

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Alfandi v. Capreit Ltd.*, 2024 NSSM 7

Date: 20240305
Docket: 529545
Registry: Halifax

Between:

Aideh Alfandi

v.

Capreit Ltd. Partnership

Adjudicator: Dale Darling, K.C.

Heard: February 6th, 2024 in Halifax, Nova Scotia

Decision: March 5th, 2024

Counsel: Both parties were self represented

By the Court:

Background

[1] This is an appeal of the Decision of Residential Tenancy Officer Vanessa Betts dated December 14, 2023.

[2] Her decision was based upon a teleconference held December 12, 2023 to hear an application for termination of tenancy and vacant possession made by the Landlord, to end Ms. Alfandi's month to month lease, which had commenced July 1, 2020. The Landlord appeared and the Tenant did not. At that hearing, the Officer made the following findings based upon the evidence provided by the Landlord:

1. That the tenant owed \$1578.00 in unpaid rent up to and including rent for December of 2023;
2. That the Landlord's claim for a 2% rental increase as of June 2023 was not served in accordance with the Act, and that the rent therefore remained \$1730.00
3. That the Landlord's allegation that the Tenant was smoking on the premises contrary to the non-smoking conditions of the lease, had

not been proven, but the Tenant was ordered to comply with the Landlord's policy on non-smoking.

[3] Based upon the evidence of arrears of rent provided by the Landlord, the Officer awarded termination of the lease and vacant possession to the Landlord effective December 31, 2023.

[4] The Tenant, Ms. Alfandi, says she first became aware of this decision when the Landlord contacted her regarding her December 31, 2023 move out date on December 29, 2023. Her evidence at the hearing before me was that she does not check her email. She contacted her daughter Safaa Harhash, who lives in Calgary, and with her assistance an appeal was filed.

[5] At the hearing before me, Ms. Harhash, Ms. Alfandi, and Sameer Harhash, Ms. Alfandi's former partner gave evidence for the Tenant. Ashley Helle appeared for the Landlord, gave evidence, and also examined Jennifer Bateman, Associate Director, Khalil Parker, Operations Manager, Lina Alkhatib, Property Manager, Raheem Henry, Leasing Specialist, and Smeet Patel, Leasing Specialist.

[6] I am rescinding the Director's Order for termination of the lease and vacant possession. My reasons follow.

The Filing of the Application to the Director of Residential Tenancies:

[7] Ms. Helle filed the initial application to the Director by Form J dated October 17, 2023. The rent was listed as \$1764.00, which represents the initial rent of \$1730, plus \$34 per month, representing a 2% increase for July 1, 2023, an amount which is in dispute between the parties. The Form J asked for termination of the lease and vacant possession, for the following reasons:

- Aida Alfandi has been smoking within her unit in a strictly non-smoking building and refuses to stop.
- Tenant refuses to pay annual rental increase. We would like to collect all past and future balances owing.

The Rental Arrears:

a) The rental ledgers

[8] A surprising number of versions of the Landlord's rental ledger showing arrears allegedly existing in this case. What is surprising, is that there is more than one.

[9] There is a version dated December 4th, 2023, which was given to the Tenant on or about that date, which was generated on December 4th, 2023. This version

shows rent for December 2023 paid, and a balance owing of \$170.00, which is some portion of the \$35.00 per month increase claimed by the Landlord (the correct amount would be \$210.00 for six months).

[10] The second, which is dated December 6th, 2023, was provided to the Officer at Residential Tenancies for the hearing held December 12, 2023. It starts with an opening arrears balance forward on January 1, 2023 of \$2,518.00. Even though it shows the December rent as paid in the same manner as the December 4th, 2023 statement does, it purports to prove a rental arrears of \$1,816.00 existed as of December 6th, 2023. It was this arrears log that the Officer relied upon in issuing order for eviction and vacant possession.

