

Claim No: 439490

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

Cite as: Kelley v. Metro Regional Housing Authority, 2015 NSSM 53

BETWEEN:

EDWIN KELLEY

Tenant (Appellant)

- and -

METRO REGIONAL HOUSING AUTHORITY

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 September 21, 2015

Decision rendered on September 28, 2015

**APPEARANCES**

For the Tenant

Megan Deveaux, counsel  
Dalhousie Legal Aid

For the Landlord

Dwayne Eddy, counsel  
Nova Scotia Department of Justice

## REASONS FOR DECISION AND ORDER

[1] An order of the Director of Residential Tenancies dated May 15, 2015 ordered the Tenant to vacate the premises at 5439 Uniacke Street in Halifax on or before the 30<sup>th</sup> of June 2015. The Tenant was also ordered to pay the Landlord's filing fee of \$30.25.

[2] This is an appeal from that order.

[3] The grounds for the termination of the tenancy were alleged breaches of Statutory Condition 9(1)(4) under the *Residential Tenancies Act*, which obliges the Tenant as follows:

Obligation of the Tenant - The tenant is responsible for the ordinary cleanliness of the interior of the premises and for the repair of damage caused by wilful or negligent act of the tenant or of any person whom the tenant permits on the premises.

[4] The Residential Tenancy Officer found the Tenant to be in breach of this condition, although she did not say anything in her reasons to explain what specific violation(s) she based her order on. Implicitly, she must have accepted the statement in the Notice to Quit which stated:

"You are in breach of Statutory Condition 9(1)(4) Obligation of the Tenant wherein you are responsible for the ordinary cleanliness of the unit and for the repair of damage to the unit. Your unit has extensive damages caused by you or someone you allowed into the unit and is beyond normal wear and tear. Damages include walls, ceiling, floors and cabinets. Also an extensive amount of debris in the unit to the point of hoarding."

[5] The evidence and argument put forward at the hearing before this court was that the Tenant had performed some unauthorized (and sloppy) repairs, that

the property was messy and that there was clutter to the extent that the Tenant could be accused of hoarding.

[6] The evidence on behalf of the Landlord included photographs apparently taken in 2012, 2013 and 2014, by someone on behalf of the Landlord, who was not in court to authenticate or explain these photos. Even taking them at face value, I find that these photos are irrelevant as they say nothing about the condition of the property in February 2015 when the Landlord provided the Notice upon which the eviction notice was based. For example, some of the photos depict an allegedly unauthorized shed that the Tenant built in his backyard. That shed and all of its contents were removed several years ago, at the insistence of the Landlord. They were no longer there in February 2015. How could that possibly have justified the proposed eviction?

[7] The Landlord claims that there has been a lengthy history of complaints about this Tenant and conflict with the Landlord over the state of the unit. Even if true, the case must stand or fall on the conditions that existed when the drastic action to terminate the tenancy was initiated by the Landlord.

[8] There was a series of photos taken in early 2015, which is relevant, and which I will comment upon below.

[9] The Tenant has been in this unit since 2009, when he moved in with his spouse and two children. The spouse and children have recently moved out and reside in a nearby residence. The Tenant said that the reason for the separation was the poor condition of the subject rental unit. While that may be a factor, I suspect that the situation is more complicated than that, which is neither here nor there, as far as this case is concerned.

[10] It is important to mention that the Tenant has a very significant physical disability. He can barely walk and even then, only with the aid of canes. He attended court in a motorized wheelchair.

[11] The upshot of these facts is that he now lives alone (though his children visit and sleep over) in a two story, multi-level residence with several bedrooms. He explained that he literally has to crawl up and down the stairs. This is obviously undesirable and probably unsafe. One hopes that this problem will be addressed in some constructive way.

[12] The Tenant explained that his physical condition is progressive, which means (a) that he had a better ability to look after the place in earlier times, and (b) that he is becoming progressively less able to do so.

[13] The Tenant testified that he was not responsible for the poor-quality repairs seen in some of the photographs. He says these were done by the Landlord's own forces. The removal of some carpets - about which the Landlord complains - was only necessary because they became soaked by a leak in the upstairs bathroom. He described the Landlord as habitually unresponsive to his complaints about things that need repairing. As for some of the other changes which he made, such as painting, he claims that he had the permission of the then-superintendent Irvine Carvery. The Landlord was not able to confirm or deny the truth of the Tenant's assertions.

[14] Looking at the 2015 photographs, I am much less (negatively) impressed than the Residential Tenancy Officer must have been, although it is important to note that she did not have the benefit of hearing from the Tenant, who was late arriving and missed the hearing at Residential Tenancies because of transportation issues.

[15] On the evidence, there are some apparently dirty surfaces, which point to a lower than average standard of cleanliness. There is evidence of shoddy repairs, which the Tenant explained. There is probably a bit too much “stuff” - furniture, tools, toys, clothes etc. - than an average person would have in a unit this size, but I do not see anything that could be called “debris.” The place seems a bit cluttered, but there is nothing that even approaches a level that might be called “hoarding.” I dare say that if every tenant were assessed for clutter, and judged by the standard that was applied here, there would be widespread evictions.

[16] In short, I find that the Landlord has not established any reasonable basis for a conclusion that the Tenant was in breach of the Statutory Condition 9(1)(4). Had I found that there was a breach, on its face, I would have given some consideration to the possibility that the Tenant, as someone with a clear and significant physical disability, was entitled to reasonable accommodation under the Nova Scotia *Human Rights Act*. That reasonable accommodation might well have been to apply a different standard of cleanliness and clutter, given the physical challenges that this tenant faces in keeping his unit clean and uncluttered. It is not necessary for me to engage in this exercise, however, as I have not found that the Tenant was in breach according to the ordinary standards that would apply to anyone.

## **ORDER**

[17] The appeal is accordingly allowed and the order of the Director dated May 15, 2015 is set aside in its entirety, and the application by the Landlord to terminate the tenancy is dismissed.

**Eric K. Slone, Adjudicator**