CLAIM NO.: 236937
Date: 20050311

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Metropolitan Regional Housing Authority v. Skinner, 2005 NSSM 8

BETWEEN:

Name	Metropolitan Regional Housing Authority	Appellant
Name	Dawn Skinner and Craig Skinner	Respondents

Revised Decision: The text of the decision has been revised as of April 4, 2006. The date of the decision at the end now reads March 11, 2005 rather than 2004. Addresses and phone numbers of the parties have been removed.

D E C I S I O N

Appearances:

Terry Potter, on behalf of the Appellant Metropolitan Regional Housing Authority (Landlord); Dawn Skinner and Craig Skinner on their own behalf.

[1] This Appeal of an Order of a Residential Tenancy Officer dated December 1, 2004, came on before me on March 1, 2005.

[2] On behalf of the Appellant, I heard the evidence of Mr. Bill Jandron, sworn and the submissions of Mr. Potter; and on behalf of the Respondents, I heard the evidence and submissions of Craig and Dawn Skinner.

[3] The issue on this Appeal is whether a Landlord which is operating a "Public Housing Program", as that term is defined in the *Residential Tenancies Act*, R.S.N.S. 1989, c. 401, as amended (the "Act"), is entitled to change the rent charged for a residential unit without complying with the normal notice requirements of s.11 of the Act:

a. whenever there is any change in the financial circumstances of the tenant or,

b. only when there is a change in the income of the tenant.

[4] In my opinion, for the reasons set out below, such a Landlord may avoid the s.11 notice requirements only under the second circumstances; that is, only when there has been a change in the tenant's income.

Background

[5] On June 28, 2002, the Metropolitan Regional Housing Authority ("the Authority") as Landlord and Dawn Devison (now Skinner) and Craig Skinner as Tenants entered into a Standard Form of Lease under the provisions of the *Act*.

[6] The Authority rents the premises under a "Public Housing Program", which is defined by the *Act* as "a rental program offered to tenants of low and modest income by reason of funding provided by the Government of Canada, the Province, or a Municipality or any agency thereof:" s. 2(f)(a).

[7] The Lease provided that the rent, as of the date of signing was to be $160.00/month: see para 7 of the Lease.

[8] The Lease contained the Standard Form Prohibitions against rent increases more frequently than one a year; and the requirement that written notice of a rent increase be given four months prior to the anniversary date of either a month-to-month or a year-to-year lease: see para 7 of the Lease.

[9] Section 11 of the Act is the section that deals with "rental increases". It establishes the general prohibition against rental increases that are more frequent than once a year (at least in the case of month-to-month or year-to-year tenancies), and incorporates the strict notice provisions that must precede any increase in rent: s. 11(1) and s. 11(2).

[10] However, s. 11(6) of the *Act* provides that nothing in s. 11 "applies to increases or decreases [in rent] based solely on the income of the tenant pursuant to a public housing program".

[11] Paragraph 7 of the Lease in question takes advantage of s. 11(6), inasmuch as it contains the following caveat to the restrictions in para. 7 of the Lease:

> "where the Landlord administers a Public Housing Program, and the Tenant's rent is increased ***solely on the basis of an increase in income***, the restrictions on frequency of rental increases and notice requirements do not apply" [emphasis added]

[12] In other words, as I read both s. 11(6) of the *Act*, and the amended wording of para 7 of the Lease, the clear intent is that rents under a "pubic housing program" may float up or down depending on changes in the tenant's "income"; and that such fluctuations may take place on a monthly basis rather than annually; and that notice need not be given in the form contemplated under the *Act*.

[13] The Standard Form of Lease executed by the Tenants in this case also included specific wording dealing with how the rent was to be determined (and hence how it was to change) under the Lease. Under para 2 of the Lease the following wording is found:

> "The residential premises described above are administered under a Public Housing Program as defined in clause 2(fa) of the *Residential Tenancies Act*. Program eligibility requirements and rules relating to changes in rent are contained in Schedule "B" attached hereto".

[14] This wording, which forms part of the Standard Form of Lease, is and was prescribed by the Residential Tenancies Regulations made under the Act, as found in N.S. Reg. 190/89, as amended up to N.S. Reg. 109/2**0**04 ("the Regulations"). The above-noted wording is found in Form "H" under the Regulations, and this form is the Standard Form of Lease.

[15] The Lease in issue also contains a Schedule "B".

[16] Schedule B of the lease is broken into two parts: Tenant Rules; and Rental Calculation Guidelines.