[11] The third ledger, which is dated January 11, 2024, was provided to this Court, and states that as of January 8, 2024, a rental arrears of \$204.00 existed, which is close to representing the 2% increase that the Landlord was seeking from July 1 to December 31, 2023, that is, \$210.00.

[12] At the hearing before me, these three versions of the event, and in particular the second, were impossible to reconcile on the evidence provided. Ms. Alfandi's December 2023 rent was paid, according to the December 4th, 2023 and January 11, 2024 ledgers, and her bank records provided in evidence at the

hearing before me, confirm that the Landlord had her December rent no later than December 1, 2023. There is also evidence of an email sent with that accounting on December 4th, 2023 from Mr. Henry to Ms. Alfandi, asking for payment of rental arrears of \$170.00, which would accord with the 2% dispute.

[13] The application filed to the Director in October of 2023, states that the only dispute over rent, was in relation to the 2% increase. And yet, apparently, that wildly inaccurate version generated on December 6th, 2023, with Ms. Helle, Ms. Bateman, Mr. Parker and Ms. Alkhatib on the teleconference, was left with the Officer as an accurate version of the arrears owed.

[14] Mr. Parker explains the December 6th, 2023 statement with “that’s the way the system pulled the statement”. Ms. Helle says that “the amount was higher than it should have been. I apologize it was an oversight”.

[15] The Defendant is a large and sophisticated business entity. This is not “the system” or an “oversight”, it is a serious misrepresentation without explanation which followed up on a pretty accurate report two days earlier, which the Officer relied upon an accurate reflection of the arrears owing.

[16] Although the third rental log was filed by the Landlord in the proceeding before me with the January 11, 2024 log, the enormity of having secured an

eviction based upon incorrect information, appeared to not have resonated with the Landlord. Ms. Harhash requested and put in evidence the exact document package filed by the Landlord before the Officer, and it was she who questioned the accuracy of those documents at the hearing before me.

[17] The correction makes it clear that the amount owing was, and is, somewhere between \$204.00 and \$210.00 as of the end of December of 2023. As reflected in the application filed October 17, 2024, there were no monies owing for the principle rent except relating to the parties dispute over the 2% increases.

[18] The Officer only relied, as she should have been able to do, on the representations of the Landlord regarding amounts owed. It was wrong, and at the time of hearing in December Ms. Alfandi was not in arrears with respect to the principle amount owed, and I so find.

[19] This is only one aspect of the arrears sought, and so I will deal next with the 2% increase claimed.

b) The 2% increases in rent:

[20] The evidence before the Officer and before me amounts to the same, that being that the Landlord attempted to issue notices of rental increase for each of

the periods from July 1, 2021-June 20, 2022, July 1, 2022-June 20, 2023, and finally July 1, 2023-June 30, 2024.

[21] The Tenant objected to the July 1, 2021 increase of 2% as being without proper notice, and with the July 1, 2023 increase of 4% as being in excess of the 2% cap. Evidence shows that the Landlord later withdrew both of these notices, and adjusted the ledger, and on February 10, 2023 Mike Antigua, a Leasing Specialist who no longer works for the landlord, issued an email notice for a 2% increase to be effective July 1, 2023. It was not until February 21, 2023 that Ms. Alfandi signed an agreement with the Landlord to receive documents by email.

[22] It is this notice that has created the \$210.00 arrears (as of December 31, 2023) that the Landlord says is owing.

[23] The Officer reviewed section 15 (2) of the Residential Tenancies Act, which describes how a Landlord “must” serve documents on an Tenant. That section provides under subsection (e) that documents can be sent electronically if under sub (iii) “the tenant has provided, in the lease, an electronic address to receive documents”. She found that the lease between the parties did not have an agreement to receive documents by way of email, and it was not until February

21, 2023 that the Lease was in substance amended when the Tenant signed a “Landlord and Tenant Consent for Email” form. The strict wording of the Act not having been complied with, and no further notice having been sent before the end of March, 2023, the notice of increase was not valid.

