal.

[10] As is the usual practice, the appeal first came before a Small Claims Court adjudicator for a pre-hearing conference, where a hearing date was set for November 4, 2021. Up to that time, the tenant had not paid October's rent, or if he tried to do so the landlord refused to accept the payment. At the pre-hearing conference, according to Ms. Richards, there was a question about rent and the adjudicator directed that rent should be paid pending determination of the appeal.

[11] On the scheduled hearing date, November 4, 2021, only the tenant showed up. Ms. Richards testified that she got the date wrong and only found out when it was too late to do anything about it.

[12] The hearing before adjudicator Angela Walker resulted in a decision and order dated November 18, 2021. The operative part of that order stated:

1. The appeal is allowed and the tenancy shall continue through to June 30, 2022.

[13] In the reasons for decision, it is clear that the adjudicator accepted the tenant's argument that the landlord had agreed in correspondence to renew the lease for another year, and that this agreement was binding.

[14] The landlord basically decided to live with this decision and continued to accept rent for the remaining months.

[15] On April 27, 2022 the landlord sent a letter to the tenant which stated, in part:

As you are aware, your lease end date is June 30, 2022. We will not be extending your lease for another year at this time. An out inspection of

apartment 203 will be carried out on June 30th. Please have the apartment cleaned and emptied of all furniture and belongings for this inspection.

[16] The tenant did not vacate his apartment on June 30, 2022. The tenant attempted to pay rent for July 2022, but the landlord again declined it.

[17] The landlord then applied to Small Claims Court for a vacant possession order which would allow the sheriff to have the tenant forcibly removed. That order was issued by court staff, based upon adjudicator Walker's November 18, 2021 decision that the tenant only had a lease until June 30, 2022.

[18] On July 19, 2022, the landlord showed up with sheriff's officers prepared to lock out the tenant and, if necessary, forcibly remove him.

[19] That is what happened. The locks were changed, and the tenant had to arrange to get a few of his necessities out. It took him until August 11, 2022, to arrange for a mover. He placed his furniture and other possessions in a storage locker, where they remain. He has been living in temporary situations since then, hoping to be able to move back into the subject premises based on his hoped for result of this appeal.

[20] On August 5, 2022, the tenant brought an application to Residential Tenancies seeking various items of relief, including moving expenses, return of his security deposit and, most importantly, recognition that he was still a tenant with the right to occupy under a month to month tenancy. The landlord counterclaimed for unpaid rent and for the right to retain the security deposit. A hearing was held on September 20, 2022, and a decision rendered on September 26, 2022.

[21] The tenant did not obtain any relief. The Residential Tenancies Officer found that the issue of the tenancy had been conclusively decided in the earlier proceedings. She ordered the tenant to pay rent for July and August 2022, and offset the security deposit leaving a net order for him to pay \$2,588.00.

[22] The tenant appealed that order to Small Claims Court. This is that appeal.

[23] The operative facts are not seriously in dispute. The tenant argues that the landlord has been dealing in bad faith throughout, and that it has breached various provisions of the *Residential Tenancies Act*. He is quite incensed and frustrated that the landlord has been unwilling to communicate with him. Many of his emails to the landlord have gone unanswered.

[24] The only legitimate question that I can see is this: did the tenancy at some point convert from a fixed term to month to month? If not, then the tenant has no basis to occupy the unit.

[25] The tenant says that by accepting rent outside the lease or after the end date, that the tenancy was automatically transformed into a periodic, monthly tenancy. He says that this occurred when the landlord accepted his rental payments for October and November 2021.

[26] The tenant implicitly relies on s.10A of the Act, which reads:

Renewal term and daily rents

10A (1) A lease, except for a fixed-term lease, continues for the same type of term if no notice is given pursuant to subsection (1) of Section 10 and is deemed to have been automatically renewed.

(2) A fixed-term lease ends on the day specified in the lease and, if a tenant remains in possession with the consent of an owner, the lease is deemed to have renewed itself on a month-to-month basis.