[17] The Rental Calculation Guidelines ("Guidelines") provide that the Tenant's rent "may be calculated in one of the following ways:

> i. if you are a self-supporting leaseholder, someone who receives income from any source, but does not receive any Provincial Family Benefits (PFB) or a Municipal Social Assistance (MSA) with at least one dependent, your rent will be calculated on the basis of the 25% graduated rental scale (GRS);
>
> ii. if you are a self-supporting lease holder with no dependents and have a household income equal or less than old age security, plus the full supplement, your rent will be calculated on the basis of the 25% GRS;

iii. if you are a self-supporting lease holder, with no dependents, and have a household income greater than the old age security and full supplement, your rent will be calculated on the basis of the 30% GRS;

iv. if you are a publicly-assisted leaseholder (someone who receives provincial family benefits or municipal social assistance as his/her sole source of income) your rent will be calculated on the basis of the PFB/MSA scale shown on the reverse. This rule may also apply if PFB/MSA is received in combination with other types of income."

[18] It is to be noted that the provisions of clause (e) of the Guidelines refer on a number of occasions to "income" or "household income". The latter is defined under clause (a) of the Guidelines to mean "the total gross income of all people living in your apartment. Gross income means your income before any deductions except for:
i. earning of children who are in full-time attendance at a recognized educational institution;

ii. certain "one-time only" lump sum payments:

iii. child tax benefits;

iv. certain "specific payments" received from Provincial Family Benefits or Municipal Social Assistance;

v. bursaries and/or scholarships;

vi. portions of annuities that are not "taxable income" as defined by Revenue Canada."

[19] The guidelines go on to provide that "pursuant to clause (g) the tenant is required to notify the Housing Authority if your income changes due to one of the following reasons and your rent will be adjusted according to the Lease Calculation Sheet (on reverse)".

[20] The "following reasons" that are specified are the following:

i. When the leaseholder's income changes from PFB/MSA, UIC Benefits, or private pension plan, to any other source;

ii. when the spouse has no income at the beginning of the lease period and subsequently begins to receive income;

iii. when a member of the household, other than a spouse, not in full-time attendance at a recognized educational institution, becomes employed;

iv. when another person who has income is added to the household;

v. if any member of a household receives retro-active payments.

[21] The guidelines taken as a whole, in my mind clearly establish that only changes in "income" are to be reported; and only changes in "income" trigger the Landlord's right to change the rent without complying with the normal requirements of s.11 of the Act.

Events Leading Up to the Appeal

[22] At the time the lease was entered into, Mr. Skinner was receiving Workers Compensation Benefits in the total amount of $699.00. The rent calculated pursuant to the provisions of the Guidelines was $160.00, and that is the rent that was specified in paragraph 7 of the Lease.

[23] After moving into the unit Mr. Skinner was apparently cut-off, or lost, his Workers Compensation. He then applied for Family Assistance Benefits and received them for some period of time, until those benefits were cut off. This occurred, as I understood the evidence, in either late 2003, or early 2004.

[24] Mr. Jandron gave evidence that the "policy" of the Authority when a tenant's income dropped to zero was to charge a base rent of $28.00 a month, which appears to have happened in February, 2004. Ms. Skinner started to work part-time about this time, and the rent based on that income was set at $138.00 a month.

[25] In May, 2004, Ms. Skinner received a student loan to enable her to attend Compu College for a year.

[26] Ms. Skinner spoke to Donna Arsenault, the Landlord's Property Manager, and told her of her intention to start school.

[27] She wanted to know whether any student loan she received would have any impact on her rent. She was told by Ms. Arsenault that it would not; and that the only thing that would be taken into account in setting the rent would be the part-time income that she earned when she was not attending school.

[28] Based on what Mrs. Arsenault told them, the Skinners thought that if Ms. Skinner accepted the student loan and started school, their rent would be based on her pay cheques alone. Since she was making approximately $200.00 a month at the time, they understood the rent would be approximately $46.00 based on the calculations and tables contained in the lease. (Ms. Arsenault is still making about $200.00 a month from her part-time employment (earned when she is not attending Compu College).)

[29] A few months after the decision had been made to accept the loan and attend college, they were advised by the Authority that their rent would in fact be $309.00 a month. In other words, the Authority purported to increase the rent from the $46.00 it was charging to $309.00 without complying with the normal notice requirements of s.11 of the Act. In other words, it was an increase in rent made less than a year from the last rent change; and without the usual four month's notice.

[30] As noted above, *prima facie* the Authority's right to so avoid the usual requirements of s.11 rested on the provisions of s.11(6) of the Act. The obvious difficulty is that a change in the level of indebtedness would not appear to be "an increase in income," to use the words of s.11(6).

[31] Mr. Jandron said that this rent was based on a "written policy" that the Authority had. Accordingly to Mr. Jandron, "the policy" of the Authority in situations where a tenant in a Public Housing Program has returned to school is to base rent on the "income assistance rate" which in the case of two adults and two children (which is the case here) is $309.00. (This is a figure found in the PFB/MSA Family Rent Scale for two adults and two dependants under the guidelines of the Lease.)

[32] Ms Skinner's position was that they did not have the money to pay the rent being claimed. She had received a Student Loan totalling $19,815.00, of which $9,350.00 had been pay to the school for tuition and books, leaving only $10,465.00 for the year for food, clothing, and the like. Ms. Skinner confirmed that the $19,815.00 was a loan, that had to be paid back over time.

