SUPREME COURT OF NOVA SCOTIA
Citation: *Rissesco v. Rahman*, 2025 NSSC 95

Date: 20250317
Docket: Hfx No. 535091
Registry: Halifax

Between:

Dale Rissesco & Anileda Tudisco

Appellants

v.

Mohd Mustafizur Rahman & Yuyin Jia

Respondents

D E C I S I O N

Judge:	The Honourable Justice Glen G. McDougall
Heard:	December 3, 2024, in Halifax, Nova Scotia
Written Decision:	March 17, 2024
Counsel:	Dale Rissesco, Self-represented Appellant Eliza Richardson, for the Respondents

By the Court:

INTRODUCTION

[1] The appellants, Dale Rissesco and Anileda Tudisco (the appellants"), are self-represented. They were the claimants at the Small Claims Court level. The respondents, Mohd Mustafizur Rahman and Yuyin Jia ("the respondents"), are represented by Eliza M. Richardson, of Burchell Wickwire Bryson law firm.

[2] The appellants were the previous tenants of 34 Bethany Way ("the unit") which the respondents now own. The appellants were served with a Form DR2 Notice to Quit from their landlords, compliant with section 10AA of the *Residential Tenancies Act*, RSNS 1989, c. 401 ("*RTA*"), which governs landlords seeking to end tenancies early due to purchase of residential premises. The appellants claimed that they were evicted in bad faith by the respondents.

BACKGROUND

[3] The following is a brief timeline of the relevant dates. On January 22, 2022, the respondents entered into an Agreement of Purchase and Sale ("APS") with the former owners of the unit. On February 12, 2022, the appellants purchased a duplex of their own in Bridgewater having already been given verbal notice that their landlords were selling the unit they were renting. On February 26, 2022, the appellants were formally served with the DR2 by their landlords. May 9, 2022, was the closing date for the respondents' purchase of the unit.

[4] The appellants argued that Adjudicator Pink erred in law by finding there was no landlord/tenant relationship between them and the respondents and finding they were not evicted in bad faith. I will provide detailed reasons in this decision outlining why. There was no error of law in Adjudicator Pink's decision. There is no basis in his Order or Summary Report to question whether there was an absence of evidence for his findings of fact.

[5] Adjudicator Pink found that the Statutory Declaration sworn by the respondents did not constitute a misrepresentation. I agree. I also explain why the unit having not being occupied by the respondents' family members in the immediate timeframe following the closing is not evidence of the respondents' bad faith. Rather, the respondents acted reasonably and in good faith by keeping the unit

vacant for an extended period while awaiting Ms. Jia's Mother's return from China to Canada. Ms. Jia's mother, Ms.Shen, was the intended occupant of the unit.

[6] The appellants also argued that Adjudicator Pink erred in law by misapplying the Civil Procedure Rules, in relation to the respondents' ability to understand English, with respect to the Statutory Declaration they swore as part of the DR2. I do not agree with this. Adjudicator Pink addresses in detail in his Summary Report/Order, his reasons for accepting that the respondents understood the substance of the Statutory Declaration. The appellants tendered several documents on appeal seemingly related to the respondents' ability to understand English. In my opinion, the issue of English being the respondents' second language is not a material issue on appeal. I did not consider the new documents presented because they do not meet the threshold *Palmer* test for the admission of fresh evidence on appeal – they were available at the time of the initial hearing and they are not relevant.

PROCEDURAL HISTORY

[7] In the fall of 2022, several months after the respondents took ownership of the unit, the appellants learned that the respondents were not occupying 34 Bethany Way and that another family was living at the address. The appellants applied to the Director of Residential Tenancies for an order that the respondents had misrepresented their intentions to occupy the unit in their affidavit filed in support of the s. 10AA *RTA* notice.

[8] The appellants' application was dismissed. They did not appeal the Director's Order. Instead, they began an action in Small Claims Court based on the assertion that the respondents "misrepresented their intent to move into 34 Bethany Way…"

[9] This matter was heard by Adjudicator Darrel Pink on June 20, 2024. The appellants were self-represented and the respondents were represented by Eliza Richardson. The claim was dismissed after the hearing. The summary of facts below is based upon the Order dismissing the claim (dated June 24, 2024) and the Summary Report (dated July 29, 2024) as written by Adjudicator Pink.

[10] Adjudicator Pink found as a fact that the respondents did not make misrepresentations in their Statutory Declaration and that they had a good faith intention for Ms. Shen to occupy the unit.

