

**IN THE
MATTER OF:**

The Nova Scotia *Human Rights Act*, R.S.N.S. 1989, c.214;

- and -

**IN THE
MATTER OF:
BEFORE:**

A Complaint under the *Human Rights Act* by **JOHN CHRISTIE** against
HALIFAX STUDENT HOUSING SOCIETY (Peter Green Hall)

**MICHAEL J. WOOD
BOARD OF INQUIRY**

DATE OF HEARING : September 14, 1999

DATE OF DECISION: November 1, 1999

COUNSEL: **LEANNE MacMILLAN** and **NICOLE ARSENAULT**, Articled Clerk for the
NOVA SCOTIA HUMAN RIGHTS COMMISSION

JOHN CHRISTIE, on his own behalf

TIM HILL
Solicitor for **HALIFAX STUDENT HOUSING SOCIETY**

PRELIMINARY ISSUES

The undersigned was appointed to constitute a Board of Inquiry pursuant to s.32A(1) of the *Nova Scotia Human Rights Act*, R.S.N.S. 1989, c.214 to inquire into the Complaint of John Christie dated August 22, 1997 against Halifax Student Housing Society, and to determine whether the actions complained of constitute a discriminatory practice contrary to ss.5(1)(b) and (s) of the *Human Rights Act*. Subsequently, by agreement of the parties, the Complaint was amended to include an allegation of discrimination contrary to s.5(1)(a) of the *Human Rights Act*.

This matter arises out of the Respondent's eviction of Mr. Christie from his apartment at Peter Green Hall in Halifax in August of 1997. For purposes of this matter, the Respondent has acknowledged that the eviction was discriminatory and contravened the *Human Rights Act*. There is some disagreement between the parties as to the specific provisions of the Act which have been contravened, however, this distinction is not material for purposes of this decision.

In addition to the damages claimed by Mr. Christie, the Human Rights Commission is seeking an order requiring the Respondent to change its bylaws so as to ensure future compliance with the *Human Rights Act* with respect to provision of accommodations. The parties have been discussing the terms of such an order, however, no agreement has yet been reached. It was specifically agreed that this Board would retain jurisdiction to deal with that matter should the parties be unable to come to a resolution themselves.

As a result of the foregoing, the sole issue which was addressed at the hearing which took place on September 14, 1999 was the amount, if any, of damages to be awarded to Mr. Christie.

FACTS

The Complainant, John Christie, is a resident Ph.D. student in Psychology at Dalhousie University in Halifax. He currently resides with his fiancée who is also a student, as well as his 8-year-old son. Mr. Christie enrolled in a combined Masters and Ph.D. program at Dalhousie in 1994 and expects to finish his thesis in December 1999. Mr. Christie hopes to take a postdoctoral position starting early in 2000.

In August 1994, Mr. Christie was abandoned by his wife and left with sole responsibility for caring for their son, Jacob. Mr. Christie was anxious to find suitable housing and was successful in securing a one-bedroom apartment at Peter Green Hall in Halifax. This facility is operated by the Respondent, Halifax Student Housing Society. This is a nonprofit association run by students and for students in order to provide affordable housing. Although the apartments are well maintained, they could not be considered luxurious. The Society employs a part-time building manager to deal with day-to-day issues, however, the overall management is carried out by the Board of Directors and various committees. Tenants of Peter Green Hall are required to become members of the Halifax Student Housing Society and are asked to volunteer some time to the operation of the building.

Peter Green Hall is a family-oriented building and many of the students in residence have young children. There is a daycare centre in the building as well as some play areas outside. It is conveniently located near Dalhousie University and Mr. Christie was able to walk to school. The public school for Jacob was also within a short walking distance.

The rent payable by tenants in Peter Green Hall included cable television, hot water, heat, and electricity.

In September 1994, Mr. Christie and Jacob moved into a one-bedroom apartment in Peter Green Hall. Within a few months, they had moved to a two-bedroom apartment in the building.

