SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Brewer v. Lewis*, 2023 NSSM 50

Date: 20230825
Docket: 524761
Registry: Sydney

Between:

JAN AND MICHAEL BREWER

Appellant

v.

STEVE AND HELEN LEWIS

Respondent

Adjudicator:	Darrel Pink
Heard:	July 19 and August 16, 2023, in Sydney, Nova Scotia
Decision	August 25, 2023

By the Court:

[1] The parties executed a Rent to Own Agreement for 24 West Street, Donkin, Cape Breton on October 2, 2018. Under the agreement the Appellants/Purchasers were to purchase 24 West Street from the Respondents/Vendors by payment of monthly installments of $700.00 commencing on August 15, 2018 'until the last payment, at which time the balance remaining will become due and payable. (Underlining in original). Under the Agreement final payment would be due in June 2023.

[2] The Agreement appears to have been prepared by the law firm Crosby, Burke & MacRury of Glace Bay, as the cover page bears the firm's name. It would appear the firm acted for both parties to the transaction.

[3] The Agreement provides:

> a. In para. 2.(i) …. In addition to the monthly installment the Purchasers will be responsible for the payments of taxes, water, and propane. These sums will be remitted directly to the Vendor for payment.
>
> b. In para. 4 …. The vendor shall be allowed to conduct an annual viewing of the home and property and must give the

Purchaser 24 hours prior written notice to conduct such viewing.

c. In para. 9 - In the event the Purchaser shall default or if the Purchaser does not complete this Agreement in accordance with the terms thereof the Vendor shall be entitled to take possession of the premises and the Purchaser will forfeit and rental monies paid thereunder.

d. In para. 10 - The Purchaser shall be responsible for all real property taxes and water rates payable to Cape Breton Regional Municipality. The Vendor will supply the Purchaser with the tax bills and water bills and the payment shall be made directly to the Vendor.

e. Under the Agreement, the Purchasers are responsible for electrical and heating costs (para. 11), to keep the property in the same condition as they received it (para. 12) and may not make any alterations without the Vendors consent (para. 13).

f. The Purchaser may pay the balance owing ‘in full, at any time’. (Para. 15).

[4] The Agreement does not refer to the *Residential Tenancies Act* or its application to the arrangement between the parties.

[5] The parties were friends and acted as such through most of the term of the Agreement. In March 2023, several months before the property would be transferred to the Appellants as the Purchasers, the relationship soured and the dispute that lead to this matter erupted.

Procedural History and Challenges

[6] The Respondents alleged the Appellants fell behind in payments of 'rent', utilities (water) and taxes and served a Notice to Quit on the Appellants. The Appellants applied to the Director of Residential Tenancies to set aside the Notice. The Respondents sought 'termination of the tenancy' and payment of money.

[7] The Residential Tenancies application was made on April 17, 2023. On June 8, 2023, the Director ordered the Appellants to pay $5190.09 to the Respondents. On June 9, a Notice of Appeal was filed, stating in part '…we feel as though the agreement wasn't taken into account.'

[8] The Appeal was scheduled to be heard on July 19, 2023, via a telephone conference call. Both parties appeared. No counsel was involved, though there may have been discussions with lawyers by one or both parties.

[9] S. 17C of the Residential Tenancies Act governs the procedure in the Court for Residential Tenancies Appeals.

> (4) The Small Claims Court shall conduct the hearing in respect of a matter for which a notice of appeal is filed.
>
> (5) The Small Claims Court shall determine its own practice and procedure but shall give full opportunity for the parties to present evidence and make submissions.
>
> (6) The Small Claims Court may conduct a hearing orally, including by telephone.
>
> (7) Evidence may be given before the Small Claims Court in any manner that the Small Claims Court considers appropriate, and the Small Claims Court is not bound by rules of law respecting evidence applicable to judicial proceedings.
>
> (8) The evidence at a hearing shall not be recorded. 1997, c. 7, s. 7;

[10] Before the appeal hearing, the Appellants filed some documentation. The Respondents did not.