[11] He further found that a purchaser signing the affidavit attached to the Form DR2 does not owe a duty of care to the tenants occupying the rental premises that would support a claim in negligence or contract. He found there was no obligation owed by the new purchasers to the existing tenants, either in tort or contract. Adjudicator Pink added that if he was wrong, and there was a duty of care owed by the respondents to the appellants, the damages sought by the appellants are not compensable because they were not reasonably foreseeable.

[12] The appeal of the Small Claims decision was heard on December 3, 2024. Eliza Richardson appeared on behalf of the respondents and Mr. Rissesco appeared on his and his wife's behalf.

SUMMARY OF FACTS

[13] The appellants were tenants in a unit at 34 Bethany Way ("the unit") in Dartmouth. On January 22, 2022, the respondents entered into an Agreement of Purchase and Sale ("APS") to purchase the unit from the appellants' then-landlords. As a condition of the APS, the respondents required the property to be vacant for the closing date of May 9, 2022.

[14] Adjudicator Pink found as a fact that the respondents' good faith plan was for the respondent Ms. Jia's mother, Yuanshu Shen, to occupy the unit. Ms. Shen was visiting from China and had a Visitor's Visa which was due to expire on July 6, 2022. The respondents' intent was that Ms. Shen would live at 34 Bethany Way and look after their children. Ms. Jia was pregnant with their second child at the time.

[15] Section 10AA of the *Residential Tenancies Act* ("*RTA*") requires that where a landlord seeks to end a tenancy early, due to the sale of the residential complex, the purchasers provide the seller an affidavit, in which they swear to their good faith intention that they, or their family member, will occupy the purchased property. The respondents provided the required affidavit to the sellers, in the form of a Statutory Declaration that reads, "we intend, in good faith, to occupy the residential premises." The respondent Mr. Rahman provided *viva voce* testimony that by using the word "we," he and his wife believed the wording included a member of their family – specifically, his mother-in-law Ms. Shen. Adjudicator Pink accepted his evidence.

[16] The seller provided a Form DR2 (Notice to Quit) to the existing tenants (the appellants), with the respondents' Statutory Declaration attached. The DR2 is dated February 26, 2022. The appellants had been looking to buy a home in the Halifax area at the end of their lease. When they were advised of the imminent sale, they

accelerated their search and found and purchased a duplex home in Bridgewater on February 12, 2022. They vacated the unit before the closing date. The appellants claimed that they could not afford a home in Halifax/Dartmouth due to housing prices at the time.

[17] The appellant, Mr. Risessco, is a bus driver for Halifax Transit. With the appellants' relocation to Bridgewater, he now drives over 100 km each way to go to work. His commute was considerably shorter when the appellants lived in the unit.

[18] The closing date for the purchase of the unit was May 9, 2022. Just before closing, Ms. Shen (Ms. Jia's mother) had to return to China on short notice, as her mother was ill and required her assistance. Her mother died while Ms. Shen was in China. She then required a new Visa which was delayed. The respondents understood the delay was due to a slowdown in processing Visa applications arising from the COVID-19 pandemic. As a result, it was many months before Ms. Shen obtained a new Visa. At the initial hearing stage, Ms. Shen provided documentation in support of this.

[19] The unit remained vacant in hopes that Ms. Shen's return would be imminent. She ultimately did not return to Canada until March 2023. After several months of continuing uncertainty with respect to Ms. Shen's return date, the respondents leased the property under a one-year fixed-term lease.

[20] The appellants claimed that the respondents did not intend to move into the rental property and that the Statutory Declaration they signed was false.

[21] Adjudicator Pink found as a fact that the Statutory Declaration was not false, and that the respondents did not misrepresent their intentions. However, he did acknowledge that the language may not have been correct – as it used the word "we" – which suggested the respondents themselves would occupy the rental unit which was never their intention. However, Adjudicator Pink found the wording in the Statutory Declaration was not fatal because of the respondents' understanding of the word "we" as it was used in that context. Adjudicator Pink found the intentions of the respondents were always clear and, though the language in the document may have left some ambiguity, it was not false from the perspective of those who swore the document.

[22] Adjudicator Pink further found that a purchaser signing an affidavit attached to a Form DR2 does not owe a duty of care to the tenants in the rental premises. He found there was no contractual relationship between the parties and no obligation

owed to the existing tenants by the purchasers. Any obligation to the existing tenants would be on the seller, not the purchasers.

