2011 **SCAT # 324450**

SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Buteau v. Summa Holdings Inc., 2011 NSSM 27

ALLAN R. BUTEAU

APPELLANT

and

SUMMA HOLDINGS INC.; JTL PROPERTIES LTD;
MACINTOSH & MACGILLIVRAY C/O MEGAN MACGILLIVRAY

RESPONDENTS

DECISION

Hearing:	March 16, 2010; January 26, 2011; and March 17, 2011
Appellant:	Self-Represented
Respondent:	Represented by Megan MacGillivray, Barrister & Solicitor
Written Decision:	March 31, 2011

This is an Appeal from the Order of the Director for Residential Tenancies dated February 9, 2010. The Appellant (tenant) Allan Buteau set out his reasons for appeal as follows:

> "In consideration of the applications that were before the hearing officer, the hearing officer made errors of fact and law.
>
> The hearing officer erred in his decision not to name "MacIntosh and MacGillivray" as co-landlords in the matter and in doing so he breached his obligations pursuant to Residential Tenancy Policy #05-18 **Identifying Parties to an Order**.
>
> The hearing officer erred in allowing the Respondents being unregistered Extra-Provincial Corporations to participate in the proceedings without first completing their registration requirements pursuant to the *Corporations Registry Act*.
>
> The hearing officer erred in refusing to hear our complaints in their entirety. (The applicant was not even allowed to present his evidence or arguments on a number of issues."
>
> The hearing officer erred in refusing to enforce a mediated settlement and further erred in refusing to require that the landlord complete the outstanding issues pursuant to the Tenancy order of November 9, 2009.
>
> The hearing officer erred in not permitting the Applicant to comment on Megan MacGillivray's testimony.
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> The resulting decision undermines the purpose and intent of the act and provides the landlord who is in breach of the *Corporations Registry Act* and in contempt of a previous order with unwarranted enrichment. The premises in question does not have an occupancy permit and according to a Municipal Inspection Report obtained in December 2009 never met the minimum standards pursuant to the Statutory Conditions section 9(1) (1) of the Residential Tenancy Act and the Standard Form of Lease.
>
> The law in these matters dictates that the Applicant is entitled to a full rental rebate, compensation for actions by the landlord, compensation for a lack of action by the landlord, and reasonable relocation costs. ALL OF WHICH WERE UNJUSTLY DENIED

BACKGROUND:

The Landlord/Respondent, JTL Properties Ltd. (hereinafter referred to as the "Respondent") entered into a written lease agreement with the Tenant/Appellant Allan Buteau (hereinafter referred to as the "Appellant") and his spouse Amy Buteau on September 1, 2009, for the lease of the upper level of the premises known as 15 Tigo Park, Antigonish, Nova Scotia.

The Appellants were allowed to move into the premises on August 21, 2009, and the landlord charged them no rent for the period August 21st—August 31st. Within days after moving into the property, the Appellant made several complaints to the Landlord.

The Appellants complained there was only one water meter for the upstairs and basement apartments; they had no hot water; improper fire wall in the basement; presence of mold; some electrical outlets were not working properly; dryer not being vented properly; that the back deck not up to code; and there was a chip in the bathtub.

Not being satisfied that the complaints were being properly addressed by the Respondent, the Appellant filed an Application with the Residential Tenancies Board on October 13, 2009.

A Hearing was held on October 28, 2009, and an Order of the Director was issued on November 9, 2009 (Exhibit #2). The Residential Tenancies Officer found the Respondent (Landlord) had taken steps to resolve each of the issues as they arose. It was ordered, however, that

a handrail be installed and an inspector's report setting out the inspector's findings from an inspection carried out by the Town of Antigonish on September 3rd (17th) 2009, be obtained if available and followed up on. If no report was available, a further inspection was to be carried out. The Appellant (Tenants) were awarded $600 for the inconvenience caused by the contractors entering the premises do the repairs which the Appellant had complained of; all of which had been resolved prior to the Hearing on October 28, 2009. This sum represented one-half months' rent. It was also ordered the Lease be amended to reflect the Respondent (Landlord) would be responsible for the water utilities and the rental unit assessed for mold and if present, cleaned up and resolved by November 19, 2009.

Unfortunately, the Appellant continued to make complaints both written and oral, that included calling the Respondent a "slumlord" and making statements that the Respondent interpreted as threats and intimidation, including a comment in an email dated November 20, 2009, from Mr. Buteau that the Respondent might hope that the house burns to the ground so that they might collect on insurance.