[11] The Appellants presented their evidence through Ms. Brewer. Mr. Lewis asked questions following her direct testimony. The questions were neither probing nor did they address the issues to be determined.

[12] When Mr. Lewis began to address his position, he referred to documentary information not before the Court.

[13] Through discussion with the parties it became clear neither side appreciated what was required of them on this appeal. They had written material they wanted to rely upon. Therefore, the matter was adjourned to allow both sides to assemble the documents they wanted to place into evidence.

[14] It was agreed the matter would resume on August 16 and that the evidence would start afresh. The parties were not bound by anything said at the July 19 hearing. Additional materials were filed by the Respondents and before the hearing, the Appellants sent text messages and one document to the Court.

Challenges with this Appeal Hearing

[15] Most matters heard by the Small Claims Court and especially Residential Tenancies Appeals, are heard without the parties having the benefit of counsel. As self-represented parties, most participants in Small Claims processes have a minimal understanding of the procedures to be used (even though there is valuable information available to those who seek it). They rarely understand the burden upon them as a Claimant or Appellant. Though the rules of evidence are relaxed, more often than not parties do not have witnesses available to testify about matters that are relevant and crucial to the Court's factual findings. They seek to have the Court make findings based on their repetition of something crucial that was told to them by someone, who could have been available to testify had they been asked or

subpoenaed to speak at the hearing. The parties rarely understand what evidence they need to present to prove their case or to challenge their opponent.

[16] Parties are frequently emotionally invested in the issues before the Court and cannot separate themselves from those emotions to present information objectively or to challenge the other party without dissolving into acrimony or accusations that '…is lying' or 'I cannot deal with these untruths' so as to suggest only their side of the matter is credible or worthy of belief.

[17] When applying the law, especially if there is anything that is novel or not apparent to a person without legal knowledge or training, self-represented parties are simply adrift.

[18] When the parties are ill-equipped to present the facts in a clear and coherent manner or to address the law, the Court is required, to meet the requirements of s. 17C (5) and (7), to question the parties in an inquisitorial manner. Even though the Court has a limited knowledge of the matter, leaving it solely to the parties to ensure all relevant issues are addressed would result in missing information or incomplete facts, which make decision-making difficult. Thus the Court must try to fill in the gaps as best that can be done, with the limited information the Court has available. That occurred here.

[19] If the parties do not know what they need to prove and how to do so, they frequently do not provide the Court with the information or tools required for the Court itself to question the parties and their witnesses.

[20] These comments relate to this matter. There was no documentary evidence to prove the most critical issue before the Court, namely were payments made by the Appellants to the Respondents as required by the Agreement. Oral examination resulted in diametrically opposite evidence – the Appellants asserting all payments had been made; the Respondents insisting that money was not received.

[21] The Court was required to both inquire of the parties to understand the nature and extent of their position and to question them on the allegations made or facts asserted by the other side.

The Facts

[22] The parties signed the Rent to Own Agreement on October 2, 2018. Monthly payments of $700 were due on the 15th of the month. The Agreement refers to these payments as ‘the balance of the purchase price’ (para. 2). In most paragraphs of the Agreement it speaks about ‘payments’, except in para 16 where the following appears: ‘…in the event that the Purchaser shall default on payments …, any payments shall be treated as rent for the premises and no equity or credit shall

accrue to the Purchaser and shall be in addition to any other damages or benefit to which the Vendor may be entitled as a result of such default hereunder.'

[23] Fifty-seven or fifty-eight months would be required to pay the purchase price of $40,000, so the anticipated date for completion would be in June 2023.

[24] The Appellants had financial challenges. Mr. Brewer's was injured at a workplace accident and went on a partial long term disability. They frequently were late with payment. The Respondents reminded them of the money due and it was paid. In December 2021 and 2022, with the pressures of Christmas, they missed payments and the Respondents agreed to accept an extra $350 in the first two months of the following year.

