

Claim No: 341673

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

Cite as: Rogers v. Burke, 2011 NSSM 14

BETWEEN:

MARGARET ROGERS

Landlord(Appellant)

- and -

MICHAEL BURKE and CHARA JOHNSTON

Tenants (Respondent)

REASONS FOR DECISION AND ORDER

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on January 4, 2011

Decision rendered on January 5, 2011

APPEARANCES

For the Landlord self-represented

For the Tenant self-represented

REASONS FOR DECISION

[1] This is an appeal by the Landlord from an Order of the Director dated December 21, 2010, which directed her to pay \$350.00 to her former tenants on account of unacceptable water quality in the home during the tenancy.

[2] This was one very small part of the claim that was originally before the Director, arising from what was clearly a very conflicted tenancy relationship. The Tenants had sought significant other relief, which was denied for various reasons. The Tenants have not appealed against that Order.

[3] In his reasons, the Tenancy Officer stated:

“Although [the tenants] did not have receipts for purchasing water during their tenancy, I am satisfied that the unit’s water was not suitable for drinking or general use according to Margaret Rogers testimony. [The tenants’] claim for water costs from May 18, 2010 until December 7, 2010 is accepted at \$350.”

[4] It is against this finding that the Landlord appeals. She says that the Tenancy Officer misunderstood her testimony. He apparently asked her if she would personally drink the water in the unit, to which she answered “no.” she explained to this court that the answer may have been misleading, because she does not routinely drink water, and if so only bottled water.

[5] The Landlord produced a water analysis of a sample taken on the 9th of December 2010, which indicates that there is a zero coliform bacterial content, and that arsenic, uranium and lead are well within acceptable range. As such, she argues, the water is and was potable and the Tenants had no legitimate complaint.

[6] What this test failed to measure was iron or manganese, which are known to be in well water throughout Nova Scotia. The Tenants' contention was that the water came out of the tap lightly orange coloured, and if left to stand for a few minutes would become dark orange with solid "chunks." They say that the water stained and ruined some of their clothing and even turned Ms. Johnston's hair orange. They could not drink it or cook with it, and even gave bottled water to their dog.

[7] The Tenants produced photographs showing vivid images of orange bathwater, deeply stained sinks, toilet and bathtub. Photos also show them burning some of their ruined clothing.

[8] Toward the end of the Tenants' time in the unit, they called for an Building Inspector from Halifax Regional Municipality, who issued an order for the Landlord to rectify a number of substandard aspects of the unit including supplying potable water. As I understand the evidence, upon such order being made the Landlord locked the Tenants out of the unit.

[9] The Landlord denies that the water was as bad as the Tenants say, and blames any deficiency on the alleged fact that the Tenants failed to use, or properly use, the water treatment system. The Tenants say that the system did not work and they repeatedly asked for it to be repaired.

[10] Although the issue before me was fairly narrow, the parties tried to use the hearing as an occasion to air all of their considerable grievances against each other. Some of what I heard was relevant; some of it was not. Everything I

heard convinced me that there are credibility problems on both sides of this issue, which is often the case when emotions run high.

[11] Even so, on the question of water quality, I prefer the evidence of the Tenants. I do not accept the Landlord's contention that the evidence of the Tenants was just a "con job" and that they staged the photographs to mislead the Court. I find on a balance of probabilities that the water was laden with minerals, likely iron and possibly manganese, which made the water unsuitable. The water test, taken some two weeks after the Tenants moved out, does not disprove this fact because of the limited parameters for the test. Furthermore, I am not willing to accept that test as proof of anything, absent stringent controls which would have included having an independent witness to the taking of the water sample.

[12] In the result, I am in complete agreement with the finding of the Tenancy Officer and the Order of the Director dated December 21, 2010 will not be interfered with. The appeal is dismissed.

Eric K. Slone, Adjudicator

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ORDER

THIS APPEAL from an Order of the Director of Residential Tenancies dated December 21, 2010 was heard at Dartmouth on January 4, 2011.

UPON HEARING the evidence and argument presented by both parties, and for oral reasons delivered that day, the following Order is made:

1. The appeal is dismissed and the Order of the Director is confirmed in all respects.

Dated at Halifax, Nova Scotia this 5th day of January 2011.

Eric K. Slone, Adjudicator