[24] I agree with the Officer’s assessment. The purpose of the specificity of Section 15 of the Act with respect to service of documents, ensures that Tenants are given notice of documents from the Landlord which affect their tenancy. There was still time to re-issue the notice between February 21, 2023 and March 1, 2023 to provide the required 4 months notice prior to the renewal of the term, but the Landlord did not do so. The notice of increase was not properly served, and therefore the increased amount claimed by the Landlord of \$34.00 per month from July 1, 2023 is disallowed for the term from July 1, 2023 to July 1, 2024.

Conclusion on Arrears

[25] I therefore vary the decision of the Officer in that there was no evidence to support that the tenant was in arrears other than in relation to the 2% increase, and I find that increase was not properly served. The portion of the Order of the Director for termination of the lease and vacant possession is rescinded.

Smoking

[26] This was one of the two grounds relied upon by the Landlord in their October 17, 2023 application to the Director.

[27] Once again, the evidence before me was as it was before the Officer. There were Notices to the Tenant in evidence issued July 7, July 30, August 11, and October 14, 2020. The July 30, 2020 Notice and the October 14, 2020 Notice are directed broadly at all residents of the building, not specifically Ms. Alkatib. The July 7, 2020 and October 12, 2020 specifically reference her apartment.

[28] Ms. Alkhatib testified that she met with Ms. Alfandi on September 21, 2023. The “chronology” supplied by the Landlord says she was also meeting about the 2% rent increase. However, there is evidence that Ms. Alfandi sent an email to Ms. Alkahtib on September 21, 2023 complaining about dogs in the building, with pictures attached.

[29] The evidence supports the conclusion that the pet issue was the main reason they met, and the other two issues arose out of that meeting. Ms. Alkatib says she said that the building was non-smoking, and that Ms. Alfandi said she would smoke in the unit until the building disallows pets.

[30] I find that Ms. Alfandi may have said this, mostly as a combative response, and an unwise one. Ms. Alfandi denies smoking, saying she lives with a family member with asthma. There is absolutely no question that she greatly objects to dogs in particular in the building, providing pictures which she says shows the building is not being kept clean as a result.

[31] After that, Ms. Alfandi received a letter dated September 29, 2023 with a Re: line titled “Friendly Reminder – Smoking in the Residential Complex”, which noted “kindly note that any complaints of cigarette odours coming from your rental unit could result in further action being taken”.

[32] Friendly reminders are, in fact, almost never intended to be friendly, which makes them an unwise choice for business correspondence intended to send a clear message. The application to the Director was filed less than three weeks after the “friendly reminder”.

[33] Ms. Helle now says “our biggest issue is the smoking”. The “friendly reminder” warned of further action if there were complaints of “cigarette odours coming from your rental unit”. However, there is no further evidence of smoking or objections to it by any resident, at any time prior to before the application to the Director for eviction.

[34] Based upon the above, as the Officer did, I find that there is insufficient evidence to ground an eviction on the basis of smoking. Having said that, Ms. Alfandi is cautioned that the non-smoking policy is the landlord's rule, and that she must abide by it. Pets are permitted in the building. Smoking is not.

Allegations of Harassment:

[35] In the hearing before me, and for reasons that are not clear, the Landlord provided evidence from staff and documentation regarding two incidents, one involving a phone call to Ms. Alfandi on December 29, 2023, and the second a visit to the office on January 2, 2024 by Ms. Alfandi and her daughter, Ms. Harhash.

[36] Mr. Henry testified that on December 29, 2023, he called Ms. Alfandi to ask "when she was moving out". The evidence before me, was that Ms. Alfandi, for whom English presents challenges, does not monitor her email, and therefore had missed both the Residential Tenancy Board hearing, and had not reviewed the decision.

[37] Upon being told her move out day was December 31, 2023, Ms. Alfandi used profanity, he says, but then apologized and the conversation continued.