[23] The appellants' claim for damages included the cost of a U-Haul to move their furniture ($309.58); one night in a hotel before the closing ($271.98); the cost of a rental unit in Bridgewater ($3260.25); and, the cost of Mr. Rissessco's commute to his workplace at Halifax Transit. The number he presented was from an online calculator, based on the amount of gas Mr. Rissessco required for his commute since moving. The gas calculation was not accepted by the Court as evidence of loss.

[24] Adjudicator Pink further noted that if he was wrong and there was a duty owed by the purchasers to the existing tenants, that the damages claimed are not compensable as it was not reasonably foreseeable that the appellants would relocate 100 km away and seek reimbursement for travel costs. Further, their storage claims were not valid as the appellants had purchased a duplex with one side unoccupied which could be used for storage. Similarly, the U-Haul rental costs were not recoverable as the appellants would have had to move and incur those costs regardless of where they were moving.

LAW AND ANALYSIS

Appellants' Position

[25] The Appellants seek an order from this Court overturning the Adjudicator's decision and a finding that:

1. There was a landlord/tenant relationship between the appellants and respondents from the time that the respondents entered into the APS;
2. The respondents evicted the appellants in bad faith.

[26] The appellants argue that Adjudicator Pink erred in law when he found there was no relationship between them and the respondents. They argue that the Court should have found that there was a landlord/tenant relationship between the parties and that the respondents evicted them in bad faith.

[27] The appellants argue that when the respondents signed the APS, they became the appellants' landlords. The appellants relied on *Feeney v. Noble,* (1994) 19 O.R. (3d) 762, [1994] O.J. No. 2049, Ontario Court (General Division), Divisional Court, where the court adopted the following statement from *Townsend v. Bridgett,* 60 O.R. (2d) 146 (Dist. Ct.), 1987 CanLII 4205 (ON SC) on this point:

> It is my conclusion that the purchasers upon signing of the agreement [of purchase and sale], became within the definition of the Act and had the right to have notice of termination served upon the tenants.

[28] The appellants also rely on an Ontario Court of Appeal case, *Buchanan v. Oliver Plumbing & Heating Ltd.*, (1959) 18 D.L.R. (2d) 575, 1959 CanLII 141, cited in *Feeney*, where Shroeder, J.A. wrote for the unanimous court:

> It appears to be me that the effect of a contract for sale has been settled for more than two centuries…what is that doctrine? It is that the moment you have a valid contract for sale the vendor becomes in equity a trustee for the purchaser of the estate sold, and the beneficial ownership passes to the purchaser…

[29] Finally, the appellants rely upon the definition of landlord in section 2(c) of the *RTA:*

> (c) "landlord" includes a person who is deemed to be a landlord, a lessor, **an owner,** the person giving or permitting the occupation of premises and such person's heirs and assigns and legal representatives [Emphasis in appellant's brief].

[30] The appellants also take issue with the wording in the respondents' Statutory Declaration, namely the use of "we." They submit that the respondents swore that they intended to occupy the unit but their intention was really for Ms. Jia's mother, Ms. Shen, to occupy the unit. Yet, she was not named in the Statutory Declaration. The appellants argue that the respondents did not use the unit for the purpose described in the Statutory Declaration in the twelve months after the appellants were served with the Notice to Quit.

[31] The appellants also raise an issue arising from the fact that English is the respondents' second language. In doing so, he presented other affidavits unrelated to these proceedings which the appellants say were sworn by the respondents prior to the Statutory Declaration.

[32] The appellants ultimately argue that the respondents' failure to use the unit for the purpose as described in the Statutory Declaration is proof that they acted in bad faith. The appellants assert that they were paying rent of $1450 monthly prior to vacating while the new tenants are paying $3000. The appellants allege that the respondents' motive to evict them in bad faith was that the appellants were paying less than their monthly mortgage.

Respondents' Position

[33] The respondents submit that the factual conclusions reached by Adjudicator Pink are supported by the evidence as set out in his Order and Summary Report, and therefore, no error of law occurred. They argue that the appellants have not advanced any grounds of appeal that are permitted under the *Small Claims Court Act*, RSNS 1989, c. 430.