On December 14th, the Respondent (Landlord) served the Appellant (Tenant) with a Notice to Quit (Exhibit #4) to vacate on December 31, 2009. On December 30th, the Appellant (Tenant) gave Notice to Vacate to the Respondent (Landlord) which provided that the Appellant was giving up possession of the premises on January 14, 2010 (Exhibit #5). The Appellant moved out on January 12, 2010, and paid no rent for January.

The Appellant filed a further Application to the Director on December 23, 2009 claiming for retroactive rental reduction; challenging the issuance of the Notice to Quit by the Respondent; and a claim for relocation costs arising from his move to another property as a result of being served the Notice to Quit on December 14, 2009.

A Hearing before the Residential Tenancies Board was held on January 14, 2010 and an Order of the Director was issued on February 19, 2010. The claim for retroactive rental reduction was dismissed as the Board found that matter had already been dealt with at the earlier Hearing in October, 2009. As the Appellant had himself issued a Notice to Vacate the premises, his Application to address the Notice to Quit by the Respondent was said to be moot. Finally, the Appellant's claim for relocation costs was also dismissed as the Appellant terminated the tenancy pursuant to their own Notice to Vacate dated December 30th. The Tenancy Officer also found the Appellant had no receipts, paid invoices or statements in support of their claim for relocation costs.

It is from that Order dated February 9, 2010, that the Appellant appeals.

The Appellant's Notice of Appeal states that his Appeal in the Small Claims Court will take place on March 31, 2010.

The Appellant made a number of written complaints after filing his Notice of Appeal regarding the manner an adjournment was made on January 27, 2011, as a result of the Appellant's non-attendance in Court that day at which time the Respondent's evidence was to commence; the Court's decision at the January 26, 2011 Hearing not to allow the introduction of the Appellant's document referred to as the "New York Protocol"; and there being no Order issued by the Court after

hearing the Appellant's evidence and without first hearing the Respondent's evidence. I have therefore for reference, chronicled the various events leading up to the hearing of evidence on the merits of the Appellant's Appeal:

Chronology of Events:

- On February 4, 2010, the solicitor for Respondent requested a date to deal with the issue of Ms. MacGillivray and her firm, and MacIntosh & MacGillivray being named as parties on the Notice of Appeal. Solicitor MacGillivray also noted she will be out of the Country on March 31, 2010, and therefore requested that these issues be dealt with before hearing of any of the evidence on the merits of the Appellant's Appeal. A copy of Ms. MacGillivray's letter was copied to the Appellant

- March 8, 2010—The Appellant filed an 11 page letter setting out his submissions regarding the naming of Megan MacGillivray and her firm as Co-Respondents;

- March 10, 2010—both parties contacted by the Clerk of the Small Claims Court to discuss an early date to deal with the preliminary matters referred to in solicitor MacGillivray's letter. Both parties agreed these preliminary matters would be dealt with on March 16th at Antigonish;

- March 16, 2010—Hearing held with both parties present. Court dealt with the issue of proper Respondents being named and the issue of disclosure of documents. I found that Megan MacGillivray, Barrister & Solicitor and MacIntosh & MacGillivray were not proper parties to this matter and should therefore not be named as Respondents. The parties agreed that the named Respondents set out on the Notice of Appeal document, namely, Summa Holdings Inc. and JTL Properties Ltd. would remain as the named Respondents. It was ordered that the parties would exchange any relevant documents in their possession by August 11, 2010. The matter was adjourned to August 11, 2010 with agreement from both parties, subject only to the availability of the Adjudicator on that date, which would be confirmed on March 17, 2010;

- March 17, 2010—both parties notified the matter would proceed on August 11, 2010, as agreed;

- July 23, 2010—Solicitor MacGillivray notified the Court that her clients were not available for the Hearing scheduled for August 11, 2010 and that her clients would be available after August 20, 2010;

- July 27, 2010—Appellant notified the Court he was in agreement with an adjournment and requested and suggested a date in mid to late November, 2010;

- July 29, 2010—Both parties notified by the Clerk of the Small Claims Court the matter would proceed on November 16, 2010;

- October 25, 2010—Appellant wrote to request an adjournment of the November 16th Court date as his employment in Albert was extended to the end of November;

- October 29, 2010—Parties notified by the Clerk that the matter was re-scheduled for January 26, 2011;

