

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Chediac v. Whalen*, 2023 NSSM 89

ON APPEAL FROM AN ORDER OF THE DIRECTOR OF RESIDENTIAL
TENANCIES

Date: 20231121
Docket: 526023
Registry: Halifax

Between:

Najat Chediac

Appellant

v.

Tierney Whalen

Respondent

Adjudicator: Darrel Pink

Heard: November 20, 2023, in Halifax, Nova Scotia

Decision 2023-11-21

Counsel: Appellant – Self-represented.
Tammy Wohler, for the Respondent.

By the Court:

[1] This is an appeal from an Order of the Director of Residential Tenancies. The hearing was held in person at the Court House on Spring Garden Road in Halifax.

Procedural History

[2] The Director dismissed the Appellant's application for vacant possession and ordered her to reimburse the Respondent monies paid under a series of illegal rent increases. There were other issues between the parties, which they agreed should be addressed in this appeal, so all disputes between them might be adjudicated. While this matter was awaiting hearing, the parties adjourned the hearing of another application by the Appellant, before a Residential Tenancies Officer, because of the overlap of the issues to be considered.

[3] The Appellant has a list of complaints about the Respondent's behaviour. At a pre-hearing telephone call with the parties, the Court scheduled this appeal on an urgent basis, because of the stated nature of landlord's concerns, Mrs. Chediac, who chose to act on her own behalf, was advised of the evidence she would require to establish her case. Despite that, she came to the hearing with no independent

witnesses or any tenants to found or verify her allegations. The Appellant asserts, with no evidence in support, that the tenants fear the Respondent, and have been subject of threats from her and will not testify.

[4] Even if there is a chance of hyperbole, the Court cannot minimize the importance of allegations of threats and intimidation from a party to a residential dispute. Taking the expressions of concern seriously, I advised the Appellant of the subpoena powers available to compel witnesses and that steps could be taken to address any fears witnesses might have. The Appellant chose not to avail herself of any options and was the sole witness on the substance of her appeal.

Introduction

[5] The Appellant/Landlord owns a six-unit building at 18 Lynnett Rd. in Halifax. The Respondent lives in apartment 5 on the top floor of this three storey walk-up. The year to year tenancy commenced on February 1, 2018. A standard form lease was signed by Tina Chediac, as Landlord, and Tierney C. Whalen, as Tenant. Rent was \$700/month. A \$350 security deposit was paid. Utilities included a coin operated washer and dryer, heat and electricity There were no separate landlord's rules or conditions added to the usual Schedule A, Statutory Conditions.

[6] Tina Chediac, the Appellant's daughter, though not involved in her mother's property business, helped to arrange the Respondent's move in. She was relocating to Halifax from Toronto. Tina responded to her application. She spoke with her Ontario reference and accepted her as a tenant. She prepared and finalized the initial lease.

[7] Tina Chedia's evidence focused on the video information obtained from security cameras at 18 Lynnette Rd. Though she supports her mother's business, she is not involved in landlord-tenant matters and provided no evidence about the particularized issues to be adjudicated on this appeal.

[8] The Respondent is supported by Income Assistance through the Department of Community Services ('DCS'). When she executed the lease in 2018, a copy was given to the Department, as they provided her with a shelter allowance of \$535/month. This was paid directly to the Appellant; the Respondent was responsible for paying the balance of \$165/month.

[9] The Appellant resides at 20 Lynnette Road. She also has a residence outside the city and spends time at both houses. She has suffered from poor health in recent years, has been hospitalized and undergone cancer treatment. She says she can no longer write and relies on Tina to do so for her. On the witness stand she

initially said she could not see to read a passage from a document, but subsequently she read several things she had written. During the hearing, when the Respondent was testifying, because she had a soft voice, the Appellant was reminded to interject if she could not hear the evidence. She did so on a couple of occasions. Her demeanor and presentation in court made it clear she understood the process and what was happening, though she was clearly unhappy to be a part of it. On several occasions she expressed the view she should be able to manage relations with her tenants as she wishes, without interference from others, such as Residential Tenancies.

[10] The Appellant indicated the informal ways she deals with tenants have worked well for her. She has adjusted rent as she has seen fit, regardless of the requirements of the Act. She manages conflict in her own way, without creating or saving many documents. She does not keep a rental ledger but manages rent payments informally. She noted if a tenant falls behind or needs some rent accommodation, she has allowed for late payments. She has not resorted to procedures under the Act to address rent arrears.

