

SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Shahisavandi v. Ballantyne*, 2023 NSSM 22

Date: 20230310
Docket: SCCH 520728
Registry: Halifax

ON APPEAL FROM AN ORDER OF THE DIRECTOR OF RESIDENTIAL
TENANCIES

Between:

Gholam Ali Shahisavandi and Nooshin Rezaei

Appellants (landlords)

v.

Marc Ballantyne and Joelle Ballantyne

Respondents (tenants)

Reasons for Decision and Order

Adjudicator: Eric K. Slone

Heard: March 6, 2023, via zoom in Halifax, Nova Scotia

Appearance: Calvin DeWolfe, for the Appellants (landlords)
Emily Hunter, for the Respondents (tenants)

BY THE COURT:

[1] This is an appeal by the landlords from a decision of the Director of Residential Tenancies dated January 10, 2023, which order denied the landlords' application to terminate a year-to-year lease on the claimed basis that the landlords require the premises for a member of their family, namely, their adult daughter Neyousha Shahisavandi.

[2] The matter before the Director of Residential Tenancies also dealt with a claim by the tenants that the landlords had raised the rent by more than 2%, contrary to the "cap" imposed by the government under the *Emergency Management Act* and the *Interim Residential Rental Increase Cap Act*.

[3] Counsel for the landlords stated at the outset of the hearing, that he believes there are two issues to resolve:

- a. Do the landlords "in good faith" "require" possession of the premises for a member of their family?
- b. How should we adjust for the fact that the landlords have been collecting rent in excess of that permitted by the 2% cap for the last year plus?

[4] I do not necessarily accept that this is exhaustive of the issues, as I will elaborate upon later, but it is a good place to start.

[5] The home in question is at 121 Windridge Lane in the Larry Uteck Blvd. area of Bedford. It is a modern looking single family, detached home that the landlords (a husband and wife) bought new in 2012 as both an investment and (Mr. Shahisavandi says) with a view to having one or other of their children eventually live there. Those children were teenagers at the time.

[6] Mr. Shahisavandi and Ms. Rezaei live a short distance away, on the same street.

[7] The house has always been tenanted. In 2019, Mr. Shahisavandi (who had most of the dealings on his and his wife's behalf) rented the home to the

Ballantynes, a family with two young children who were moving to Nova Scotia for Mr. Ballantyne's work. They anticipated being in Nova Scotia for three to five years.

[8] Though Mr. Shahisavandi wanted to sign a fixed-term lease for one year, this was not acceptable to the Ballantynes, and a year-to-year lease was signed. There was no evidence suggesting that Mr. Shahisavandi let it be known then that he had a long-term plan to have one of his children move in, possibly displacing tenants such as the Ballantynes.

[9] The rent was agreed to be \$2,650.00 per month starting October 26, 2019. In August 2020, Mr. Shahisavandi prepared a lease renewal document which the Ballantynes signed. It is understood by all parties now that this was an unnecessary step as year to year leases are deemed to renew automatically unless the tenants terminate it. It is sometimes said that tenants in periodic leases (such as year to year) have "tenure" meaning that landlords have very limited rights to terminate such leases.

[10] By 2021, Mr. Shahisavandi was no longer willing to renew on the same terms. He was evidently ignorant of the 2% cap imposed by the government. He attempted first to have the lease renewed at a rent of \$3,000.00 per month which would have been a percentage increase of 13.2%.

[11] Despite eventually becoming aware of their rights, in an effort to be accommodating, the Ballantynes said they were willing to increase their rent to \$2,850.00 - a 7.5% increase. A renewal document prepared by Mr. Shahisavandi was signed to this effect, which (again) was legally unnecessary. The proper procedure for increasing the rent, by any amount, was not followed.

[12] Approximately one year later, on June 26, 2022, Mr. Shahisavandi provided a Notice of Termination purporting to terminate the lease on October 26, 2022, stating as his reasons:

"I am choosing not to renew the lease" and "my son will occupy the premise (property)."

[13] The Ballantynes did not accept this purported termination and continued to pay rent and occupy the home.

[14] The landlords followed up with an Application to Director requesting permission to terminate the lease so their daughter (Neyousha) could occupy it.

[15] The Ballantynes counterclaimed for relief, questioning the good faith of the landlords' application, and also seeking overpayments of rent which were in violation of the rental cap.

[16] After a hearing on January 10, 2023, the Residential Tenancies Officer rejected the application to terminate on the basis that she was in doubt as to the landlords' intentions. She also rejected the counterclaim on the basis that the tenants had voluntarily agreed to rent outside the legal 2% cap.

The lease termination

[17] The section of the *Residential Tenancies Act* which governs is:

10 (8) A landlord may give to the tenant notice to quit the residential premises where

...