[33] In a decision dated December 1, 2005 the Residential Tenancy Officer decided that the Authority was not entitled to change the rent in the manner that it was proposing to do; and decided that the appropriate monthly rent was $46.00.

[34] It is from this decision that the Authority appeals.

The Parties' Positions

[35] The Authority's position is that it had a written policy, which permited it to change the rent in respect of a public housing program unit to a rent based on the PFB/MSA Family rent scale when a tenant goes back to school. On the facts of this case, it means that it was entitled to change the rent from one month to the next without prior notice, from $28.00 to $309.00 either because a tenant was in school, or because he or she had received a student loan, or both.

[36] The Tenant's position, on the other hand, was that:

a. the Landlord was not permitted to do that, because the receipt of a student loan which had to be paid back did not constitute a "change in income"; and

b. in any event, if they were wrong on that point, they had relied upon the representations of an Authority's representative (Ms. Arsenault) who had told them that the loan and the fact that Ms. Skinner had gone back to school would not have any impact on the rent being charged to them.

Analysis

[37] In my opinion, the Authority's position is not supported on the law or on the terms of the lease.

[38] First, it is clear from the provisions of the *Act* and the *Regulations* quoted above that a Housing Authority operating a Public Housing Program can avoid the requirements of the *Act* insofar as rental increases are concerned ***only if*** those changes are based on changes (and in particular ***increases***) in ***income***. A student loan that has to be repaid is not "income". It is not an "increase in income." That being the case, the fact that the tenant has taken on more debt cannot constitute a change or increase in income. But with no increase in income, there is no right on the part of the Landlord to change the rent, except in accordance with the "normal" notice provisions under the *Act*. In other words, it can only change the rent on an annual basis, and only on four month's notice.

[39] Mr. Potter argued that the written policy of the Authority should be deemed to be part of the Lease.

[40] There are two difficulties with that submission as I see it. First, the written policy was not put into evidence at the Hearing. All I had was Mr. Jandron's version of what he understood the policy to be.

[41] Second, and more importantly, the *Act* and the *Regulations* are very specific. The only thing that permits a Housing Authority to avoid the normal Notice and timing

requirements surrounding a rent increase is a change in “income” in respect of a Public Housing Program. While the term “income” might be stretched to cover a number of things, in cannot in my view be stretched to cover a “loan”, or a change in the level of indebtedness of a tenant. Any written policy that purported to give the Authority power to avoid the Act in circumstances where there was no change in income is in my opinion unlawful, in the sense that it is not supported or authorized by the *Act* or the *Regulations*, and accordingly cannot be used to contradict or contravene the provisions of the *Act* or the *Regulations*.

[42] Accordingly, since the only evidence before was that the income of Ms. Skinner was approximately $200.00 a month; and since that income pursuant to the Guidelines, generated a rent of approximately $46.00 a month, then the only income that the Authority could charge for the period in question would be $46.00 a month.

[43] This in the end was the result of the Residential Tenancy Decision under Appeal. The evidence was that the Skinners paid retro-active rent based on that Decision (that is, based on a rent of $46.00 a month), and my understanding is they will continue to pay that amount as long as the household income remains unchanged. On this basis it appears that there are no arrears in rent; and that so long as Ms Skinner is making approximately $200.00 a month; and so long as no one else in the rental unit is earning income; then the rent would be $46.00 a month.

[44] On that basis alone, I would dismiss the Appeal of the Authority.

[45] I emphasize that nothing in this Decision would prevent the Authority from changing the rent on a month-to-month basis pursuant to the terms of the Lease in the event that the household income did increase. My Decision is directly solely to the issue of whether or not a change in indebtedness (that is, the receipt of a loan) could justify changing the rent without complying with the normal requirements of s.11(1) and 11(2) of the Act.

Estoppel

[46] If I am wrong in the above analysis, I am satisfied on the evidence before me that the Authority should nevertheless be estopped from charging the tenants anything more than $46.00 as long as she is a full-time student, and as long as the household income is only approximately $200.00 a month.

[47] The evidence is that Ms. Skinner went to Ms. Arsenault before deciding to go to school. She specifically asked whether a student loan, and her becoming a full-time student would have an impact on their rent. She was told that it would not, because the loan was not “income”. In reliance upon that, Ms. Skinner proceeded to attend the school. The rental provisions of the Lease are obviously complicated, and are made more complicated by the fact that they can change from month-to-month

depending on the income of a tenant. That being the case, it was reasonable on the part of Ms. Skinner to believe that Ms. Arsenault was in a position to advise her. Ms. Skinner altered her position in reliance upon that advice, and it is too late now for the Authority to alter its position without thereby prejudicing Ms. Skinner.

[48] Based on the above reasons, I accordingly dismiss the Appeal.

[49] An Order will so issue.

Dated at Halifax, Nova Scotia this 11th day of March 2005

ADJUDICATOR
W. Augustus Richardson

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