In mid 1996, Mr. Christie began a relationship with a fellow student by the name of Donna D. By the spring of 1997, Mr. Christie and Ms. D. had decided that they would get married as soon as it was feasible. In addition, Ms. D. had taken over the role of being Jake's "mother" and he identified her as such. For these reasons, Mr. Christie and Ms. D. decided to live in a common-law relationship and she moved into his apartment in Peter Green Hall in April or May of 1997.

Within a couple of months, Mr. Christie was notified by the Board of the Halifax Student Housing Society that he was in violation of the rules applicable to Peter Green Hall which prohibited unmarried adults from living together. Mr. Christie attended a board meeting where the issue was discussed and advised that he and Ms. D. intended to be married that fall as soon as her divorce was completed.

By letter dated June 30, 1997, Mr. Christie was advised that the Board had granted his request for special consideration and would permit Mr. Christie and Ms. D. to remain as tenants provided they produced a copy of their marriage license by July 31, 1997 and a marriage certificate by September 19, 1997. Mr. Christie and Ms. D. wanted to comply with these conditions, however, Ms. D.'s divorce became protracted and they could not get married at that time. They did not advise the Society of this problem before the July 31, 1997 deadline. By letter dated August 7, 1997, Mr. Christie was advised that he had to give up possession of his apartment by August 31, 1997 for failing to meet the conditions of the June 30 letter. Mr. Christie was very upset by this response and spoke to Mr. Terry Arsenault, the property manager. He advised Mr. Arsenault of the problem with Ms. D.'s divorce and the fact that he was being given very little time to find a new apartment. Mr. Arsenault indicated he would take his concerns to the Board and report back. Subsequently, Mr. Arsenault indicated that Mr. Christie had been given until September 8 to vacate his apartment.

Mr. Christie felt that his treatment was very unfair and contacted both the Residential Tenancies Board and Dalhousie University but was told that those organizations did not have jurisdiction to deal with his complaint. He then contacted the Human Rights Commission and filed the Complaint of August 22, 1997 which gives rise to this proceeding.

Mr. Christie began looking for accommodations as soon as he received the eviction letter of August 7. His evidence was that the rental housing market in the peninsula of Halifax was very tight. He did not have a car and it was his preference to find accommodations in the south end of Halifax. Mr. Christie viewed four to five apartments which ranged in rent from \$800 to \$1,400 per month. He saw some two-bedroom and some three-bedroom apartments, however, his evidence was that the two-bedroom apartments were smaller than Peter Green Hall and, for that reason, not satisfactory.

Ms. D. and Mr. Christie ultimately found an apartment in the south end of Halifax which was of sufficient size and was average in terms of rent. It was a three-bedroom apartment with a monthly rent of \$1,015.39 which includes parking but no utilities. Mr. Christie, Ms. D., and Jacob moved into the new apartment in early September 1997.

Mr. Christie described the problems that arose as a result of the move, particularly with respect to his son, Jacob. He remained in the same school for the 1997-98 academic year, however, has subsequently transferred to a new one. He also changed daycare facilities to one that was closer to their new apartment.

Mr. Christie himself was upset and angry that the Halifax Student Housing Society had essentially told him that his family unit could not live in their "family-oriented" building, Peter Green Hall.

The remedy requested by Mr. Christie for violation of his human rights is an award of general damages as well as the differential cost between the rent and utility expenses at Peter Green Hall and the new apartment, as well as the costs incurred in moving.

ISSUES

Issue No. 1: Ms. D.'s Entitlement to Damages

Issue No. 2: General Damages

Issue No. 3: Special Damages

DECISION

1. Ms. D.'s Entitlement to Damages

Ms. D. was not a named party to the Complaint and an issue arose as to whether it was within the jurisdiction of the Board to award damages to her. During the course of Mr. Christie's direct examination, he referred to Ms. D. but did not name her. In response to a question from the Board, Ms. MacMillan indicated that the Human Rights Commission was not seeking any damages on behalf of Ms. D. and, therefore, she should not be named. After the conclusion of the evidence, Ms. MacMillan sent a letter to the Board indicating that Mr. Christie did not agree with the position put forward by the Commission and that he felt Ms. D. was entitled to be awarded damages. At the request of the Board, the Human Rights Commission and the Respondent made written submissions on this issue. Mr. Christie had the opportunity to make written submissions but did not do so.