(f) the Director is satisfied that it is appropriate to make an order under Section 17A directing the landlord to be given possession at a time specified in the order, but not more than twelve months from the date of the order, where

(i) the landlord in good faith requires possession of the residential premises for the purpose of residence by himself or a member of his family, or

....

(iii) the Director deems it appropriate in the circumstances.

[18] The Residential Tenancies Officer questioned the landlords' good faith, mostly it seems because Mr. Shahisavandi had first mentioned that it was his son who would be moving in, then changed it to his daughter.

[19] I also have significant doubts about the landlords' *bona fides*, for the

same reason as the Residential Tenancies Officer and also because:

- a. They knew at the outset that the tenants wanted to live in the premises for a 3-to-5-year time frame while the family was expecting to be in Nova Scotia, yet said nothing about any possible plan to cut the lease short so one or other of their children could occupy the home.
- b. Mr. Shahisavandi seemed at the outset of the renewal negotiations to be most concerned with extracting more money.
- c. I find that Mr. Shahisavandi, despite his denial, dangled the threat of a “renoviction” to add pressure on the tenants to agree to increased rent.
- d. While this was not explored at the hearing, this is a modern single-family home with value on the rental market of \$3,000.00 per month or more. It is a bit hard to believe that Neyousha, aged 25 and working at her first full-time job, would be able to afford, or even needs, such a large and expensive home for herself. Of course, it would not be expected that she pay market rent, but it is still an expensive home for a single, young person.

[20] Putting my doubts about the landlords’ good faith aside for the moment, I note that the *Residential Tenancies Act* would authorize the termination of the lease on two separate grounds:

- (i) the landlord in good faith requires possession of the residential premises for the purpose of residence by himself or a member of his family, or
....
- (iii) the Director deems it appropriate in the circumstances.

[21] Under 10 (8) (f) (iii) the Director has a discretion to terminate the lease where it seems “appropriate.” This does not require a prior finding that the landlord has a good faith intention to allow a family member to occupy the

premises. That discretion applies to me, on appeal from the Director of Residential Tenancies.

[22] In the circumstances here, there are good reasons to exercise that discretion in the landlords' favour but interfering as little as possible with the tenants' lives. They have asked, in the alternative, for the lease to continue until August 26, 2023, and I believe that this represents the best compromise to end what has become a problematic tenancy. This allows them the opportunity to look for a new home, and not have to change residences in the middle of a school year.

The overpayment of rent

[23] The landlords concede that they have been overcharging the rent. The rent for 2021-22 should have been \$31,800.00; instead, the landlords collected \$34,200.00, a difference of \$2,400.00. For 2022-23 (being 5 months, to date) they have collected \$14,250.00 instead of the \$13,250.00 that the original lease provides, a difference of \$1,000.00.

[24] The landlords argue that they should be able to retain the 2% annual increases that they would have been eligible to charge, and only credit the excess.

[25] The Residential Tenancies Officer appeared to believe that the parties could contract out of the legislation. I disagree. Even the landlords' counsel did not urge me to agree with that interpretation.

[26] The question I ask myself is whether a party who imposes an illegal rent increase should be allowed to retain any of that increase. I suggest that this would be contrary to public policy and contrary to the *Interim Residential Rental Increase Cap Act*, SNS 2021, c 22, which reads:

4 (1) In addition to the restrictions on increasing rent in Section 11 of the *Residential Tenancies Act*, a landlord shall not increase the rent payable by an existing tenant by more than two per cent above the amount that the tenant was legally required to pay in the preceding 12-month period.

(2) For greater certainty, subsection (1) applies if a landlord enters into a

new fixed-term lease with an existing tenant for the same residential premises.

5 (1) Where a tenant believes that a landlord has imposed a rental increase in contravention of this Act, the tenant may make an application to the Director of Residential Tenancies in accordance with Section 13 of the *Residential Tenancies Act* for an order requiring the landlord to reimburse the tenant for any amount of rent collected in contravention of this Act.

[27] The statute does not say that the landlord should reimburse the tenant for any amount “in excess of the maximum allowed.” It is my view that all of the extra rent collected was “in contravention of this Act” and the rental account should be adjusted to reimburse the tenants for everything they have paid over and above \$2,650.00.

[28] I am therefore ordering the landlords to credit the tenants with \$3,400.00 of overpayment. They should be able to work out between themselves how this will work, in practice.

[29] I also find that the legal rent to be paid for the balance of the (shortened) term is \$2,650.00 per month.

ORDER

[30] This court orders that the Order of the Director of Residential Tenancies dated January 10, 2023, is set aside, and in its place it is ordered that:

- a. The tenancy for 121 Windridge Lane, Bedford, Nova Scotia shall continue until August 26, 2023, after which it is deemed to have terminated.
- b. The landlords shall credit the tenants with rent overpayments in the amount of \$3,400.00.
- c. The rent for the balance of the term set out above in \$2,650.00 per month.

Eric K. Slone, Adjudicator