SCCH - 17- 466583

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
ON APPEAL FROM AN ORDER OF THE DIRECTOR OF RESIDENTIAL TENANCIES
Cite as: Walsh v. Bazoun Developments Ltd., 2017 NSSM 55

BETWEEN:

TARALEE WALSH and CHRIS HILLMAN

Tenants (Appellants)

- and -

BAZOUN DEVELOPMENTS LIMITED

Landlord (Respondent)

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on August 29, 2017

Decision rendered on September 1, 2017

APPEARANCES

For the Tenants	self-represented
For the Landlord	George Faddoul, Director

REASONS FOR DECISION

[1] This is an appeal by the Tenants from a decision of the Director of Residential Tenancies dated July 31, 2017, which ordered the Tenants to pay to the Landlord the sum of $4,756.15, in connection with a tenancy on Prospect Road in Shad Bay, Nova Scotia.

[2] The history is a bit complicated and ultimately quite problematic for the Tenants.

[3] The tenancy began on July 1, 2016 and was to run year to year. The Tenants had problems with the water quality, which was the subject of many complaints and an equal number of efforts by the Landlord to address the complaints. Whether those efforts were wholly successful is a point upon which the parties vehemently disagree.

[4] By the end of November 2016, the Tenants felt they had endured enough. They moved out of the premises and launched an application to Residential Tenancies seeking, among other things, a declaration that the tenancy had been validly terminated because of the alleged problems with the water. The Landlord cross-applied for December rent and a few minor incidental items.

[5] The matter came before a Residential Tenancy Officer on December 14, 2016. All parties attended the hearing. An order was issued on December 21, 2016 allowing the Landlord's claim for rent and other items. The order also allowed the Tenants' claim for $345.00 for the purchase of bottled water. But significantly she refused to award the Tenants the termination of the tenancy that

they had sought. Her precise words were ***"termination of tenancy is not granted."***

[6] The net result of the hearing, including disposition of the security deposit, was that the Tenants owed the Landlord $207.00, an amount that they apparently have still not paid.

[7] Apart from the small financial reckoning, the clear legal effect of that order was that the tenancy continued, whether the Tenants understood that, or not. I believe that the Tenants did have some appreciation of the fact that they had been unsuccessful in that matter, because they apparently considered appealing it. Ms. Walsh testified that she presented herself at the Small Claims Court counter intending to file an appeal, but was told that she could not appeal the order because she was not actually questioning the amount of money that the Residential Tenancy Officer ordered them to pay. She said that she therefore left the Court building without filing an appeal.

[8] It is very difficult for me to do anything with this slightly troubling evidence. If it is true, Ms. Walsh was seriously misled. This court regularly hears appeals from Residential Tenancies orders that either terminate tenancies, or decline to do so, without any specific monetary question attached. Court staff are experienced and trained to be helpful, and are specifically directed not to provide anything that might be mistaken for legal advice. Based on my experience with Residential Tenancies appeals, staff allow almost anything to get through, preferring (properly) to let the Adjudicator sort out whether the appeal has any merit. I can only conclude that, in this case, Ms. Walsh had a flawed understanding of her right to appeal, and in the result she did not take the necessary steps to question the Residential Tenancies Order.

[9] As stated, that Order had full legal effect and was a factual determination to the effect that the water problems were not serious enough to justify terminating the tenancy, and as a result **the tenancy was still in effect**.

[10] The Tenants may have believed that their issues with this Landlord were at an end, but they were wrong. The Landlord attempted to mitigate his damages by re-renting the unit, but in the end only found a replacement tenant who started paying rent mid-May 2017.

[11] On the 14th of June 2017, the Landlord commenced the application that gave rise to the Residential Tenancies Order that is under appeal here.

[12] The hearing date at Residential Tenancies was set for July 20, 2017.

[13] In early July 2017, the Landlord personally attended to serve the notice of the Residential Tenancies hearing on the Tenants. According to Mr. Hillman, he unlawfully entered their home while trying to serve the papers. There was already bad blood between them, and a bit of a scene occurred where police were called.

[14] As for the Residential Tenancies papers, Mr. Hillman testified that he was so incensed by the Landlord's conduct that did not even look at the documents and simply took them to the back of his home and burned them.

[15] He did understand verbally from the Landlord that there was to be a hearing at Residential Tenancies, but he stated that he was going on vacation and was not going to be inconvenienced.

[16] Had he done the rational thing and read the papers, he would have learned what the Landlord was seeking, and he also would have learned that the planned hearing was part of a pilot project to hold Residential Tenancies hearings by conference telephone. As such, the Tenants would not have had to change their vacation plans, except to the extent of being at or near a phone on July 20, 2017.

[17] At the hearing before me, when told that he could have participated over the phone, a surprised Mr. Hillman retorted "how was I supposed to know that?" The answer is that he should not have burned the papers without reading them.

[18] In the end the hearing at Residential Tenancies was uncontested, and the Landlord received what he was asking for, namely 4.5 months of rent at $1,050.00 per month plus $31.15 for the application fee, for a total of $4,756.15.

[19] This appeal is from that order.

[20] The main thrust of the Tenants' presentation before me was that the water quality was an issue so significant that they, the Tenants, should not have to pay any more rent to this Landlord. They buttressed their evidence with pictures and other evidence to the effect that the water was brown and non-potable, right up to the end.

[21] While I listened to this evidence, there is actually no reason for me to decide the issue of whether or not the water quality justified them leaving their lease prematurely. In fact, it would have been improper for me to decide that issue because the Residential Tenancies order of December 21, 2016 conclusively determined that issue. To use legal language, the issue of whether or not the water problems were serious enough to justify ending the tenancy was *res judicata*.

[22] *Res judicata* is the Latin term for "a matter [already] judged", which precludes parties in civil or other proceedings from questioning in subsequent proceedings the result of a legal order that is deemed to be final, i.e. not still under appeal. The issue of whether or not the tenancy was still alive after November 30, 2016 was finally decided by the Residential Tenancy Officer in December 2016 and, not having been appealed, is final. That matter is closed.

[23] In practical terms, therefore, it would not have mattered what the Tenants might have argued at the second Residential Tenancies hearing, because the only issue would have been what amount of rent did the Landlord lose as a result of the Tenants illegally terminating their lease.

[24] The Tenants did question whether the Landlord had actually proved that the property was vacant until mid-May 2017. The Residential Tenancy Officer was obviously satisfied. At the hearing in Small Claims Court, I heard the testimony of the Landlord to that effect. I found him to be reasonably credible and had no reason to doubt his testimony. The Tenants had no evidence to the contrary, other than the bald statement that the Landlord could be lying and attempting to perpetrate a fraud. That is a possibility that I would consider if there were any evidence to that effect, which there was not. On a balance of probabilities, I find that the Residential Tenancy Officer made the correct decision and the appeal must be dismissed.

Eric K. Slone, Adjudicator