[25] The Appellants' daughter has special needs, and her health and welfare is a constant concern to the Brewers. The evidence indicates Mrs. Brewer had been in the hospital on at least one occasion, but it is not clear whether this related to her own health or that of one of their children.

[26] The Respondents wanted cash for each month's payment. E-transfers or cheques were not acceptable to him. Mr. Brewer delivered the cash. Social visits frequently resulted. The Appellants did not provide receipts.

[27] The Agreement, in paragraphs 2(i) and 10 required the Appellants to reimburse the Respondents for utilities and taxes. The Agreement says funds will be remitted to the Vendors so they can make payments directly to the Municipality. The Respondents did not provide written information or receipts regarding taxes or water charges.

[28] In May 2019, an exchange on Facebook Messenger between Ms. Lewis and Ms. Brewer suggests the tax invoices are to be sent to the Brewers directly and she (Ms. Lewis) has spoken to ‘Charlene at po’ (Post Office) and ‘she sent the bill back up to us’. Neither Ms. Lewis nor Charlene testified.

[29] Ms. Brewer testified, though there was nothing in writing, the arrangement for taxes and water charges was that $250 (which may have increased to $300) was to be added to the monthly payment of $700 on a quarterly basis. These extra payments would cover the quarterly water charges and municipal taxes and allow the Respondents to pay the taxes and utilities directly to the CBRM.

[30] Mr. Lewis stated his expectation was the Appellants would pay the Municipality directly. He believed the tax and water invoices were sent by CBRM to 24 Water Street, addressed to ‘Stephen Lewis & Helen’, and that the Appellant would open the envelope and make the payment directly.

[31] There is nothing in writing to document anything about payment of taxes and water charges, which would constitute an amendment to the Agreement. Ms. Brewer sent a message about adding quarterly payments. It was not acknowledged.

[32] Ms. Brewer states any mail received for Stephen Lewis was not opened but was delivered to their home. She believed, based on the quarterly payments being remitted by the Appellants, the water charges and taxes were being paid.

[33] The last paid water bill from CBRM was in December 2018. Charges on the account were rendered in February, May, August and November. They average less that $150/quarter.

[34] In March 2023, an invoice from CBRM for water in the amount of $3030.60 was addressed to 24 Water Street. Because payments had not been made the CBRM threatened to turn off the water. Ms. Brewer says that though money was paid to Mr. Lewis, she could not have their water service terminated, so she arranged with the Municipality to address the outstanding account. No one from the Municipality testified. There was no evidence of CBRM's billing practices or had accounts been mailed to the Respondents.

[35] Post-tropical Storm Fiona, in the fall of 2020, caused damage to 24 Water Street and the Appellant's belongings. To clean up from the damage the Appellants collected and bagged items that needed to be disposed of. They left them at various

places on their property. Mr. Lewis felt the placement of garbage around the property was unsightly. He said neighbours complained. No evidence to support this was provided.

[36] He took photos of the property and introduced them without indicating when they were taken. It was clear he did so to suggest this was a current state of the property. Whether that was an intention to deceive the Court or a failure to appreciate the need for precision in giving his evidence is not clear.

[37] Mrs. Brewer explained why so many garbage bags and refuse was scattered around their property. She said the Municipality would only accept much of the waste as ‘heavy’ garbage, which would not be collected with regular curbside pick-up. Several scheduled collections of ‘heavy garbage’ were postponed, resulting in the property looking unkempt for some while.

[38] Fiona damaged the roof and railings at 24 Water St. The Appellants have pre-paid a contractor to complete roof repairs. An invoice marked ‘Paid’ was tendered but no oral evidence was called to independently prove the payment. The contractor is Mr. Brewer’s friend. Mr. Lewis suggested the arrangements for this work were not bona fide and that payment had not been made. He provided no evidence to support this suggestion, which amounts to an allegation that the Appellants are tendering evidence which is perjured.