[34] The respondents further note that neither the Small Claims Court nor the Supreme Court of Nova Scotia have the jurisdiction to order any relief arising from a breach of the *RTA.*

[35] The respondents submit that none of the appellants' grounds of appeal can succeed. The respondents remind the Court that the *Small Claims Court Act* does not permit appeals based on alleged errors of facts. The maintain that an Adjudicator's finding of fact must be given a high degree of deference. This court, on appeal, may intervene with respect to an Adjudicator's finding of fact where the evidence as stated in the summary report could not support the conclusions reached by the Adjudicator. The respondents point to *Hoyeck v. Maloney*, 2013 NSSC 266 on this point, in which Justice Moir wrote:

> [23] We do not review Small Claims Court findings of fact for palpable and overriding error. **Our jurisdiction to review for error of law may extend to the situation "where there is no evidence to support the conclusions reached": *Brett* at para. 14. That would have to be apparent from the summary.**
>
> [Emphasis Added].

[36] The respondents further argue that the appellants have raised novel arguments at the appeal stage that were not advanced at the Small Claims hearing. The respondents point in particular to the following passage of the appellants' brief:

> The Adjudicator made an error in law when he determined that there was no relationship between the Appellant and Respondents, did not apply the Nova Scotia Civil Procedure Rules correctly, and alleged something was not brought into evidence. The Adjudicator should have ruled that there was a Landlord/Tenant relationship between the Appellants and Respondents, that the Respondents acted in Bad Faith and that the eviction of the Appellants was in Bad Faith.

The respondents argue that the appellants are improperly trying to relitigate the matters decided by Adjudicator Pink.

ANALYSIS

Standard of Review

[37] The following sections of the *Small Claims Court Act* are pertinent for this Court to consider on appeal:

> 2. It is the intent and purpose of this Act to constitute a court wherein claims up to but not exceeding the monetary jurisdiction of the court are adjudicated informally and inexpensively but in accordance with established principles of law and natural justice.
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> […]
>
> 32(1) A party to the proceedings before the Court may appeal to the Supreme Court from an order or determination of an adjudicator on the ground of
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> (a) jurisdictional error
>
> (b) error of law; or
>
> (c) failure to follow the requirements of natural justice, by filing with the of the Supreme Court a notice of appeal.

[38] The appellants' grounds of appeal fall under the "error of law" category.

[39] The leading case on what constitutes an error of law in the context of Small Claims Court decisions is *Brett Motors Leasing Ltd. v. Welsford*, (1999) 181 NSR (2d) 76, 1999 CanLII 1121. In that decision, Saunders, J. (when he was a member of this Court prior to his elevation to the Nova Scotia Court of Appeal) wrote the following:

> [14] **One should bear in mind that the jurisdiction of this Court is confined to questions of law which must rest upon findings of fact as found by the adjudicator. I do not have the authority to go outside the facts as found by the adjudicator and determine from the evidence my own findings of fact**. "Error of law" is not defined but precedent offers useful guidance as to where a superior court will intervene to redress reversible error. Examples would include where a statute has been misinterpreted; or when a party has been denied the benefit of statutory provisions under legislation pertaining to the case; or where there has been a clear error on the part of the adjudicator in the interpretation of documents or other evidence; or where the adjudicator has failed to appreciate a valid legal defence; or where there is no evidence to support the conclusions reached; or where the adjudicator has clearly misapplied the evidence in material respects thereby producing an unjust result; or where the adjudicator has failed to apply the appropriate legal principles to the proven facts. In such instances this Court has intervened either to overturn the decision or to impose some other remedy, such as remitting the case for further consideration.

[Emphasis Added].

[40] As noted earlier, the inability of this court to interfere with the adjudicator's fact finding is explained in *Hoyeck v. Maloney,* 2013 NSSC 266:

> [19] The need for deference to fact-finding becomes acute on a Small Claims Court appeal. The *Act*, true to its purpose of economical dispute resolution, limits appeals to an error about jurisdiction, an error of law, and a failure in the duty of fairness: s. 32(1). Note the absence of palpable and overriding error of fact.
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> …
>
> [23] We do not review Small Claims Court findings of fact for palpable and overriding error. Our jurisdiction to review for error of law may extend to the situation "where there is no evidence to support the conclusions reached": *Brett* at para. 14. That would have to be apparent from the summary.
>
> [24] **In conclusion on this point, fact-finding in Small Claims Court is only reviewed when it appears from the summary report and the documentary evidence that there was no evidence to support a conclusion**. An insufficient summary may attract review on the third ground, fairness, but it is not insufficient just because it is less satisfying than a transcript.
>
> [Emphasis Added].