The Issues in this Appeal

[11] The Appellant has a long list of concerns and accusations relating to the Respondent:

1. The Tenant changed the lock to her apartment, so the Appellant had no means to access it.
2. The Tenant caused a flood which damaged the unit below hers. In 2022 there was a problem with the toilet and the plumber reported it was ‘completely off the wall’.
3. The Tenant has frequent guests who have damaged the building. Mrs. Chediac said, ‘unacceptable things go on at all hours of the night.’
4. The Tenant has failed to pay the last rent increase.
5. The Tenant or her visitors damaged the coin operated washer and dryer, so they did not work.
6. The Tenant refused to allow a pest control company access to her unit.
7. The Tenant or her guests jam open the back door, or they have kicked it in so it would not close.
8. The Tenant is supposed to pay the amount her power bill exceeds \$100 month and has not done so.

9. The police are always at her place.
10. The Tenant and her friends use illegal drugs in the building.

Change of locks

[12] The Respondent acknowledges she changed the lock on her unit. She says the Appellant, early in her tenancy, made an unauthorized entry and inspected her personal space and closets. The Appellant did not deny this, though she asserted that all entries complied with the Act.

Flooding from Toilet

[13] There was no evidence to support this allegation –no photos showing damage, nothing from the downstairs tenant, no evidence from a plumber or a receipt for plumbing services that might have identified what was found and what work was done.

Frequent Guests/Open Back Door/Presence of police/ drug use

[14] These concerns relate to tenant behaviour and are addressed together.

[15] The Appellant did not speak from personal knowledge or experience with guests of the Respondent or drug use. She recalled a recent incident when someone

woke her early around 2:00 a.m. and then said, 'I got the wrong apartment', and she watched him go next door. Though she says the visitor went to 'her place', meaning the Respondent's, she did not follow him and could not see him once he entered the building. She could not be certain to which apartment he went.

[16] She did not particularize times when the Respondent had guests that behaved poorly. There was no evidence of activities or behaviour by guests connected to the Respondent. Though there was reference to loud music, nothing was said to show when this occurred and the extent or length of it.

[17] The building at 18 Lynnette has a closed circuit TV installed at the backdoor. It shows the entry and stairs down to two lower units and stairs up to the second floor apartments. It does not capture Ms. Whalen's door or landing. The Appellant submitted several videos but introduced only one as evidence. It showed three people at the back door smoking what appears to be drugs. No one in the video was identified, Though the Appellant wished the Court to infer these individuals included the Respondent and her guests, there was no evidence to identify them or to support such a conclusion.

[18] The Appellant says the back door is frequently left open, has been jammed, or it has been damaged so it will not close, despite numerous repairs. She presents

no evidence to connect these facts to the Respondent. She neither directly connects the Respondent to any allegation regarding the door, nor does she connect any visitor of the Respondent to her stated concerns.

Rent/ Power Bills

[19] There are two aspects to the dispute about rent: unpaid rent by the Respondent and improper rent increases by the Appellant. They are both addressed here.

[20] The Appellant says she gave written notices of rent increases. The first was for \$30, from \$700 to \$730, on October 30, 2018, to be effective on February 1, 2019 (given to the Respondent personally); the next for \$25, from \$730 to \$755, on October 30 2019, to be effective on February 1, 2020 (given to the Respondent in the building's parking lot); then on October 30, 3031 for \$15.60, from \$755 to \$770.60 effective on Feb 1, 2022 (placed under the Respondent's door); and the last for \$15.90. from \$770.60 to \$786.50, on October 30, 2022, to be effective on February 1, 2023 (placed under the Respondent's door). [Ex. 1/pp 4-7]

[21] Because rent was paid by the DCS, the Department's records on rent payments are helpful. DCS paid \$535/month from the outset of the lease to April

2021. The balance was paid by the Respondent. When the shelter allowance moved to 100% of the rent, DCS paid \$730 in May 2021, \$755 for June and July of 2021, and then \$780 per month. Notes in the DCS file show the Respondent requested the first rent increase in April 2021 (from \$700 to \$730) and another, from \$730 to \$755 in July 2021. DCS was paying a shelter allowance that covered all the Tenant's rent, so no additional sums were payable by her.

[22] The amounts paid by DCS do not mirror the amounts the Appellant says were payable in accordance with the notices she says she delivered to the Respondent. According to the Appellant, \$730/month was due after February 1, 2019, and \$755 after February 1, 2020. In 2021, when DCS moved to paying 100%, they paid \$730/month when the Appellant's evidence suggests the rent was \$755.

[23] The Respondent denies receiving handwritten notices of increased rent from the Appellant in 2018 or 2019. The four notices the Appellant says she gave to the Tenant are identical but for the dates and sums. They are handwritten on the same lined paper; they use exactly the same words, even though they were supposedly written over four years; and the message is printed but the 'yours truly' is in written script.