[39] In late 2022 and early 2023 the Appellant fell behind with their payments. By agreement with the Respondents, the December payment was to be made over January and February 2023. Mrs. Brewer says that arrangements for monthly payments continued until March when the relationship deteriorated because of the outstanding water bill from CBRM. Mrs. Brewer testified she arranged for her mother, Ann Michelle McNeil, to provide cheques to Mr. Lewis in April and May 2023 to cover their outstanding obligations. By this point the parties were not communicating directly as their relationship had deteriorated. Copies of cheques payable to 'Helen & Steve Lewis' for $700 dated April 9 and May 11 were tendered as evidence.

[40] Mr. Lewis denies receiving any monthly payments in cash or cheques since January. He asserts ten months rent is outstanding for a total of $7000.

[41] Mr. Lewis was angry about missed rent payments and he sounded exacerbated when the March water invoice arrived from the Municipality. He advised the Appellants of the need to address the debt. His message on March 25, 2023, to Jan Brewer says in part:

> *… I would advise you to get to a bank, credit union or somewhere, get a loan to pay in full what is owed or sadly you will lose the the (sic) house with just months to own. I am quite disgusted that we have to do this, but I have no intention of paying for this or reconnection on anything. …*

[42] It is noteworthy that Mr. Lewis does not refer to any outstanding rent in these messages. Given the concern he says he had, one would have thought he would address the full extent of the Appellants' alleged indebtedness to him.

[43] Ms. Brewer's reply notes '*we always paid you guys' 'We have always paid the tax bill to you guys when you told us it was do (sic)' 'I have never opened or collected any mail in your name ever because that's illegal'. 'We were under the impression that when we paid you the $300 quarterly it was for taxes and water.''...it clearly states that you guys get the water and tax bills in your name and tell us the amount to pay you and we pay the power in our name as it's the only utility that can be in our name'.*

[44] There was no written rejoinder from Mr. Lewis.

[45] Ms. Lewis then indicated she would attend at CBRM to arrange for payment, but she says the Respondents had to permit the municipality to deal with her as *'when I called Friday they wouldn't speak to me.'*

[46] Following this incident regarding non-payment of the water bill and unpaid rent the Respondents filled their Residential Tenancies Application along with a Notice to Quit.

[47] The Appellants believe the final payments were due in May or June and that they have completed their ‘purchase’ and they owe no further sums. Thus they owe payments for March – June 2023 – 4 x $700 = $2800.

Findings

[48] The parties present diametrically opposite positions on many key issues. On some matters there is agreement. There was a Rent to Own Agreement (the Agreement). Monthly rent was $700. Payments were made in cash. No receipts were provided. When the Appellants fell behind, the Respondents accommodated their financial situation by allowing for deferred or late payment of arrears. The Agreement required the Respondents to pay the municipal taxes and water charges. They did not pay the water expenses. There was a falling out between the parties in March 2023, ostensibly over a large water bill from CBRM. Nothing has been paid by the Appellants since the Residential Tenancies process was commenced.

[49] The main areas where the parties present opposite evidence are payment by the Appellants included $250 (or a similar amount) quarterly by cash added to the rent payment; the Appellant were to pay the CBRM directly, contrary to the Agreement; the Appellants provided cheques from Ms. Lewis’ mother for the March and April rent; the Appellants did not maintain the premises in a tidy manner by allowing large amounts of garbage to accumulate on the property; and

the Appellants have pre-paid for repairs of the Fiona caused damages to the roof and railings.

[50] Whether rent was paid in 2023 (January to March/April) and whether the Appellants paid quarterly installments for municipal charges are the two factual findings the Court must make.