[41] The appellants argue that the Adjudicator erred in law when he determined there was no landlord/tenant relationship between them and the respondents and maintain that the respondents evicted them in bad faith. Adjudicator Pink found that the facts did not establish a tenancy relationship between the appellants and respondents.

[42] The appellants are asking this court to overturn the Adjudicator's finding of fact. It is clear from the passages outlined above that this Court only has the authority to disturb the Adjudicator's findings of fact when there is no evidence to support the conclusions he drew. The evidence and fact findings underlying Adjudicator Pink's conclusions are set out in detail in his Summary Report and Order. In my view, there is no jurisdiction for this Court to interfere in his factual findings.

Fresh Evidence is not Permitted

[43] The appellants tendered documents to this Court that were not before the Adjudicator at the initial hearing stage. They did so by filing a compendium of "Appellants Exhibits" alongside the appellants' brief. This exhibit book contained

several Land Registration documents and Affidavits of Spousal Status which the appellants say pertain to the respondents.

[44] This Court received the appellants' exhibits but has not considered any of the documentation that was not before Adjudicator Pink in coming to its decision.

[45] Fresh evidence is generally not allowed on appeals. In *Luke v. Chopra*, 2019 NSSC 145, Arnold J. said:

> [12] Ms. Luke says the parties signed a "Rent to Purchase and Sale Agreement" on December 8, 2010. **This document was not before the Director or the adjudicator. She has only produced it on this appeal**. She attached various materials, including the purported agreement, to her brief. **Ms. Luke did not file an affidavit in accordance with Civil Procedure Rule 7.28(1), which requires that "[a] party who proposes to introduce evidence beyond the record on a judicial review or appeal must file an affidavit describing the proposed evidence and providing the evidence in support of its introduction."**
>
> [13] The *Small Claims Court Act* does not specifically address the admissibility of fresh evidence on appeal. In *Lacombe v. Sutherland*, 2008 NSSC 391, Beveridge J. (as he then was) considered, in *obiter*, whether fresh evidence other than evidence to establish a jurisdictional error or breach of natural justice may be admissible:
>
> [29] **Furthermore, in a typical situation an appellate court cannot consider, absent leave being granted, any fresh or new evidence on the hearing of an appeal.** Here the *Small Claims Court Act* contains no specific provision setting out a power to hear fresh evidence. I need not decide today if the parties to an appeal from a Small Claims Court adjudicator can adduce fresh evidence other than evidence that may go to establishing a jurisdictional error or a breach of natural justice. Neither party sought to adduce any new evidence before me.
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> …
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> [15] **There is precedent for applying the four-part test from *R v. Palmer*, 1979 CanLII 8 (SCC), [1980] 1 S.C.R. 759, to a Small Claims Court appeal in a tenancy matter**. In *Doyle v. Topshee Housing Co-operative Ltd*, 2012 NSSC 371, Scanlan J (as he then was) referred to *Patriquin* (2011) as a caution against the admission of fresh evidence, and said:
>
> [6] Tests for the introduction of new evidence was stated in the Supreme Court in *R. v. Stolar* (1988), 1988 CanLII 65 (SCC), 40 C.C.C. (3d) 1. This decision was recently referred to by the Nova Scotia Court of Appeal in *Hatfield v. Mader*, 2012 NSCA 66 at para. 22. The Court said:

> (1) The evidence should generally not be admitted if, by due diligence, it could have been adduced at trial provided that this general principle will not be applied as strictly in a criminal case as in civil cases: see *McMartin v. The Queen*.
>
> (2) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial.
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> (3) The evidence must be credible in the sense that it is reasonably capable of belief, and
>
> (4) It must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.
>
> [Emphasis Added]

[46] The fresh evidence sought to be tendered by the appellants is not admissible on the appeal. All the documents would have been available at the time of the initial hearing and could have been sought to be adduced at that time. Additionally, these documents are not relevant to a potentially decisive issue in the Small Claims proceeding. The documents the appellants sought to tender as fresh evidence go to a peripheral non-issue, that being the respondents' understanding of English. As I have outlined, the adjudicator was satisfied that the respondents understood the contents of the affidavit they swore.

