

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

**Citation:** *Goodwin v. 3150018 Nova Scotia Ltd.*, 2017 NSSM 18

Claim No: SCCH 462018

**BETWEEN:**

Tyrone Goodwin

**Appellant/  
Tenant**

v.

3150018 Nova Scotia Limited

**Respondent/  
Landlord**

Date of Hearing: April 27, 2017

Date of Decision: May 4, 2017

**Editorial Notice:** The electronic version of this judgment has been edited for grammar and punctuation, and addresses and phone numbers have been removed

Tyrone Goodwin appeared on his own behalf.

Ann Organ appeared on behalf of the Respondent/Landlord.

**DECISION**

This is an appeal of the Decision and Order of Residential Tenancies Officer, Peter Keating, dated March 21, 2017.

**Background**

The parties entered into a lease of Apartment [...], [...] Windmill Road in Dartmouth, NS (“the premises”). A Standard Form of Lease was signed on June 3, 2016. The tenancy runs from June 1, 2016 to May 31, 2017. The rent is \$900 per month payable on the 1<sup>st</sup> day of each month. The lease contains a rental incentive providing free rent for May 2017 subject to conditions. Mr. Goodwin lives in the premises with his fiancée, Larissa MacNeil, and his daughter.

At issue is an allegation by the landlord that the tenant is late paying rent every month. Further, Ms. Organ alleges Mr. Goodwin has been harassing and threatening her. She seeks to have the tenancy terminated. Mr. Goodwin denies being harassing or threatening. He acknowledges being late with his rent, but that it was with the landlord’s consent or in accordance with the *Residential Tenancies Act*.

As noted below, I find the evidence supports Mr. Goodwin's submissions. I have ordered the eviction lifted and the tenancy shall not terminate until May 31, 2017.

### **Procedural History**

The matter began with an application to the Director of Residential Tenancies dated February 3, 2017. The hearing was held before Peter Keating on March 7, 2017. Mr. Goodwin did not appear. Mr. Keating found in favour of the Landlord and ordered Mr. Goodwin to vacate the premises. Mr. Keating's decision was made an Order of this Court on April 4, 2017. Mr. Goodwin wished to appeal the findings and Order and sought leave of this Court to file an appeal. By Order dated April 11, 2017, Adjudicator Eric Slone granted the tenant an extension of time to file the appeal by April 14, 2017. Mr. Goodwin filed his appeal on April 13, 2017. The matter was heard on April 27, 2017.

The Tenant named Ann Organ in her personal capacity as the landlord. The landlord is actually 3150018 Nova Scotia Limited ("the numbered company"). I order any claim against Ms. Organ in her personal name to be dismissed. The title and style of cause is amended to show the numbered company as the Landlord and Respondent.

An appeal from the decision of a Residential Tenancies Officer is a new hearing based on the evidence presented before the Small Claims Court Adjudicator. The evidence presented usually consists of that presented to the Residential Tenancies Officer and any additional evidence the parties seek to adduce. As a *de novo* hearing, the Court has the discretion to confirm or vary the decision of the Director of Residential Tenancies.

### **Position of the Parties**

Ann Organ is employed with the landlord as the Property Manager of the buildings including the premises. She seeks to have the tenant give vacant possession of the premises as soon as possible. She also seeks arrears of rent for April 2017.

Tyrone Goodwin seeks to remain in the premises until May 31, 2017.

Neither party wishes to extend the tenancy beyond May 31, 2017.

### **The Law**

The relevant provisions of the *Residential Tenancies Act* are as follows:

Section 9, Statutory Condition 3, provides as follows:

"Good Behaviour - A landlord or tenant shall conduct himself in such a manner as not to interfere with the possession or occupancy of the tenant or of the landlord and the other tenants, respectively."

A finding that a tenant threatened or harassed his landlord would be an example of a breach of good behaviour.

Meanwhile, s. 10(6) and (6A) state:

“(6) Where a fixed-term lease exists or where a year to year or a month to month tenancy exists or is deemed to exist and the rent payable for the residential premises is in arrears for fifteen days, the landlord may give to the tenant notice to quit the residential premises fifteen days from the date the notice to quit is given.