[27] With due respect, this section does not mean precisely what the tenant believes. The question is not strictly whether the landlord accepts rent. The question is whether the tenant remains in possession with the consent of the owner. If the intention of the legislature was that a month-to-month tenancy would result from the acceptance of rent, even under protest, it could have said that.

[28] It is abundantly clear that this landlord has been scrupulously careful not to renew this tenancy. When the tenant tried to pay rent in July 2021, the landlord rejected it. It was not until the landlord had an order from Residential Tenancies allowing it some rent for July, August and September 2021, that it accepted those payments. It can hardly be said that the landlord was consenting to anything.

[29] When the tenant appealed that order, the landlord again refused to accept rent until it was directed by an adjudicator to accept rent pending resolution of the appeal, which took a couple of months.

[30] Again, it can hardly be said that the landlord consented to the tenant remaining in possession.

[31] Once adjudicator Walker's order was in effect, the landlord accepted rent

pursuant to the understanding that the tenancy would terminate on June 30, 2022.

[32] Surely a landlord does not have to refuse rent during a time when the nature of the tenancy is being litigated. S.10A(2) is not some form of legal tripwire that transforms a tenancy from fixed term to monthly the instant it accepts rent, even under protest, from an over-holding tenant.

[33] The legal consequence of the order by adjudicator Walker was that the tenant received a one-year extension of his fixed-term tenancy. Nothing that happened before or after transformed the tenancy into something else. This landlord could not have been clearer that it had no desire to extend the tenancy and was not consenting to the tenant over-holding.

[34] I am not unsympathetic to the tenant's disappointment and sense of frustration. Fixed-term leases carry risks that the rent may increase or that the tenant may be forced to move, without any obligation on the landlord to explain its motives. Under periodic leases there are some protections. There simply are none here.

[35] The tenant argued that the Supreme Court of Canada case of *Bhasin v. Hrynew*, 2014 SCC 71 has some overriding effect. That important case codified and expanded a duty of good faith in the performance of contractual obligations. It is clear from a reading of the case that contracting parties are not prohibited from insisting on the letter of the contract or acting in their self-interest. As Cromwell J. pointed out:

[70] The principle of good faith must be applied in a manner that is consistent with the fundamental commitments of the common law of contract which generally places great weight on the freedom of contracting parties to pursue their individual self-interest. In commerce, a party may sometimes cause loss to another — even intentionally — in the legitimate pursuit of economic self-interest: *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, 2014 SCC 12, [2014] 1 S.C.R. 177, at para. 31. Doing so is not necessarily contrary to good faith and in some cases has actually been encouraged by the courts on the basis of economic efficiency: *Bank of America Canada v. Mutual Trust Co.*, 2002 SCC 43, [2002] 2 S.C.R. 601, at para. 31. The development of the principle of good faith must be clear not to veer into a form of ad hoc judicial moralism or “palm tree justice. In particular, the organizing principle of good faith should not be used as a pretext for scrutinizing the motives of contracting parties.

[36] As such it is not for this court to prevent the landlord from pursuing its

contractual rights or its financial self-interest.

[37] In the result, the tenant cannot create a tenancy for himself out of thin air. It takes two to contract, and this landlord has not offered the tenant a tenancy that extends beyond June 30, 2022.

[38] While it is a minor point, I disagree with the order that granted the landlord rent for both July and August. The tenant was trying mightily to remove his belongings and finally succeeded on August 11, 2022. I would limit the landlord's recovery of August's rent to a prorated portion, namely 11/31 of \$1,725.00, or \$612.10. The landlord is accordingly allowed:

Rent for July 2022	\$1,725.00
Prorated rent for August 2022	\$612.10
Minus security deposit	(\$862.50)
Net due to landlord	\$1,474.60

ORDER

[39] This court orders that the appeal be dismissed, and the Order of the Director of Residential Tenancies dated September 26, 2022 is confirmed, with one variation reducing the amount the tenant is ordered to pay from \$2,588.00 to \$1,474.60.

Eric K. Slone, Adjudicator