[47] In *Patriquin v. Killam Properties Inc.,* 2011 NSSC 338, this court also dealt with the admission of fresh evidence on a Small Claims Court appeal:

> [6] With regard to affidavit evidence, clearly, the *Small Claims Court Act* appeal provisions do not provide for the submission of any new evidence. **The appeal is not a hearing *de novo*. It is a hearing based on the record. By record, I mean the contents of the Small Claims Court file which is requested and provided to our court when a notice of appeal is filed.** The entire record, including any exhibits filed in the hearing before the Small Claims Court, are all included in that file and they are all open to review by this Court. In addition to that, the adjudicator is requested to provide a summary report of findings of law and fact made on the case on appeal. So, in addition to the decision or order of the adjudicator, the summary report is also provided to this court and is used in determining the merits of the appeal.
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> …
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> [8] The *Small Claims Court Act* and its Regulations do not contemplate an appeal by way of trial *de novo*. It is based on the record. **This is not a carte blanche refusal to admit additional evidence but it would only be in very rare and exceptional circumstances that further affidavit evidence would be admitted**. There are good policy reasons for this. If affidavits were routinely accepted the appeal would soon morph into a trial *de novo*…It would also defeat

> the principle purpose for the Small Claims Court which is to provide an inexpensive and informal venue for people to present cases without the need to incur the expense of legal representation.
>
> [Emphasis Added].

[48] The above passage highlights that fresh evidence is only admitted on appeals from the Small Claims Court in exceptional circumstances and that an appeal is not an opportunity for the appellant to argue the case afresh with new arguments and evidence. The documents the appellants presented on appeal are not admissible.

No Landlord-Tenant Relationship

[49] The adjudicator found that the appellants never had a written lease or agreement of any kind with the respondents. The appellants never paid the respondents rent or a deposit of any kind. Further, the appellants had purchased another property and vacated the unit before the closing date. The appellants did not occupy the unit at any time after the sale closed. I disagree with the appellants' argument that the respondents became beneficial landlords at the time of signing the APS. In my view, a beneficial landlord/tenant relationship prior to closing would only arise between the appellants and respondents if the appellants continued to be tenants after the closing.

[50] The appellants rely on section 2(c) of the *RTA* for the proposition that a landlord can be defined as an owner: "landlord' includes a person who is deemed to be a landlord, a lessor, an owner, the person giving or permitting the occupation of premises and such person's heirs and assigns and legal representatives." However, the *RTA* does not specifically contemplate the time between when an APS is signed and when the closing takes place. The authorities provided by the appellants on beneficial ownership are not relevant to whether there was a landlord/tenant relationship. Regardless of whether the respondents were beneficial owners of the unit, they were never landlords of the appellants for the above-noted reasons.

[51] In my view, considering the surrounding circumstances, the appellants' landlord for 34 Bethany Way was always their initial landlord (the sellers) – and never the respondents (the purchasers). Any claim regarding wrongful eviction should have been brought against the sellers and not the buyers.

The Appellants Were Not Evicted In Bad Faith

[52] Justice John Keith of our Court has given two recent decisions dealing with statutory interpretation of section 10 of the *RTA*, which contains the governing provisions on Notices to Quit. While Justice Keith dealt with s. 10(8)(f) in both decisions, and the case at bar deals with s. 10AA, his analysis of the landlord's "good faith" requirement applies here.

[53] In *Simmons v. Burglund*, 2024 NSSC 400, Keith J. wrote the following on "good faith":

> [43] "Good faith" is a ubiquitous term in the law and serves a multitude of different purposes depending on the context. For example, it is used:
>
> To describe a fiduciary's duty to act "honestly and in good faith";
>
> As an organizing principle to capture the idea that contract performance imports notions of honesty and fair dealing; and
>
> As a notion in labour law to engage in meaningful dialogue in an effort to reach a collective agreement.
>
> [44] Generally speaking, the notion of "good faith" speaks to certain moral and legal imperatives tied to the qualities of honesty, integrity and doing the right thing for the right reasons.

[54] Additionally, he wrote in *Gallant v. Bridgley*, 2024 NSSC 401, that:

> [29] …assessing the landlord's motivation (i.e. whether a landlord establishes a good faith requirement for the premises as a residence for himself/herself or a family member) is a highly fact specific exercises and necessarily involves the exercise of discretion. …

[55] As I have already indicated, I find that the adjudicator was correct to conclude that the respondents were not, at any point in time, landlords to the appellants.