When she came into the office on December 29th, 2024, Mr. Henry was off sick that day.

[38] There is in the Landlord's evidence an electronic "Incident Report" dated January 3, 2024 regarding this incident. It is not signed, but has Mr. Henry's email address attached. It reads like an insurance claim form (under Section 3, 3.1 it asks "What happened? What was the cause of the incident? What contributed to the cause (ie, weather conditions, wet floors, tenant action etc). Under 1.1, What are you reporting, is written "HARASSMENT", and under 3.2, Action Taken After Incident is written "Tenant was immediately reminded not to use such language if we are to continue the conversation to which they apologized and the conversation continued".

[39] In cross examination with Ms. Harhash, Mr. Henry was asked how Ms. Alfandi was "aggressive", to which he responded, "not to me, but generally". He said "I did not say she harassed me". When asked why the Report said the call was "harassment", he responded "using profanity is no way to talk".

[40] On January 2nd, 2024, another Incident Report was generated, this one signed by Mr. Patel. It describes the incident as "Tenant Aidah Alfandi and her daughter visited the office for a small claims court appeal. Tensions rose when

immediate access to evidence was unavailable. The Operations Manager intervened, but the heated conversation led to the Associate Director”.

[41] Under 3.1, the entirety of the incident is described as follows:

- Tenant Aidah Alfandi and her daughter visited the office to serve a notice of appeal at small claims court. Ada requested access to the evidence package, but unfortunately, I did not have immediate access to the data. I communicated that we would provide the information the next day. In response, Ada raised her voice, questioning my right to sit in the office if I couldn't provide immediate access.
- Upon hearing the escalating conversation, the Operations Manager intervened, successfully finding the details Ada needed. However, Aidha continued to argue loudly about her court order and the evidence submitted. Due to the unproductive nature of the conversation, the Operation Manager decided to end it. The Associate Director, also present during the incident, stepped in and politely asked Aidah to leave as her raised voice was disruptive.

Adding to the situation, Aidah's daughter began recording a video, requesting a statement as proof without obtaining consent. They were informed that no consent was given for recording. Cause: N/A

[42] Mr. Patel testified that on that day, he was transitioning into the building, and Ms. Alfandi came in looking for Mr. Henry. He was out sick that day, she became "a little bit louder", and then left and returned with her daughter. He says he was "upset I was told I didn't deserve to be in the chair".

[43] In cross examination with Ms. Harhash, he agreed that "Aida was getting more frustrated and you were encouraging her to stay silent".

[44] On January 3, 2024 Ms. Alfandi received a Notice from Capreit. It is signed "Capreit", and says that there was an "aggressive verbal interaction between you, a daily member (occupant) and a Capreit staff member that occurred in the rental office". It is described as a "first warning", and stated that the Landlord will no longer communicate in person or by phone with Ms. Alfandi, but only by email. Ms. Alfandi confirmed January 7th, 2024, that going forward only email would be used. At the hearing before me, Ms. Harhash confirmed that she would be managing communication for her mother.

[45] It is of course required and laudable for employers to ensure that employees have a respectful workplace, but in this case, the individual employees involved who testified before me, were not, and did not think they were victims of harassment.

[46] In the relationship between landlords and tenants, there is always a power imbalance. The evidence established that Ms. Alfandi struggles with English, and two days prior to an eviction, got a call from Mr. Henry asking when she was “moving out”. She is a person who does not use her email. It is hardly surprising that she reacted, and it seems the reaction was a brief one which was over immediately.

[47] The same applied to the incident in the office, and in both incidents, it is of note that escalation occurred and then resided. Both of these incidents were in the context of the stress of an eviction notice, and considerable urgency to meet the requirements of a 10 day notice period for appeal. There is no evidence of “harassment” by Ms. Alfandi, only that she was upset over the prospect of eviction.

