

SMALL CLAIMS COURT OF NOVA SCOTIA
Christopher Marriott v. Southwest Properties, 2023 NSSM 84

Date: 20231031
Docket: SCCH 526009
Registry: Halifax

ON APPEAL FROM AN ORDER OF THE DIRECTOR OF
RESIDENTIAL TENANCIES

Between:

Christopher Marriott

Appellant (tenant)

v.

Southwest Properties Maple Operating Partnership

Respondent (landlord)

Adjudicator: Eric K. Slone

Heard: October 24, 2023, via zoom in Halifax, Nova Scotia

Appearances: Andrea Rasmussen, counsel, for the Appellant

Heather Blackburn and Maryann Peacock, for the
Respondent, Southwest Properties

By the Court:

[1] This is an appeal by the tenant from a decision of the Director of Residential Tenancies dated August 3, 2023, concerning rental premises at The Maple, 1583 Hollis Street in Halifax.

[2] The background is that on June 28, 2022, a sheet of glass railing from an upper floor of the building fell and shattered on the tenant's fifth floor terrace. Fortunately, no one was outside on the terrace on this occasion, as the event was serious enough that major injury or even death could have occurred.

[3] The actual question for this court to decide is whether the landlord fully complied with an earlier order of Residential Tenancies to the effect that the tenant was entitled to pay an abated rent amount until the landlord met certain preconditions arising from the event.

[4] In that order from August 31, 2022, the Residential Tenancies Officer noted that the tenant had asked for a number of remedies, including "*payment of money and relief from rent owing*" as well as "*a full engineering report.*" I will have to decide whether the Residential Tenancies Officer ordered a "full engineering report" and, if she did, whether that aspect of the order has been complied with.

[5] The more recent Residential Tenancies order found that the landlord had complied with the terms of the previous order effective March 2023, and as such the tenant was obliged to resume paying full rent as of April 1, 2023.

[6] The tenant in this appeal contends that he has never received a full engineering report that explains what happened on June 28, 2022, and which would give him confidence in using his terrace. He testified, and I accept as a fact, that he has not been using his terrace to any significant degree because of his safety concerns.

[7] In the days and weeks following the incident, the landlord did have an engineer involved, who inspected all of the units in the complex and supervised some remedial work. That engineer eventually supplied a short, one-page letter that stated:

March 21, 2023

The Maple, 1583 Hollis St, Halifax NS, B3J 0E4 Balcony Railing
Inspection and Review

Dear Halifax Regional Municipality,
The balcony railing system that is installed at, The Maple, 1583 Hollis Street, Halifax NS was inspected on February 15, 16, 17, and 22, each unit in the building was entered as well as common areas, and the balcony railings in each location were inspected. When deficiencies were encountered, they were noted and then addressed by Park Rail and Southwest Properties. The railing systems and connections meet or exceed the requirements outlined in the National Building Code of Canada 2020. The balcony railing system is expected to

perform well with respect to durability and safety for the foreseeable future.
Please feel free to contact me anytime to discuss this further.

Kind Regards,
Nathan Ward, P.Eng

[8] This letter was sufficient for Halifax Building Standards to lift its violation order that was put in place after the incident. A terse letter from the municipality dated March 31, 2023 stated:

Please accept this letter as confirmation that all aspects of the immediate order regarding the balcony guards and railing system at The Maple, as noted above, have been satisfactorily complied with. As a result this violation has been deemed corrected and this order, in its entirety, has been rescinded.

[9] The landlord takes the position that there is nothing further that it is obliged to, and that the tenant may use his terrace without any concern that it is unsafe to do so. The tenant is far from satisfied and has not resumed using his terrace and has not resumed paying full rent.

[10] Thus the landlord took the matter back to Residential Tenancies seeking to reinstate the full rent as of April 1, 2023.

[11] If the tenant is to succeed to any degree, he must satisfy me that there is something lacking in the landlord's response to the original order. I will quote extensively from that order. Pertinent statements are emphasized:

The tenant has filed an application seeking:

1. repairs: a glass panel railing from the twenty-first floor fell onto the tenants terrace. This is the third glass panel to fall;
2. payment of money and relief from rent owing;
3. other: seeking a full engineering report;
4. and the award of the application fee.

...

He is seeking a full engineer's assessment and a 30% reduction in rent.

....

(Quoting Maryann Peacock) **An engineering firm has done an assessment and the report is due out Friday.**

(Quoting Maryann Peacock) **The cause of the break or what may have impacted it is not determined.**

There was an order from HRM Building Standards to lock all the terraces.