(6A) Within fifteen days after receiving a notice to quit under subsection (6), the tenant may

(a) pay to the landlord the rent that is in arrears, and upon the payment of that rent, the notice to quit is void and of no effect; or

(b) apply to the Director under Section 13 for an order setting aside the notice to quit.”

The onus to prove a breach of the Act falls upon the party making the claim, in this case the Landlord, 3150018 Nova Scotia Limited.

### **The Evidence**

Ann Organ testified that Mr. Goodwin has been habitually late with his rent. She provided a tenant log which shows several dates where he has paid late. She stated that he attended to her office twice on January 30 and once on January 31. According to Ms. Organ, Mr. Goodwin barged in and proceeded to threaten her. Both times there were prospective tenants in her office who subsequently refused to move into the building citing “too much drama”. Mr. Goodwin paid his rent late except for April 2017 which he has not paid at all. When he attended to her office, Ms. Organ had the police speak with him.

Tyrone Goodwin testified that he attended to Ms. Organ’s office on two occasions on February 1, 2017, rather than January 30 or 31. He was present on the 23<sup>rd</sup> as well. He originally paid his rent with 11 post dated cheques. Unfortunately, he experienced a job loss and as a result, he had to wait several weeks to receive Employment Insurance. He described the landlord as understanding of his predicament as they allowed him to pay once he was able to do so. He acknowledged receiving the Notice to Quit regarding his January rent on January 17. He paid Ms. Organ in cash at her office on February 1. He requested his February cheque be returned to him as it was going to bounce. He paid his rent in cash at that time. He submitted into evidence the recording of his conversation. There was arguing over whether the rent cheque bounced and a disagreement regarding a sign showing those who owe rent. There were no threats or insults as alleged by Ms. Organ.

Mr. Goodwin testified that a sign was posted on the hallway which is entitled: “Late Rents-No Rent”, containing a list of names including “Tyrone Goodwin”. Mr. Goodwin testified that it was posted in the hallway. His fiancée, Larissa MacNeil, stated that it was posted on the office door. Ms. Organ testified it was on the wall of her office for reference purposes.

### **Findings**

I have carefully weighed and considered the evidence of both parties. For reasons noted below, I find the evidence of Ms. Organ to be exaggerated and not supported by the evidence. Mr. Goodwin’s recording of their conversation of February 1 significantly discredited her. Where their evidence differs, I favour that of Mr. Goodwin.

### **“Late Rents-No Rent” Sign**

The tenants argue this sign was intended to embarrass the tenants into paying their rent. There is disagreement between the parties as to where this sign has been posted. The tenants state it was posted on the office door and visible by those doing business there or walking by. Ms. Organ testified that it is kept only on the wall in her office.

Ms. Organ did not stipulate how Mr. Goodwin obtained the sign. I believe she would have indicated if he had removed it from her office in her presence. I find it was posted on the office door in the hallway

Regardless, it is of no consequence whether the sign is posted in the hallway or the Property Manager’s office. The former is an area of general access to those in the building; the latter is attended to by those doing business with the Property Manager. This information should be confidential between the landlord and each tenant. Yet anybody in the area of these signs can view this information. It is reasonable for a landlord to track those who owe rent and create reminders for themselves. However, that information should be maintained more discreetly and confidentially.

I find the posting of the sign containing confidential information to be a direct violation of Statutory Condition 3, the “Good Behaviour” provision. I order the sign removed immediately.

### **Threats/Harassment**

Mr. Goodwin tendered into evidence a USB stick containing a recording of a conversation between Ms. Organ and him. I find the conversation took place on February 1. Their conversation related to whether Mr. Goodwin’s cheque bounced or if it was retrieved and replaced with cash. Mr. Goodwin also objected to his name being posted on the sign.

I find there was nothing any reasonable person would find harassing, intimidating or threatening. As a result, this ground has not been proven at all.

### **Arrears**

There was evidence from Mr. Goodwin that he paid his rent late, and in the case of January, within the time prescribed by the Notice to Quit. I accept that all of the previous months’ rent payments are up to date. Where the payments were to be late, Mr. Goodwin paid late fees. I find only a Notice to Quit was served as a result of the arrears of January’s rent. I accept Mr. Goodwin’s submission that it was paid in accordance with the Act, namely 15 days after receiving the Notice to Quit.