[51] Credibility of the two main witnesses, must be assessed. That assessment must be done in the context of many factors: the Agreement to transfer title to the property after a five year rental period. The relationship between the parties was informal and no or inadequate records were kept, because the Agreement was between friends, who trusted each other and accommodated their changing circumstances. The Respondents obligations to pay taxes and water charges were included in the Agreement solely for their benefit. The Respondents failed to address the municipal charges and whether they were being paid by the Appellants, as Mr. Lewis asserted, they should be.

[52] The Appellants treated the property as their own.

[53] The Respondents, or at least Mr. Lewis, became incensed with the Appellants and saw an opportunity to maintain ownership of the property.

[54] In *Law Firm* v *Client*, 2022 NSSM 46, Adjudicator Balmanoukian reviewed the applicable case law in Nova Scotia relating to the assessment of credibility. For this matter, the approach of Justice Forgeron in *Baker v. Aboud*, 2017 NSSC 42 is most helpful. She states:

> Questions which should be addressed when assessing credibility include:
>
> a) What were the inconsistencies and weaknesses in the witness' evidence, which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony and the documentary evidence, and the testimony of other witnesses: *Novak Estate, Re, supra*;
>
> b) Did the witness have an interest in the outcome or were they personally connected to either party;
>
> c) Did the witness have a motive to deceive;
>
> d) Did the witness have the ability to observe the factual matters about which they testified;
>
> e) Did the witness have a sufficient power of recollection to provide the court with an accurate account;
>
> f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions: *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 (B.C.C.A.);
>
> g) Was there an internal consistency and logical flow to the evidence;
>
> h) Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant or biased; and
>
> i) Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?

[55] Not every question needs to be assessed in each analysis. In reviewing the testimony of Mr. Lewis, I find he tailored the evidence to suit his needs. This evidence was frequently self-serving beyond what was required. He was

unnecessarily critical and personal in his attacks on the character of the Appellants. Some of his evidence defies logic from someone who holds himself out as a careful and detailed person. Examples of these types of evidence include:

- He presented photos of garbage bags to show the poor state the Appellants maintained the property. He made no reference to Hurricane Fiona, the damage it caused in the community and the municipality's response, which was known to him. (It should be noted this evidence did not relate to any claim made by the Respondents in their Residential Tenancies application.)

- He used strong and evocative language to describe the Appellants, and, on several occasions, he had to be warned against calling them 'liars.' At one point he stopped his evidence suggesting he could not deal with 'such untruths' when he was required to respond to the position or evidence of Ms. Brewer. His attitude, evident from his oral testimony and the messages he sent, was impatient and intolerant; it reflected a dramatic change from what the Appellants described as a friendship. It appeared to be disproportionate to the seriousness of the issues that had arisen.

- He refused to accept cheques for rent provided by Ms. Brewer's mother for April and May 2023. He denied receiving the cheques.

- He says he changed the arrangements for payment of municipal charges. This breached the Agreement. There is no documentation or evidence to support the change or that it was agreed to by the Appellants, who clearly believed they were making the payments to the Respondents to enable them to meet their obligations under the Agreement. Mr. Lewis had an incentive to respond strongly to the unpaid water bill, because it showed that he had not met his obligations under the Agreement. He received about $250 quarterly and did not apply it to the municipal accounts so his only excuse was to say that the obligation had been transferred to the Appellants.

- When he raised the water bill in March 2023, he said nothing about unpaid rent, likely because at that point he did no consider the rent to be in arrears.

- He failed to respond to the Appellants' claim they paid additional sums quarterly for municipal charges. The Appellants' evidence was clear and was supported by messages between the parties. It required the Respondent to be specific in trying to refute it. Instead, the Respondents categorically denied the payments were made to them. Though Mr. Lewis stated on several occasions that 'we pay our bills' or 'we are the type of people who do not pay our bills,' because he failed to adequately explain why the changes from the terms of the Agreement were made or to provide any evidence of them,

his denial is not believable. Extra money was paid to the Respondents without it being directed to the municipality as intended. When CBRM sent a large water bill, the Respondents were caught, and they angrily shifted the blame to the Appellants.

