SCCH -17- 466462

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
ON APPEAL FROM AN ORDER OF THE DIRECTOR OF RESIDENTIAL TENANCIES
Citation: *Fei v. Liu,* 2017 NSSM 44

BETWEEN:

LULU CHLOE FEI

Landlord (Appellant)

- and -

YANG LIU

Tenant (Respondent)

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on August 15, 2017

Decision rendered on August 18, 2017

APPEARANCES

For the Landlord	self represented
For the Tenant	Nathaniel Ng-Cornish Megan Deveaux Dalhousie Legal Aid

REASONS FOR DECISION

[1] This is an appeal by the Landlord from a decision of the Director of Residential Tenancies dated July 27, 2017, which ordered the Landlord to return the Tenant's security deposit in the amount of $310.00, plus ordered the Landlord to pay the Tenant's application fee of $31.15, for a total payment order of $341.15.

[2] The Landlord rents rooms in a house on Maclean Street in Halifax to students. The Tenant signed a lease for one such room on December 6, 2016, for a term that was to begin February 1, 2017. The issue before the court is whether the lease was for a fixed term ending August 31, 2017, or whether it would be month to month. This is important because the Tenant gave notice on March 21, 2017 that he intended to leave at the end of April 2017. If the lease was month to month, that was perfectly legal notice. If the lease was for a fixed term, however, it would be inadequate notice.

[3] The standard form of lease available on line or at Residential Tenancies asks the parties to choose whether the lease is year to year, month to month, week to week or for a fixed term. The Landlord acknowledges that she handwrote provisions in the lease that suggested that it was <u>both</u> month to month and a fixed term to the end of August 2017. This mistake, if it was one, was repeated in paragraph 15 of the lease (dealing with notices to quit) where a check mark was placed by the word "monthly" which then states that the Tenant may terminate the lease upon giving one month's notice.

[4] The Landlord insists that the verbal understanding between them was that it was a fixed term lease. She says that she was unfamiliar with the forms and procedure and made an error in also stating that it was month to month. She

asks the Court to ignore that error and enforce the part of the lease that says it was a fixed term.

[5] The Residential Tenancy Officer found, and I completely agree, that the Tenant was entitled to treat the lease as month to month. The reason is that the lease must be read according to its written terms, and if there is ambiguity in the writing, it will be interpreted against the interest of the party who drafted it. This is the legal principle of *contra proferentum,* also known as "interpretation against the draftsman", which says that where a promise, agreement or term is ambiguous, the preferred meaning should be the one that works against the interests of the party who drafted it. Although much of this lease is on a pre-printed form, the handwriting was all supplied by the Landlord.

[6] This would be enough to dispose of the appeal, but there is another issue which arose that I feel compelled to comment upon.

[7] In support of his termination, the Tenant also supplied a certificate signed by a physician, certifying that the tenant had suffered a health deterioration that has resulted in the inability of the tenant to continue the lease. The Tenant testified that he often came home late and had to be ultra quiet entering his apartment, so as not to disturb the Landlord or other tenants. He found this stressful. He said he was also stressed because the Landlord had security cameras throughout the building.

[8] The Landlord was highly suspicious of this certificate. She embarked upon an audacious plan. She showed up at the same clinic, using a fake name, and paid $35.00 to see the doctor. She told him that she was stressed out and had to leave her apartment. She testified that the doctor asked very little, and simply signed a certificate for her.

[9] I believe the Landlord's evidence. And I am frankly shocked.

[10] The *Residential Tenancies Act* has a procedure to allow tenants to get out of lease obligations early when the tenant's health has deteriorated in such a way that renders the tenancy unsustainable:

> **Early termination for health reasons**
>
> 10C (1) Notwithstanding Section 10, where a tenant or a family member residing in the same residential premises in a year-to-year or fixed-term tenancy has suffered a significant deterioration in health that, in the opinion of a medical practitioner, results in the inability of the tenant to continue the lease or where the residential premises are rendered inaccessible to the tenant, the tenant may terminate the tenancy by giving the owner
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> (a) one month's notice to quit, in the form prescribed in the regulations;
>
> (b) a certificate of a qualified medical practitioner, in the form prescribed by regulation, evidencing the significant deterioration of health ....

[11] This is no trivial matter. It places a duty on physicians to look closely at their patient's health and make a judgment to the effect that the tenancy cannot be continued owing to a "significant" deterioration in health. This is a decision that may be costly for landlords. These certificates should not be handed out like candy. In *GNF Investments Ltd. v. Rossell*, 2015 NSSM 54, I wrote extensively on this topic:

> [15] In my opinion, s.10C is a specific application of the more general principle that contracts which have been "frustrated" need not be performed. The doctrine of frustration allows for the legal termination of a contract due to unforeseen circumstances that prevent the achievement of its objectives, render its performance illegal, or make it practically impossible to execute. .....
>
> [17] The *Residential Tenancies Act* is very specific about what has to occur before a yearly or fixed term lease can be ended early. There must

> have been a "deterioration of health," as a result of which (in the opinion of a physician) the tenancy is no longer viable and/or the premises are no longer accessible. If there has been no deterioration in health the right to early termination does not manifest. And even if there has been a deterioration in health, however caused, the right to early termination is not engaged unless a physician concludes that the result of that deteriorated health makes the tenancy non-viable or the premises inaccessible.

[12] I went on to say that the judgment of the physician is not the final word, as the Landlord can challenge it in court. But it is disappointing to think that all a physician needs to hear from a tenant that there is something about the tenancy that is creating “stress,” and that this would justify an early termination of a lease at a potential cost to a landlord in the hundreds or thousands of dollars. This trivializes s.10C of the *Residential Tenancies Act.*

[13] In my opinion, such lenient practice will work against the rights of tenants in the long term, as landlords and this court will not take these certificates seriously.

[14] I believe that a physician being asked to sign such a certificate must perform due diligence. He or she must inquire into the causes of the patient’s illness and - before signing the certificate - must conclude that there is something inherent in the premises or the tenancy that “frustrates” the lease. Termination of the lease is not a first resort. The physician has a duty to consider whether the tenancy is truly the problem, or is merely being used as a convenient scape goat. The physician should not sign every certificate on request.

[15] The brave and audacious initiative by the Landlord here appears to demonstrate that some physicians either do not understand their duty, or are not taking the duty seriously.

[16] In the end, it is academic because the Landlord cannot escape the fact that the tenancy was month to month, and the Tenant was in the right to terminate it upon one month's notice.

[17] The appeal is accordingly dismissed and the Landlord is ordered to repay the Tenant the amount of $341.15.

Eric K. Slone, Adjudicator