It should be noted that Mr. Christie was given the opportunity to make submissions at the conclusion of the evidence and he chose to do so, but made no reference to a claim for damages by Ms. D.

The power of the Board is set out in s.34(8) of the *Human Rights Act* which states:

A board of inquiry may order any party who has contravened this Act to do any act or thing that constitutes full compliance with the Act and to rectify any injury caused to any person or class of persons or to make compensation therefor.

The Human Rights Commission submits that the reference to "any person or class of persons" is sufficiently broad to allow an award of damages to Ms. D. even though she is not named as a party. In support of this position, I was referred to the decision of a *Saskatchewan board of inquiry in Saskatoon Indian and Métis Friendship Centre Inc. v. Millar's Florist and Greenhouse Limited* (1992), 20 C.H.R.R. D/456. In that decision, the board was considering s.31(7) of the Saskatchewan *Human Rights Code* which is very similar to s.34(8) of the Nova Scotia legislation. The complainant was the Saskatoon Indian and Métis Friendship Centre Inc., however, the Human Rights Commission was also seeking damages for the employee of the complainant who had been subject to the discriminatory treatment. That person was the main witness at the hearing with respect to the events in question.

The board of inquiry in the *Saskatoon Indian and Métis Friendship Centre Inc.* case interpreted the Saskatchewan legislation to include persons even though they were not named as complainants. I would agree with that analysis and interpret s.34(8) of the *Nova Scotia Human Rights Act* as giving jurisdiction to award damages to Ms. D.

The Respondent argued that s.34(8) should be limited to those persons defined as parties to the proceeding in s.33. However, if that had been the intent of the legislature, they would have used the term "party" rather than "any person" in s.34(8).

2. General Damages

Where a person's human rights have been violated contrary to the provisions of the *Human Rights Act*, one appropriate remedy is to make an award of general damages to compensate them for the embarrassment, humiliation, hurt feelings, etc. The level of compensation will depend upon the circumstances involved and the impact of the incident on the particular person.

Contrary to the position of the Human Rights Commission at the hearing, this Board is now being asked to award general damages to Ms. D. as well as Mr. Christie. As I have indicated, one does not need to be a complainant in order to be eligible to receive compensation for violation of one's human rights. In this case, however, there was no evidence presented at the hearing which could form the basis of such an award. Ms. D. herself did not testify and Mr. Christie did not describe any particular impact that the Respondent's actions had on Ms. D. In light of this lack of evidence, I am not prepared to award any amount for general damages to Ms. D. I should note that in the *Saskatoon Indian and Métis Friendship Centre Inc.* decision, the noncomplainant who was awarded damages testified at the hearing and gave evidence as to the impact of the respondent's activities on him.

Dealing with Mr. Christie, his evidence was that he was upset and angry at the way he was treated by the Respondent and the fact that he was required to move his family on short notice. This was obviously a disruption, particularly where a young child was required to move from the home he had become comfortable in.

The impact of the eviction on Mr. Christie was temporary and there was no evidence that it affected his performance at the University or his relationship with his family. I have been referred to a number of decisions of boards of inquiry under the *Nova Scotia Human Rights Act* to establish a range for general damages. In *Borden v. MacDonald* (1993) 23 C.H.R.R. D/459,

the complainant was denied rental accommodation because she was black. The complainant testified as follows with respect to the impact of the incident on her:

It is my misfortune to be involved in a situation which has affected my life in such a way I wish to never have to experience again. At one point in my life, I felt positive and sure of myself and had a considerable amount of confidence and self-esteem but unfortunately that came to an abrupt ending. I was, and still feel overwhelmed with this belief, hurt and disappointment. This incident has caused me to feel inadequate and ashamed to the point of when I call for an apartment now, I do not feel comfortable to use my maiden name, instead I use my boyfriend's last name so that the person on the other end of the phone doesn't figure out I am black. I have fears of meeting people wondering if they will treat me like a human being or like I have some kind of contagious disease. I feel out of place in a town that I have been born and brought up into.

Ms. Borden was awarded \$1,500 as general damages.