- January 26, 2011—Both parties present. Before any evidence was presented, the Appellant sought to amend his claim. The Appellant notified the Court the only issues that he wanted to address on appeal were his claims for relocation costs of $1,079.15; and rental rebate of $3,920.00. The Respondents consented to the Appellant's motion, provided that the retroactive rent rebate would not exceed $600 per month. The Appellant's evidence was heard on January 26, 2011. The Appellant notified the Court he might call or introduce rebuttal evidence after hearing the Respondent's evidence. Both Parties agreed the Respondent's evidence would commence on January 27, 2011, commencing at 6:00 p.m.;

- January 27, 2011—Respondents present and ready to proceed. The Appellant was not present. The Court was informed by the Clerk that the Appellant had been taken into custody earlier in the evening by RCMP on a

criminal investigation that may be related to the proceedings. The Clerk was informed by the RCMP that they were unable to determine how long the Appellant would be detained and held in custody. The Respondent and the Court waited until 8:10 p.m. for the Appellant to appear. On the Court's own motion, after canvassing dates of the Respondents availability, the matter was adjourned to May 25, 2011, subject to the Appellant's availability. The new date was set taking into consideration one of the Respondent's main witnesses (property manager) was pregnant and her expected delivery was March, 2011. As well, the Respondent's witnesses the principal of the Respondent's companies would be out of the Province for a period of time.

- February 1, 2011—the Appellant wrote to the Court advising he hoped to return to Alberta for employment reasons by the end of March, 2011 and questioned why the May 25th date was set without his approval;

- February 2, 2011—the Appellant requested a new Hearing before a different Adjudicator. The Appellant complained that the Clerk set the new date (May 25, 2011) without his input and violated his rights;

- February 14, 2011—the Appellant wrote to the Court requesting an adjournment of the Hearing scheduled for May 25, 2011. Both parties contacted by telephone by the Clerk to see if they would be available on February 22nd when the Court would hear the Appellant's request for a new

date for continuance of the evidence. The Appellant was asking for an accelerated date no later than mid-April;

- February 22, 2011—The Appellant's application for a new date was heard with both parties being present. The Appellant confirmed he did not have a job offer yet and did not known when he would be returning to Alberta to work, although he normally returns by mid, or late April. The Appellant stated he would not be available for trial again until between December, 2011 and March 31, 2012. Solicitor MacGillivray informed the Court her client would make themselves available for March 17, 2011 to accommodate the Appellant's request for an accelerated date. The Appellant informed the Court he was available on this date and did not object to the new Hearing date. Ms. MacGillivray notified the Court at this hearing that she would be making a motion for non-suit. The parties were notified they could, if they so wished, file Briefs and the Court would make a ruling on the non-suit on March 17, 2011 before hearing the Respondent's evidence;

- March 7, 2011—the Appellant filed with the Small Claims Court a Motion for an Order in Natural of Mandamus to compel the issuance of an Order from the Small Claims Court and a Notice of Intent to Appeal;

- March 14, 2011— the Appellant filed a Notice of Motion for an Order in Nature of Mandamus in the Supreme Court of Nova Scotia indicating he was

appealing from an Order or determination made by the Adjudicator on March 9th; which was that the Adjudicator had asked the Court to circulate to both parties an "Agenda" setting out the matters of concern raised in the Appellant's letters that he had sent to the Court, that would be dealt with on March 17th, before the Respondent's evidence began. The Appellant was asserting that the "Agenda" was a determination, or Order that was subject to Appeal;

- March 14, 2011—The Appellant wrote to the Respondent's solicitor seeking agreement to adjourn the Hearing scheduled for March 17, 2011;

- March 15, 2011—Solicitor MacGillivray wrote to the Court to advise her clients were opposed to the adjournment requested by the Appellant ;

- March 16, 2011— the Appellant notified by the Court that his request for an adjournment would be dealt with on March 17th;

- March 17, 2011—the Respondents were present and proceeded with their evidence and completed their evidence. The Appellant did not appear at the Hearing having noted in his letter dated March 16th, that he was refusing to appear until ordered by the Supreme Court of Nova Scotia. At the close of the Respondent's evidence, the Court reserved its decision;

ADJOURNMENTS:

There were a number of requests for adjournments as already noted herein.

1) Prior to the March 31, 2010 hearing the parties notified the Court that they wanted the Court to deal with some preliminary matters before the Hearing on the merits of the Appellant's appeal. The parties were contacted and notified the Court would deal with any issues they felt needed addressed on March 16, 2011. Both parties confirmed this date was available for them. A Hearing was conducted on March 16, 2011 and all matters were addressed and the matter was set down for Hearing for August 11, 2010.