...

Maryann Peacock stated this is only the third incident of the panels shattering.

She (Maryann Peacock) stated **the landlord plans on compensating the tenants as soon as they receive the report from the engineer** and the recommended repairs have been completed.

The following are the findings:

On June 28, 2022 a glass panel rail fell from the twenty first floor sending shattered glass to the terraces below. HRM (Halifax Regional Municipality) building standards ordered the terraces affected closed. **An Engineer Assessment is complete and the report is due Friday.**

The tenants lost the use of their 1000 square foot terrace. Based on the testimony of the tenant, this is quite a significant loss of enjoyment of his rental space. He is seeking 30% compensation in rent. I find that this claim is reasonable, given that the tenant has lost in excess of 50% of the square footage of his rental unit. **The tenant is entitled to a reduction of \$715.80 from July 1, 2022 until the engineer's report is revealed** and all the necessary repairs are complete. The full amount of rent will be payable once the repairs meet HRM Building Standards and proof is submitted to the file.

.....

A copy of the Engineer's report will be submitted to the file and to the affected tenant.

Having reviewed all of the evidence, it is Ordered that:

The landlord, Southwest Properties pay to the tenant, Christopher Marriott the sum of \$1462.75. This amount represents compensation for reduction of rental space for July and August plus the application filing fee. The rent will be reduced by 30% until proof the rental space complies with Halifax Region Municipality (HRM) Building Standards and proof is submitted to the file. The landlord will also forward proof of compliance to the tenant, Christopher Marriott.

[12] The Residential Tenancies Officer obviously understood that an engineer's report was pending. She also understood from Ms. Peacock that this was the third incident of its type, and that the cause had not been determined. She was being told that an engineering firm had done "an assessment" and that a report was due out within days.

[13] In fact, the engineer's letter (such as it is) was not written and provided until more than six months later.

[14] Ms. Peacock testified at the hearing before this court and stated that the landlord did not receive anything from the engineer other than the aforementioned letter. She did not explain her prior evidence to Residential Tenancies in August 2022 to the effect that an engineering assessment had been completed and that a report was due out within days of that hearing.

[15] She also testified that the suspected cause of the event was something on the patio (possibly a barbecue) hitting the glass and causing it to break, but that was not confirmed. She described the remedial measures as having involved the addition of a silicone caulking compound to stabilize the glass panels.

[16] The tenant called an expert witness, a professional engineer named Duncan Gillis, who testified about engineering practice. He described an “engineering report” as a written account of an investigation. He stated that the letter from engineer Nathan Ward is not an engineering report, which one would expect to contain a detailed explanation of what occurred, what the investigation consisted of, and what conclusions could be drawn. He himself has created hundreds of reports of varying length, but they all contain a discussion of the methodology, summary of findings, analysis, observations and conclusions.

[17] Based in part on this testimony, I find that the letter from Mr. Ward is not an engineering report. It may have been enough to satisfy the municipality that its compliance order should be deemed satisfied, but the municipality’s requirements are not the sole criterion.

[18] It is totally understandable that Mr. Marriott wants to understand what went wrong, and how the repairs would make it less likely that such an event would

happen in the future. It is far from obvious how stabilizing the glass panels with a silicone compound would prevent what happened in 2022. As I understand it, the glass panel broke, and pieces fell out of the frame. It raises questions as to whether the glass is strong enough to withstand impacts from items typically found on terraces, such as furniture or barbecues.

[19] It may well be that the risk of a recurrence can never be reduced to zero, but a reasonable person would want to understand what happened, what has been done and what risk still remains.

[20] I find that the landlord has not produced an engineering report as contemplated by the original Residential Tenancies order, and the tenant is still reasonably avoiding the use of his terrace. As such, the rent abatement should not have been terminated as of April 2023, and the landlord must procure a report and provide same to the tenant before it can resume collecting full rent.

[21] I am not suggesting that the landlord needs to retain a different engineer. It may be that Mr. Ward can simply create a report based on his actions and findings.

[22] Hopefully there will not be any disagreement about the adequacy of this report, but if there is, it should be raised again in Residential Tenancies.

Order

[23] This court orders that the Order of the Director of Residential Tenancies dated August 3, 2023, is rescinded in its entirety, and the landlord must continue to allow the 30% rent abatement until an engineer's report is provided as originally contemplated by the August 31, 2022 Residential Tenancies Order.

Eric K. Slone, Small Claims Court Adjudicator