In *Grant v. Strug* [1994] N.S.H.R.D.I.D.No.1, the complainant was evicted from her apartment because she had a baby and it was an "adult only" building. The actions of the landlord were described as being cold and heartless and the submission of the Commission, which was accepted by the board, was as follows:

The Commission would contend that the actions of the respondents and the respondents' employees took away the enjoyment that Mrs. Grant was entitled to have on giving birth to her first child. It should have been a time of celebration, should have been a time of joy. Instead it was a time where because the child was born they were basically being told they were being kicked out.

Ms. Grant received an award of general damages of \$2,000.

In *Hill v. Misener* (1997) C.H.R.R. D/355, the complainant was refused rental of an apartment because her spouse was black. The impact of the discriminatory action on the complainant was described by the board as follows:

Ms. Hill was very hurt and upset by the comments made by Mr. Misener. She testified that for the first time in her life she was made to feel ashamed for having married the father of her children because he is "black". She testified she married their father because she loved him and not because of the color of his skin. She resented the fact Mr. Misener made her feel ashamed for falling in love with a person who is "black". Her shame turned to anger that Mr. Misener would make her feel that way.

Ms. Hill was insulted and humiliated. I watched her demeanor during her testimony and can see this matter still upsets her. As a mother she fears for the type of discrimination her children are likely to experience.

Ms. Hill was awarded \$4,000 in general damages.

Taking into account all of the circumstances of this case and comparing them to the decisions noted above, I conclude that the impact on Mr. Christie is at the lower end of the range established by these decisions and, therefore, award him \$1,500 in general damages.

3. Special Damages

Mr. Christie is entitled to be compensated for any extra costs that he incurred as a result of the discriminatory actions of the Respondent. He has claimed reimbursement for the difference in rent and utility costs between Peter Green Hall and the apartment his family moved to in September 1997. He is looking for this cost difference from that time until he would have been ineligible to live in Peter Green Hall which he says would be some time around the end of 1999 or early next year.

The position of the Respondent is that Mr. Christie has suffered no loss because Ms. D. has assumed responsibility for half of the rental costs in the new apartment and that his portion is less than the amount he was paying at Peter Green Hall. In addition, it takes the position that Mr. Christie did not take reasonable steps to mitigate his damages by seeking less expensive accommodation when the lease on the new apartment was up for renewal.

I do not accept the Respondent's argument that Mr. Christie has suffered no loss and that, therefore, there should be no award for the difference in rent between the two apartments. Ms. D. is a person that is eligible to receive compensation under the provisions of the *Human Rights Act*. There was evidence, which was not contested, which demonstrated a clear difference in cost between Peter Green Hall and the new apartment. This cost was borne by Mr. Christie's family and it is irrelevant how the parties calculated their contribution to those expenses. I am, therefore, prepared to award Mr. Christie the difference in expenses between the two apartments.

As for the time period over which the contribution is to be made, that requires some consideration of how long Mr. Christie would have stayed at Peter Green Hall had he not been evicted. His testimony was that he would have remained until he was ineligible to do so which would amount to a total period of occupancy in excess of five years. This is much longer than most students although that may be a function of the particular course of study being pursued by Mr. Christie. Although Mr. Christie testified that he intended to stay as long as possible, I think it is reasonable to make some deduction to reflect the possibility that this might not have occurred.

In my opinion, the reasonable period for calculating the claim for rent and utility differential would be from September 1997 to August 1999 subject to any deduction for failure to mitigate.

The Respondent took issue with the fact that Mr. Christie focused his search for accommodations in the south end of Halifax where rents were higher and availability limited. In the circumstances that faced him in the late summer of 1997, I think that was a reasonable approach. He had a son who was in school and daycare and he did not want to disrupt those arrangements. He does not have a car and had not had an opportunity to determine whether public transit was suitable in other areas of the City where accommodations might have been less expensive.

