

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA  
ON APPEAL FROM AN ORDER OF THE  
DIRECTOR OF RESIDENTIAL TENANCIES**

**Citation:** *MacGillivray v. Maria's Housing Co-operative Ltd.*, 2018 NSSM 27

BETWEEN:

ALISSA MacGILLIVARY

Tenant (Appellant)

- and -

MARIA'S HOUSING CO-OPERATIVE LTD.

Landlord (Respondent)

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**REASONS FOR DECISION AND ORDER**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on April 3 and May 29, 2018

Decision rendered on May 30, 2018

**APPEARANCES**

For the Tenant                      self-represented

For the Landlord                  Patrick MacEwen  
   Counsel

## REASONS FOR DECISION

[1] This is an appeal by the Tenant from a decision of the Director of Residential Tenancies dated January 25, 2018, which gave to the Landlord vacant possession of the subject premises as of February 5, 2018. The order also ordered the Tenant to pay the Landlord the sum of \$3,502.57, mostly consisting of arrears of rent.

[2] The Tenant apparently did not attend the Residential Tenancies hearing, although served with notice. On the face of it, she would have had until early February to appeal to this court. She did not do so. Instead, she waited until the Sheriff was virtually at her door prepared to evict her, at which time on or about March 14, 2018 she brought an application before another adjudicator and received leave to appeal, as well as a stay of the order for vacant possession and a stay of execution.

[3] The appeal came before me on April 3, 2018. We embarked upon the hearing, and I heard both the Tenant and two of the witnesses for the Landlord. It became obvious that there was a stark difference between the parties as to the facts. The Landlord claimed that the Tenant was seriously in arrears of rent. The Tenant claimed that she had been paying her rent by way of email transfers, and she contended that she was in good standing. If true, that would have meant that an employee of the Landlord was receiving but not accounting for rent moneys. I determined at that time that before I would make a finding one way or the other, thereby branding either the Tenant or an employee of the Landlord as an outright liar (or worse), I wanted to see further documents. In particular, I wanted to see the Tenant's bank statements showing rental monies coming out of her account on a monthly basis, as she stated it was doing. The Tenant assured me that

such documents existed and could be brought to court. Accordingly, I adjourned the trial for two weeks to April 17 to be concluded upon the providing of such further evidence.

[4] On April 17, the Tenant showed up, but advised the court that she was seriously ill and could not proceed that night. Over the objections of the Landlord, I adjourned the hearing for a further two weeks, to May 1, 2018.

[5] On May 1, 2018, the court received an email from the Tenant advising that she was still in the hospital and asking that the case be adjourned for two weeks, until May 15, 2018. Over the objection of the Landlord, I so adjourned the matter.

[6] On the day that the matter was to resume, namely May 15, 2018, the court received a further email purporting to be from the Tenant's sister. In that email, she advised that the Tenant was in the hospital receiving cancer treatments, and asked that the matter be adjourned a further two weeks to May 29, 2018. The email also advised that a medical note would be faxed to the court. Indeed, a fax was received by the court office which purported to be a medical note signed by a Dr. Wiebe, and which read "due to unforeseen circumstances Alissa MacGillivray had to remain in the hospital to continue chemotherapy - potential release date May 24, 2018."

[7] Neither the email nor the doctor's note were copied to the Landlord and they only learned of these matters when they attended court on May 15, expecting the case to proceed. They were not happy to see the matter further adjourned. I advised them that I felt I had no choice, given the medical evidence before me.

[8] In the days that followed, counsel for the Landlord made contact with the office of Dr. Wiebe, to clarify the medical note. A written response from Dr. Wiebe was received that stated that this purported note was in fact a forgery, and that Dr. Wiebe had not signed such a note. Counsel for the Landlord advised the court in correspondence that he would be seeking summary dismissal of the appeal when the matter came back before the court on May 29. The Tenant was copied on counsel's correspondence, and must be taken to have known that her appeal was in jeopardy.

[9] In a repeat of events from two and four weeks previously, on May 29 in the late afternoon, a further email came in purporting to be from the Tenant's sister stating that she was not able to attend court tonight because she was still sick. Despite having been cautioned to do so, this correspondence was not copied to the Landlord and accordingly, they only learnt about it at the opening of court on May 29.

[10] No explanation was given as to why the sister could not attend court to support the request for a further delay, which might have swayed the court's view that the request for further time was just a delay tactic.

[11] I determined on the basis of all of the circumstances, that no further adjournment should be granted. Accordingly, I am dismissing the appeal.

[12] I take it as established that the Tenant provided a false document to the court in order to obtain the adjournment on May 15, 2018. Such a fraud upon the court calls for the most serious denunciation possible. This Tenant received several indulgences, based upon her word. The court accepted that she was unable to continue with the hearing on April 17 and again on May 1. Her emailed request, backed up by a supposedly doctor's note, was deemed sufficient to get

her yet a further adjournment on May 15. These indulgences were stacked upon the court's earlier indulgence to excuse her failure to appeal in a timely manner.

[13] That type of indulgence was not likely to be repeated in the face of the Tenant's fraudulent conduct. I infer from all of the facts that the Tenant has no satisfactory further evidence to provide, that would back up her claim that she had paid all of her rent. Her tendering of a false medical note destroys her credibility. I cannot accept any of her evidence.

[14] As such, I am dismissing the appeal both on the merits and on the basis that the Tenant has engaged in a gross abuse of this court's process. The order of the Director of Residential Tenancies will be varied to provide that the tenancy is terminated as of May 31, 2018. I am also bringing the rent total up-to-date as the Tenant has not been paying her rent, nor has she paid any for many months. The Tenant is ordered to pay to the Landlord the sum of \$6,562.50. The stays of vacant possession and execution are also lifted effective May 31, 2018.

### **ORDER**

[15] The order of the Director of Residential Tenancies is varied as follows:

- a. The Tenant shall surrender vacant possession of the premises at 190 Ridge Valley Road, Halifax, Nova Scotia B2V 1E8 as at 11:59 p.m. on May 31, 2018.
- b. The Tenant shall pay to the Landlord the sum of \$6,562.50.
- c. All orders staying execution and vacant possession are hereby vacated.

**Eric K. Slone, Adjudicator**