Both parties agree that as of the date of the hearing, only April 2017 rent remains outstanding. I will give Mr. Goodwin the benefit of the doubt that his lateness is out of concern for his possible eviction. He was not entitled to withhold rent for April as long as he occupied the premises.

In sum, I find that once Mr. Goodwin lost his job, he paid his rent late a maximum of 9 days, most months less than a week. The two exceptions were January and April which were longer. I do not find the arrears sufficient reason to justify an order for vacant possession prior to the end of the tenancy stipulated in the lease

The rent for April 2017 is overdue. I shall give Mr. Goodwin the same amount of time as stipulated in the Notice to Quit, namely fifteen days. I order the tenant to pay the landlord the sum of \$900, less costs noted below, on or before May 19, 2017 at 4:30 pm.

### **Termination**

Both parties agree that the tenancy will not be renewed. I order the tenancy terminated on May 31, 2017 at 11:59 pm, or such earlier time as the tenant may vacate the premises or the parties may agree.

### **Rental Incentive**

Paragraph 12 of the lease provides for a rental incentive. The document states as follows:

#### **Rental incentive (if any)**

12. In signing this lease, the landlord has granted to the tenant the following incentives, which will remain in effect for the duration of the lease:

“May, 2017 will be free contingent on no late payments or NSF’s during tenancy. Any additional pets must be approved by Property Manager in writing.”

The tenant is not required to repay or return any rental incentive if he or she terminates the lease before the end of the term in accordance with the provisions of the *Residential Tenancies Act* or sublets or assigns the residential premises to a tenant with the consent of the landlord.

The Tenant provided only 11 months rent cheques.

The word “Voided” is handwritten and the portion struck out.

The *Residential Tenancies Act* and regulations do not address rental incentives other than paragraph 12 in the Standard Form of Lease. The issue was not raised by the landlord at the hearing. That is sufficient reason for upholding the incentive.

If the issue had been raised, I would have found the language ambiguous and arguably a late payment fee, which Mr. Goodwin has already paid. I do not find anything inherently wrong with such a provision. In my view, it needs to be structured better.

I find there is no payment due for rent for May 2017.

### **Security Deposit**

The Landlord holds a security deposit of \$450.00. Its disposition shall be addressed at the conclusion of the tenancy. I expect the parties, the Landlord in particular, will exercise good faith

should they decide to make a claim for the damage deposit.

### **Tenant's Other Claims**

In his appeal, Mr. Goodwin sought to make a counterclaim of items which are beyond the jurisdiction of this Court and the *Residential Tenancies Act*. Specifically, he seeks reimbursement for moving, damage deposit at his new home and a sum for defamation of character. I disallow those items. He also seeks his damage deposit, but that is addressed above.

### **Costs**

The tenant shall have his costs of this appeal in the amount of \$99.70. The application fee assessed by the Residential Tenancy Officer shall be paid by the Landlord.

### **Summary**

The appeal is allowed. The Order of the Director dated March 21, 2017 is set aside and the following is ordered:

- The tenancy terminates on May 31, 2017 at 11:59 pm. The tenant and any other tenants, occupants or borders shall give vacant possession of the premises known as Apt [...], [...] Windmill Road, Dartmouth, Nova Scotia.
- The tenant shall pay to the landlord rent for April 2017 **by cash, bank draft/money order or certified cheque**, on or before May 19, 2017 at 4:30 pm, as follows:  
\$900.00 - \$99.70 (costs) = \$800.30.
- The landlord shall remove the "Late Rents-No Rent" sign immediately and shall cease and desist from posting any signs containing confidential information regarding its tenants.
- The tenant shall not be liable for rent for May 2017.
- The parties shall be at liberty to apply for the security deposit at the end of the tenancy in accordance with the *Residential Tenancies Act*.
- The tenant shall have his costs of the appeal of \$99.70 payable in the form of a credit against the rental payment for April 2017. The costs of the application before the Director, \$31.15, shall be borne by the landlord.

An order shall be issued accordingly.

Dated at Halifax, NS,  
on May 4, 2017;

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**Gregg W. Knudsen, Adjudicator**

Original: Court File  
Copy: Tenant(s)  
Copy: Landlord(s)