

IN THE COURT OF APPEAL OF MANITOBA

BETWEEN:

	) J. R. Nash
	) <i>on his own behalf</i>
)
S.A.M. (MANAGEMENT) INC.	) A. K. Solmundson
	) <i>for the Respondent</i>
<i>(Landlord) Respondent</i>)
	) T. D. Gisser
<i>- and -</i>	) <i>for the Residential Tenancies</i>
	) <i>Commission</i>
JAMES ROBERT NASH)
	) <i>Chambers Motion heard:</i>
<i>(Tenant) Applicant</i>	) October 18, 2018
)
	) <i>Decision pronounced:</i>
	) November 1, 2018

Corrected Judgment: A corrigendum was issued on December 4, 2018; the corrections have been made to the text and the corrigendum is appended to this judgment.

MARC M. MONNIN JA

Background

[1] The tenant applies for leave to appeal a decision of the Residential Tenancies Commission (the Commission), whereby it granted an order of possession of a rental unit occupied by the tenant. S.A.M. (Management) Inc. is the landlord for the residential complex (hereinafter referred to as the landlord).

[2] The request for an order of possession arose by the landlord giving the tenant a notice of termination which read as follows:

Your tenancy is terminated effective July 31, 2018 because: you did not comply with the following obligations: duty not to disturb

others (s. 73 of the Act), you breached a material term of your tenancy agreement by: "You have behaved in a threatening, accusatory and malicious way towards SAM Management employees and engaged in a course of conduct inconsistent with continued tenancy. You were provided with written warnings on March 8, 2018 and June 12, 2018 advising you that your tenancy would be terminated if you continued to harass, threaten and verbally attack SAM Management employees. You have not ceased your inappropriate and aggressive behaviors. You must move out on July 31, 2018[.]

[3] The tenant did not dispute that, arising from two complaints he had with the landlord's conduct, he was aggressive in his verbal and written responses. In these exchanges, he accused the landlord's personnel of being incompetent and indicated that they should be fired. His language was quite strong and, in some cases, obscene.

[4] Before the Commission, and again before this Court, the tenant argued that this situation arose because of two specific incidents. In the first incident, the landlord issued a rent receipt in the incorrect amount. This receipt was required by the tenant in order to file his tax return. The tenant sought a speedy replacement. It took the landlord some 45 days to provide the correct receipt without a reasonable explanation.

[5] In the second situation, the tenant complained that his lock was not operating properly and would stick. The landlord eventually replaced the lock, but it was not until after a number of requests by the tenant, as well as visits by a locksmith to ascertain the problem with the lock. The landlord's view was that the lock was, in fact, functioning whenever one of its employees or the locksmith would attend.

[6] The tenant's position was that a lack of professionalism on these two matters on the part of the landlord's employees led him to become

increasingly aggressive and frustrated, as a result of which he expressed his views in some strong language. It was his contention that expressing his views and seeking a replacement for a lock should not be grounds for eviction.

[7] At the hearing, the Commission heard evidence from several of the landlord's employees, as well as from the tenant.

[8] In its decision, the Commission noted that the matter before it turned on its unique facts which were not in dispute. It concluded that the landlord was entitled to an order of possession by reason of section 73 of *The Residential Tenancies Act*, CCSM c R119 (the *Act*), which requires a tenant not to unreasonably disturb the landlord's possession.

Leave to Appeal Principles

[9] Section 175(2) of the *Act* governs appeals from the Commission to this Court. Decisions of this Court set out the criteria which must be met in order for leave to be obtained.

[10] In *Pelchat v Manitoba Public Insurance Corp and Automobile Injury Compensation Appeal Commission*, 2006 MBCA 90, those criteria were set out as follows (at para 2):

1. The question must be truly one only of jurisdiction or of law, and not one which "involve[s] the court in an assessment or analysis of conflicting factual issues" (*Shersty v. Manitoba Public Insurance Corp.* (2002), 43 C.C.L.I. (3d) 35, 2002 MBCA 108, at para. 2, *Fillion v. Manitoba Public Insurance Corp.* (2004), 10 C.C.L.I. (4th) 182, 2004 MBCA 61, and cases cited therein).
2. The case must be one that warrants the attention of the court. "The issue must be one of importance; not just for the immediate case, but in determining other similar disputes which are apt to arise in (the) future" (*Wuziuk v. Director of*

Social Services (No. 2) (1979), 3 Man.R. (2d) 81 (C.A.), at para. 7.

3. There must be an arguable case of substance; i.e., one with a reasonable prospect of success (see *Lejins v. Manitoba Public Insurance Corp.* (2003), 50 C.C.L.I. (3d) 1, 2003 MBCA 95).

[11] This Court does not get involved with reassessing findings of fact or reconsidering factual issues (see *3391397 Manitoba Ltd v Winnipeg (City) Assessor*, 1998 CarswellMan 84 at para 5 (CA)).

Decision

[12] The tenant wishes to have this Court overturn the Commission's decision that his conduct amounted to a breach of the provisions of section 73 of the *Act* and allowed the landlord to obtain an order of possession under section 96(1). That conclusion by the Commission required it to consider the facts before it and apply the provisions of the legislation. It was exercising jurisdiction conferred to it specifically by the *Act*. I see no issue of jurisdiction or of law. The application of the *Act* to specific facts is, at best, a question of mixed fact and law which cannot be appealed to this Court.

[13] As well, the tenant must show an arguable case. If this Court were to review the decision, it would have to do so on the standard of review set out by the Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9; namely, on the standard of reasonableness. The tenant would have to show that the decision of the Commission is unreasonable; namely, one which could not have been an acceptable outcome given the facts presented to it. While the tenant may not agree with the outcome, I cannot see that there is an arguable issue as to whether it falls within a reasonable standard.

[14] Lastly, the tenant's position is that this situation is one which applies not just to him, but to all tenants who have complaints of the nature that he had with the landlord. In a very general sense, that is correct; however, this is a particularly fact-driven case as was noted by the Commission in its reasons. In my view, a decision of this Court on this case would have very little precedential value.

Conclusion

[15] For these reasons, I am of the view that leave to appeal should not be granted. Therefore, the application is dismissed.

[16] Costs in favour of the landlord only as against the tenant on a Tariff D basis.

Monnin JA



COURT OF APPEAL
PROVINCE OF MANITOBA
WINNIPEG
R3C 0P9

CORRIGENDUM

December 4, 2018

TO WHOM IT MAY CONCERN:

Re: SAM (Management) Inc v Nash
2018 MBCA 115
Docket No. AI18-30-09149
Released: November 1, 2018

The attached decision replaces the previous decision that was released on November 1, 2018. In para 16, “Tariff A” has been changed to read **Tariff D**.