[24] The tenant acknowledges at one point she fell into arrears and the parties agreed on their payment. No evidence was presented to verify any aspect of the Tenant's payment history. The Appellant never initiated a process to evict the Respondent for non-payment of or arrears of rent.

[25] The Appellant introduced a document that purports to require the Respondent to pay the amount over \$100/month for power usage. It is attached as "Additional agreements to Lease" to a document that is suggested to be the original lease from 2018. It is not signed.

[26] Proffering this document [Ex 1, pp 19] is problematic because the evidence demonstrates Tina Chediac completed and signed the original lease. Najat Chediac did not sign the 2018 lease. It was sent to DCS and was introduced from their files. The version relied upon to support a claim for payment for electricity is filled in with handwriting. It includes a note that rent is paid by 'social services' which was not included in the original lease. The signature of the Respondent does not appear to be the same as her signature on other documents.

[27] The Respondent denies this was her lease, says she did not sign it and the signature, which appears to be hers, was not signed by her. She did not agree to pay extra for electricity.

[28] The Appellant has recently charged the Respondent an extra \$25 per month to address the broken washer and dryer. No evidence connects the Tenant to the damage, as is noted below. Nor is there anything in the lease to allow these costs to be passed along to the Tenant, absent her agreement.

Damage to Washer and Dryer

[29] The Appellant had no evidence connecting the Respondent to damage to these machines. The Respondent called a witness who lives in the building next to her. The Respondent has paid him to do her laundry for some time, as the coin operated machines were not working.

[30] The evidence is conflicting about whether there is a working washer and dryer in the building now.

Pest Control

[31] The Appellant says the tenant has refused a pest control worker to access her unit to address pests. She called no evidence to verify this. She produced no receipts from a pest control company to indicate when calls were made, what service was offered and whether entry to an apartment was refused. This is

evidence this court sees frequently when pest control is involved in addressing insects and other pests.

[32] The Tenant spoke of the presence of cockroaches in her apartment. She says, believing they do not like light or cold, she leaves her lights on and windows open. She denies ever refusing entry to someone who came to deal with pest remediation. She believes another tenant refused entry, but no one ever sought to come to her apartment and was denied entry.

The Respondent

[33] The Appellant says she has tried to steer the Respondent on a better life path. She is disappointed the tenant did not attend school. She related the Respondent had been badly beaten and was hospitalized. She believed that was because of the company she keeps or the visitors she entertains. She believe drug use at the building is connected to the Respondent. She intimated in her evidence a regret for renting to a younger tenant when all her other tenants are between 50 - 70 years old.

[34] The Respondent's is supported by Income Assistance through DCS because of a disability. She spent several years in Nova Scotia before moving to Ontario

from whence she came in 2018. Though she intended to finish a course of study at the Community College, that did not happen. Both parents died in the period before or shortly after her return to Nova Scotia in 2018.

[35] She is not friendly with the other tenants of the building. She does not know them and only knows one tenant's name. She testified the resident of the other apartment on her floor is an ex-convict. She says the frequent visitors, the drug use the poor behavior and damage are related to his friends. She denies having frequent visitors or anyone who is her guest participates in bad behaviour.

[36] She gave her evidence clearly. Though on several occasions she had to be reminded to speak louder, she was not evasive on important and sometimes personal issues.

[37] She related a story of forgetting her keys and having someone use a ladder to gain access for her apartment to retrieve them. A 911 call was made by someone, and the police arrived. Once the situation was explained the matter ended.

[38] When asked whether she was hospitalized from a beating, she denied this had occurred. She was hospitalized for bacterial meningitis that laid her up, between the hospital and home care, for three months. She was detained recently

by the police as she was a witness to a murder and had to give a statement. Neighbours might have seen her leave in a police car. She has had no other involvement with the criminal law except a minor charge, that did not result in a conviction. She has no criminal record.

Findings

[39] Though there is no doubt, based on the Appellant's evidence and the distress she clearly displays, she believes the Respondent is a bad tenant and she needs to evict her for the safety, security and comfort of the other tenants. She reiterated that belief several times. Throughout her evidence she painted the worst picture of the Tenant; if she could come to a negative conclusion, she did. She has focused her negative attention towards the Respondent; she demonstrates a bias, and her evidence makes it clear she has not addressed any options for the cause of her concerns, particularly relating to the presence of non-residents in the building. Her failure to produce independent evidence, when urged to do so by the Court, could allow one to conclude the evidence just does not exist.