Mr. Christie indicated that around the time that the lease came up for renewal, he would look briefly in the newspaper to see what was available. He indicated that his search was confined to south end Halifax. Mr. Christie obviously was content with the accommodations that he had and did not appear particularly interested in moving elsewhere, especially where it was likely he would be leaving this area upon the completion of his studies. While Mr. Christie's decision is understandable, I do not think he made any significant efforts to find less expensive accommodations. If the Respondent is being asked to pay for the difference in rent, I do not think they should be required to do so for the full period of time if Mr. Christie is not making realistic efforts to look for less expensive accommodations.

The Respondent presented a table setting out CMHC data concerning apartment vacancy rates and average rents in the Halifax area during 1997 and 1998. The tables shows that the average rent for a three-bedroom apartment in the south end of Halifax in 1998 was \$1,114 which is consistent with the rent being paid by Mr. Christie for the new apartment. It also shows that the average rent for a two-bedroom apartment was \$824. I believe that if Mr. Christie had made reasonable efforts to seek new accommodations at the expiry of the initial term of the new lease (November 30, 1998), there was a reasonable likelihood that he could have found a two-bedroom apartment equivalent in size to Peter Green Hall at a lower rent. For this reason, the claim for rent differential after November 30, 1998 will be based upon a rent figure of \$824.

From September 1997 to August 31, 1998, the rent at Peter Green Hall, including parking and storage, would have been \$589 per month. That amount increased on September 1, 1998 to \$606. Using these amounts, the total which Mr. Christie would have paid had he continued at Peter Green Hall would have been \$14,340.

According to Exhibit No. 8, the total rent paid for the new apartment to the end of November 1998 was \$13,200.07. Using the rent of \$824 a month for the period to the end of August 1999 gives a total new rent of \$20,616.07.

At Peter Green Hall, electricity is included in the rent. As a result of the eviction, Mr. Christie's family was required to pay for electrical power in their new apartment. The total billings for the period from September 1997 to August 1999 was \$3,325.74.

Mr. Christie also claims reimbursement for cable television costs which were included in the rent at Peter Green Hall. Unfortunately, the evidence as to what service was provided at Peter Green Hall and its cost is sketchy at best. There is no information as to the monthly rates for any time period prior to March 1999. In addition, there is a note from Mr. Christie included with the submissions from counsel for the Commission indicating the cable packages that he believed were provided at Peter Green Hall but his note also indicated that he "might be wrong". According to the summary of account from Halifax Cable, Mr. Christie was paying for additional services while at Peter Green Hall. The account also shows an increase in the monthly costs of \$25.34 at the time he moved to the new apartment. I think it is reasonable to expect that this represents the cost of services that had previously been included in his rent. Using this amount, I calculate that the recoverable cost for cable television is \$608.16. There is also a cable connection charge of \$58.90 which should be added to that amount.

The last item claimed by Mr. Christie is the cost of moving to the new apartment in September 1997. A receipt was produced in the amount of \$290 for this expense and I would allow the claim for that amount.

CONCLUSION

I have concluded that Mr. Christie is entitled to receive compensation for the breach of his human rights in the form of general damages for pain and suffering as well as reimbursement for actual additional expenditures. A summary of the award is as follows:

General Damages	\$ 1,500.00
Rent Differential	\$20,616.07 minus \$14,340.00 = 6,276.07
Electrical Power	3,325.74
Cable Television	667.06
Moving	290.00
TOTAL	\$12,058.87

Mr. Christie is also entitled to interest on the money that he has expended and counsel were to try and reach an agreement on that. I have received no confirmation of an agreement and, therefore, award Mr. Christie an additional sum of \$500 as compensation for this item. In the result, the total amount awarded to Mr. Christie is \$12,558.87.

As agreed, I have retained jurisdiction over this matter for purposes of issuing the order with respect to the requirement that the Respondent change its bylaws so as to ensure compliance with the Human Rights Act, and I look forward to hearing further from counsel with respect to that matter.

If requested by any party, I will issue a monetary order pursuant to the Human Rights Board of Inquiry Monetary Orders for Compensation Regulations and forward it to the Prothonotary at the Supreme Court of Nova Scotia in accordance with those Regulations.

DATED at Halifax, Nova Scotia, this 1st day of November, 1999.

MICHAEL J. WOOD

BOARD OF INQUIRY