[56] However, to briefly address the appellants' argument that they were evicted in bad faith, I would also uphold Adjudicator Pink's conclusions that the respondents held a good faith intention for Ms. Shen to occupy the unit. Adjudicator Pink detailed his reasons why he found, on the evidence, that there was a good faith intention which included the family's attempts to secure Ms. Shen an updated Visitor's Visa, the delayed processing time for visas due to COVID-19, and the length of time the unit remained vacant awaiting Ms. Shen's return from China. The Adjudicator properly found on the facts before him that the respondents' actions did not constitute bad faith.

The Adjudicator did not Misapply the Civil Procedure Rules

[57] The appellants also argue that the Adjudicator erred in law by not applying the Civil Procedure Rules correctly in relation to the respondents' command of English and the wording of the Statutory Declaration.

[58] The appellants specifically cite Rule 39.10:

> …
>
> (3) A witness who reads, but does not read English, may swear or affirm an affidavit in a language the witness does read, or swear an affidavit in English certified by the authority who administers the oath or affirmation to have been translated for, and apparently understood by, the witness.

[59] The appellants argue that if the respondents did not read or understand English, the lawyer who prepared their affidavit should have had the affidavit's contents translated pursuant to Rule 39.10. At para. 23 of the appellants' brief they argue that there is no provision in the Rules that would:

> …allow a [sic] Affidavit Statutory Declaration [sic] to express that 2 individuals intend to do something, when the actual intent is for an individual not named to actually do it with the exclusion of the 2 named individuals.

[60] Based on Adjudicator Pink's Order and Summary Report, there is no evidence that the respondents did not understand the substance of the affidavit they swore. There is evidence that English is not their first language. At para. 10 of Adjudicator Pink's Summary Report, he stated the respondent, Mr. Mustafizur, provided *viva voce* testimony at the hearing: "Mr. Mustafizir was asked what he believed was meant by the word "we" as it was used in the affidavit. He stated it included "a family member, our mom." In his Summary Report at para. 13, Adjudicator Pink noted:

> [14] I accepted the evidence the intention was for 34 Bethany Way to be occupied by Ms. Shen and that in using the word "we" in the affidavit, the respondents were using the word as it made sense to them. Their view of their family meant the mother was included when they used the word "we."
>
> [15] I found the Respondents did not intentionally or negligently misrepresent their intentions when they executed the affidavit attached to the DR2.

[61] Adjudicator Pink elaborated on his findings surrounding the use of "we", in his Order:

> The Court found the form, prepared by the Defendants' lawyer. may not have been correct because it used the word "we" which suggested that the Defendants themselves would occupy the rental unit, which was never their intention. **Though it would have been preferable to use words that state the language of s. 10AA, namely "or a family member of the purchaser", failure to do so was not fatal, given the Defendants' understanding of the word "we" as it was used in that context.**
>
> **The intentions of the Defendants was always clear and though the language used may have left some ambiguity, it was not false, from the perspective of those ho [sic] swore the document**.
>
> [Emphasis Added].

[62] There is no evidence referenced by the adjudicator that the respondents did not understand the contents of the Statutory Declaration. The respondents' testimony clarifies that. The Adjudicator found, as a fact, that the respondents use of "we" in the affidavit included Ms. Shen.

[63] Adjudicator Pink's findings of fact on this issue are supported by the record, and this Court does not have the jurisdiction to disturb them. I do not find that the Rules were misapplied.

CONCLUSION

[64] The Adjudicator's decision dismissing the appellants' claim should be upheld and the appeal dismissed.

[65] I am satisfied that the Learned Adjudicator did not in err in law. Each of his findings of fact are grounded in the detailed Summary Report and Order and thus they are owed deference. The arguments raised by the appellants have the appearance of an attempt to re-litigate the same issues with different arguments, which is incompatible with the purpose of the Small Claims Court processes as outlined in the *Small Claims Court Act.* An appeal to this court is not a trial *de novo.* And, there is no appeal permitted on fact-finding in the present circumstances based on my analysis of *Brett Motors* and *Hoyeck.*

[66] I find no error with the Adjudicator's conclusions that there was no landlord/tenant relationship between the appellants and the respondents and that the appellants were not evicted in bad faith. The beneficial interest the respondents enjoyed when they entered the APS with the sellers (the true landlord) did not extend so far as to create a duty of care *vis-à-vis* the existing tenants. This court further finds that the Adjudicator did not err in law by misapplying the Civil Procedure Rules.

[67] Order accordingly with costs to the respondents as allowed under the *Small Claims Court Act* and its Regulations.

McDougall, J.