[40] The Appellant, without evidence, suggests the Tenant is violent and associates with bad people. When confronted with the evidence the Tenant was hospitalized, not because of a violent act, but because of a serious illness, her

response was ‘that’s what I was told’ and then she added ‘by the police’. At the time, she did not try to find out what had happened. When she learned of what has occurred, she did not apologize for her error and the impact her wrong belief had on her. Her failure to make any inquiries is incongruous with her stated desire to help the Respondent steer a better path in life but is consistent with her unshakeable conclusion she needs to be rid of the Respondent. Perhaps her desire to help has waned with time, as she has grown angrier with the situation, she believes she has to manage at 18 Lynnette Rd.

[41] Though there are videos that show people smoking drugs in the apartment building, the Appellant’s failure to investigate thoroughly and to immediately pin blame exclusively on the Respondent, suggests the Appellant is not acting fairly or reasonably vis-à-vis the Respondent. On seeing such evidence, a conscientious landlord would not simply store the evidence away but would take active steps to confirm who is involved and address the consequences. The letters regarding rental increases are suspect. I find they were not the basis for adjustments to the annual rent, even if they satisfied the Act. The same is true for the lease that suggests the Tenant agreed to pay for some of electricity. The lease is suspect. There is not sufficient evidence to conclude that it is a fake or fraudulent, but it does not reflect

an agreement by the Tenant to pay anything extra. That lease containing a provision relating to electricity was not signed and is of no force and effect.

[42] As found by the Residential Tenancies Officer, the purported rent increases violate the Act because they give only three months notice, when four months was required, or they do not comply with amendments to the Act requiring the timing, percentage and nature of the rent increase. I find the handwritten notices of rent increase were not delivered to the Respondent. They appear to have been prepared in preparation for a proceeding before the Residential Tenancies Office, but I cannot find with certainty that was the case. I do find they were invalid.

[43] Charging for electricity and for appliance repairs constitute an illegal rent increase. There is no sum owed by the Respondent to the Appellant relating to power use.

[44] Counsel for the Respondent submitted a compilation that summarized the amount overpaid by the Tenant because of illegal rent increases over the course of her tenancy. They aggregate \$1815. I accept that amount.

Conclusion

[45] The Respondent admits she changed her locks. Though her reason from doing so may have seemed appropriate, a landlord requires the ability to access a rental unit. Statutory Condition 8¹ establishes that requirement. It is for the safety of all tenants. Therefore the Respondent must deliver to the Appellant a key to the door of her apartment. To avoid direct contact and conflict in the immediate aftermath of this hearing, delivery should be carried out by Ms. Wohler or her office so that within ten days of receipt of this decision, Nova Scotia Legal Aid will obtain a key from the Respondent and deliver it, by hand or by courier, to the Respondent at her address on Lynnette Rd.

[46] The Appellant has failed to prove on the balance of probabilities that the Respondent has breached her obligations under the Act. Her belief in the Respondent's bad behavior, no matter how frequently or loudly she alludes to or mentions it does not make it so. There is not anything close to sufficient evidence to support the case the Respondent/Tenant has breached the 'good behaviour' provisions in the Act. The Appeal relating to the request for vacant possession by the Tenant is dismissed.

¹ Entry Doors - Except by mutual consent, the landlord or the tenant shall not during occupancy by the tenant under the tenancy alter or cause to be altered the lock or locking system on any door that gives entry to the premises.

[47] The Appellant has improperly charged rent that was not authorized by the Act. Multiple rent increases were not proper. The total amount overcharged is \$1815.00. The Landlord is ordered to pay that amount to the Tenant.

[48] The lease requires there to be a coin operated washer and dryer in the building. If they are not present or working, that is an inconvenience to all tenants. The Appellant must ensure there is a working washer and dryer in the building. If they are not operable by December 15, the Respondent may deduct \$25/ month from her rent until they are repaired and operating properly.

[49] Though there was evidence regarding pests, especially cockroaches, I can come to no conclusion regarding their extent and if they violate the Landlord's obligations. An inspection by HRM By-law enforcement Officers is a good way to establish if a problem needs to be addressed. I remind the parties that the Landlord should take all necessary steps to have and maintain a program of pest remediation and the Tenant must co-operate by providing access to her apartment and undertaking proper procedures to minimize the presence and effect of insects.

[50] Though there was evidence regarding the electrical panel, it was not a pressing issue. I accept the Appellant's evidence the fuse panel was recently

replaced by circuit breakers and the work was done by a licenced electrician.

Nothing is required from the Court on this.

[51] The appeal is dismissed. The Order of the Director is varied to require payment by the Appellant to the Respondent of \$1815.00.

[52] The Respondent is ordered to provide the Appellant with a key to her apartment, in accordance with this decision, within ten days of receipt this decision.

Darrel Pink, Small Claims Court Adjudicator