- He failed to check that the obligations on the Respondents for municipal charges were being paid by the Appellants. The Respondents were obligated under the Agreement to pay the charges and they offered no support for any purported change in the arrangement, other than a vague reference to 'Charlene at the po'.

[56] In reviewing the evidence of Ms. Brewer, I find she was both clear and straight forward when describing her family's financial circumstances and how they were affected by her husband's health and work insecurity and her daughter's special needs. She was aware of the Appellant's obligations and described the efforts she made to meet them. On payment of the municipal charges, though not in strict compliance with the Agreement, Ms. Brewer confirmed in writing arrangements to pay $250/quarter, which coincided with quarterly payments due to CBRM.

[57] Ms. Brewer was clear on why there had been an accumulation of garbage on their property. She made no excuses but explained the situation of ‘heavy’ garbage and the CBRM’s approach to collection.

[58] She also explained efforts made to provide cheques for the unpaid rent in April and May. She sought support from her mother.

[59] She was perplexed about the unpaid water bill and immediately responded to Mr. Lewis in language that was clear and unequivocal. She provide him an opportunity to refute the information she provided which he did not do.

[60] I have looked at the totality of the evidence, the way in which information was provided by the parties, the tome and nature of their language and the inconsistencies in logic of some of the positions taken by the Respondents. Based on my evaluation of the credibility of the two main witnesses, where there is a disagreement between the evidence of Mr. Lewis and Ms. Brewer, I favour that of the Appellant.

[61] I find the Appellants paid additional sums each quarter to the Appellants to allow the Respondents to meet their obligations to pay municipal charges under the Agreement. The evidence does not allow for a finding on what the Respondents did with that money. Because the Appellants met their obligation under the Agreement to pay sums for taxes and water to allow the Respondents to pay their

municipal accounts, the account from CBRM is the responsibility of the Respondents.

[62] The Appellants have not paid the $700/month since February. The payments were due in March, April and May with a partial amount due in June. They therefore owe the Respondents payments of $2800, for 4 months, plus $100 for June which will complete the payments under it.

Rent to Own Agreements

[63] Though not clearly addressed in the *Residential Tenancies Act*, 'rent to own' arrangements are subject to the Act and its enforcement mechanisms. See *Luke* v *Chopra*, 2022 NSSC 145, where Justice Arnold undertake a thorough review of the legislative framework that applies. Here, the Agreement stipulates monthly payments do not establish any equity. It is noted that they are generally not referred to as 'rent,' but given the fact the Act applies, they must be considered to be rent. On that basis the findings noted above relate to unpaid rent.

[64] This Court does not otherwise have authority to make findings relating to a rent to own arrangement. It appears to be unfortunate that though I can make a calculation of the amount of rent owed under the terms of the Agreement, which for my purposes is a lease, this Court cannot make an order that would declare the

terms of the Agreement to be fulfilled and to require the conveyance from Mr. and Ms. Lewis to Mr. and Ms. Brewer, contemplated by it.

[65] The only order this Court can make is that rent of $2900 is owed by Appellants to the Respondents. Any finding that on payment the Appellants will have met their obligations under the Agreement relates only to their completing their obligations regarding rent.

[66] I state this because I fear that, as is common, one party will not be pleased by my findings, which may result in further litigation to force the vendors to complete the conveyance to the purchasers. That would be an unfortunate outcome.

[67] It is ordered:

a. The Appellants must pay $2900 to the Respondents to meet their obligations under their lease. Payment can be made by an e-transfer to steve-lewis@live.com.

b. The Order of the Director of Residential Tenancies is varied to change the sum owed to the Respondents and to remove the requirement for vacant possession.

c. If the Appellants fail to pay the amount ordered by September 15, 2023, they must provide vacant possession to the Respondents by 5:00 pm on September 15, 2023.

Dated at Halifax, Nova Scotia, August 25, 2023

Darrel Pink, Small Claims Court Adjudicator