[48] It was not articulated by the Landlord was conclusions I was to draw from this evidence, upon which a considerable time was spent at the hearing before

me. I can only assume that this was brought to the Court's attention to establish a post-decision violation of the Landlord's rules regarding good behaviour. It establishes that communication between the parties became poor in the wake of an eviction notice, but not before. I do not accept this evidence as relevant to what the Landlord applied for, rental arrears and smoking.

Retaliation

[49] Ms. Harhash in the hearing before me expressed the view that the Landlord had affected Ms. Alfandi's rights by supplying incorrect evidence to the Officer.

[50] Under section 20 of the Act, "[t]he Director or the Small Claims Court may refuse to exercise, in favour of the landlord, the powers or authorities under this Act or may set aside a notice to quit if the Director of the Small Claims Court is of the opinion that a landlord has acted in retaliation for a tenant attempting to secure or enforce the tenant's rights under this Act or the *Rent Review Act*:" s.20.

[51] In *Mandaville Court v. Muise*, 2008 NSSM 11 (Canlii), para 43, Adjudicator Richardson in reviewing the legislation, concluded that the burden of proving retaliation lies with the Tenant, and the tenant must establish that (in the present

case) the application for termination of tenancy and vacant possession, must have been made in the context of:

- a. the existence of a particular right under the Act;
- b. that she was attempting to secure or enforce that right; and
- c. that the landlord was acting in retaliation of that attempt.

[52] I agree with Adjudicator Richardson's analysis. In applying the test established by *Mandaville Court*, it is clear that throughout the conflict with the Landlord, Ms. Alfandi was attempting to enforce her right to be given the notice required under the legislation of a rent increase. What is murky, is whether the application to terminate her tenancy, was in retaliation for that assertion.

[53] That is because there is no evidence regarding the smoking allegations after September 29, 2023, which would have created an alternative explanation for the application for eviction, other than the 2% increase issue.

[54] With respect to the arrears issue, as late as December 4th, 2023, Mr. Henry sent an email advising Ms. Alfandi that she had an outstanding balance of

\$170.00, (which was related to the 2% dispute), with no mention of the impending application to end her tenancy to be heard December 12, 2023.

[55] On all the evidence before me, the motives of the Landlord cannot be determined. Overall, the evidence suggests that at least some of the Landlord's agents found Ms. Alfandi unlikeable, but seem to have dealt with her in a professional manner.

[56] What is completely unknown, is what happened in the first half of October 2023 that triggered this application? That overall, there was a tsunami of mixed messages being sent to Ms. Alfandi, is clear, with "friendly reminders" about smoking, and requests in December for payment of an arrears amount that the Landlord was already planning on using to ground a termination of the lease. It is hardly surprising that the eviction notice came as a shock.

[57] The burden remains with the Tenant in this matter, and there was no evidence of animus from Mr. Henry or Ms. Alkhatib, or Mr. Patel, the most "hands on" communicators with Ms. Alfandi. If that animus existed elsewhere, is not proven on a balance of probabilities, based upon the inconsistent and confusing approach taken by the Landlord.

[58] Based upon the evidence before me in this proceeding, I have made the following findings:

1. Ms. Alfandi was not in arrears with respect to her rent at the time of the hearing before the Officer on December 12, 2023, except for the disputed amount relating to notice of a 2% increase in the rent, which the Officer found was not legal as notice had not been provided according to the Act.
2. I agree with the Officer that the notice of a 2% increase was not legally served, as it was sent electronically to an email address on February 10, 2023, which the tenant did not amend the lease by giving consent to use for service until February 21, 2023.
3. I agree with the Officer that there is insufficient evidence to ground an eviction on evidence of smoking contrary to the Landlord's policy.

[59] For all of these reasons, the Director's Order for termination of the Lease and vacant possession is rescinded. Ms. Alfandi shall have her costs of filing this appeal in the amount of \$99.70.

Dale Darling, K.C., Small Claims Court Adjudicator