2) On July 23rd , Ms. MacGillivray noted to the Court she was not available for the August 11, 2010 scheduled Hearing and requested a date after August 20, 2010. On July 27, 2010, the Appellant confirmed he was in agreement with the adjournment and he suggested a date in late November. The parties were notified the matter would proceed on November 16, 2010. On October 25, 2010 the Appellant notified the Court he would not be available for the November 16, 2010 date. The parties were therefore notified the matter would not proceed on November 16, 2010 and that the matter was rescheduled to January 26, 2011. Both parties were present on January 26, 2011.

3) After hearing and completing the Appellant's evidence on January 26, 2011, the parties agreed the matter would continue on the evening of January 27, 2011. Both parties noted they were available.

4) On January 27, 2011—The Appellant did not appear. The Respondents and their solicitor were present. After waiting approximately two hours for the Appellant to appear, on the Court's own motion, the matter was adjourned to May 25, 2011, subject to the Appellant's availability. The Appellant was notified in writing by the Court of the new date.

- On February 14, 2011—The Appellant writes to the Court and asks that a new date be set for continuance of the matter before the Court as he stated he would be out of the Province on May 25, 2011. The parties were therefore contacted by the Court and informed the Court would hear the Appellant's request for an accelerated date for the continuance.

5) On February 22, 2011—Both parties appear on the Appellant's request for an accelerated date. The Respondent notified the Court they would be available on March 17, 2011 to introduce and complete their evidence. The Appellant confirmed he was available on the date starting at 6:00 p.m.

6) On March 14, 2011—The Appellant wrote to the Respondent asking that the March 17th Hearing be adjourned and there be a stay of further proceedings. Ms. MacGillivray notified the Court on March 15th, her client was not agreeing to the request to have the matter adjourned. On March 16, 2011 the Appellant was notified by the Court that his request for

an adjournment would be dealt with on March 17, 2011. On March 17th, the Appellant did not appear and the matter proceeded as scheduled.

PARTIES:

At the Hearing on March 16, 2010, the parties agreed that this date would be to deal only with two issues; that is, who were the properly named Respondents and disclosure of documents.

After hearing the parties, I found that MacIntosh and MacGillivray c/o Megan MacGillivray, named on the Notice of Appeal, was not a proper Respondent, nor was Megan MacGillivray as solicitor for the Respondent. As a result of my findings, the parties agreed that the Respondents for the purpose of this Appeal were Summa Holdings Inc. and JTL Properties Ltd.

At the March 17, 2011 Hearing, the Respondents' owner, John Apfeld confirmed he was the owner of Summa Holdings Inc. who purchased the property at 15 Tigo Park, Antigonish in 2008. Mr. Apfeld is also the owner of JTL Properties which was incorporated to manage the property at 15 Tigo Park and one other rental property in Antigonish. Mr. Apfeld's daughter, Lisa Apfeld acted as manager and his agent in all dealings with the two properties.

I found that the proper Respondents in this matter were Summa Holdings Inc. and JTL Properties Ltd. This same finding was made by the Residential Tenancies officer on January 14, 2010.

EVIDENCE AND FINDING OF FACT:

On January 26, 2011 the Appellant, Allan Buteau, was sworn and gave evidence. He confirmed the lease agreement dated September 1, 2009. The monthly rental was confirmed to be $1,200 per month starting September 1, 2009. He confirmed an inspection of the premises was carried out with both parties present on September 1st, and with the exception of an insignificant issue which they resolved, everything appeared satisfactory. Within a few days after the Appellant took possession, however, he complained about various issues, regarding the safety of the premises and immediately contacted the Town of Antigonish requesting they carry out an inspection of the premises which was done on September 3, 2009. As noted earlier in this decision, the Appellant then filed an Application to the Director of the Residential Tenancies on October 13, 2009. A Hearing took place on October 29th, and an Order was issued on November 9, 2009 (Exhibit #2). At the Hearing on October 28th, the written report of the Building Inspector for the Town of Antigonish was not available due to the Building Inspector having taken a new job. The Order of November 9, 2009, provided that the Respondent (Landlord) shall:

1) credit the tenants, Allan Buteau in the amount of $600 representing half a months' rent for the inconvenience of repairs;

2) amend the lease within 10 calendar days to reflect the Landlord now responsible for the water utilities;

3) the landlord request a report for the September 3rd inspection and follow the directions of the Municipal Inspector;

4) the landlord install a handrail;

5) the landlord to have the rental unit assessed for mold and if present, clean-up and issue resolved on or before November 19, 2009.

The Appellant stated the October 13, 2009 Application to the Residential Tenancies Board was properly dealt with by the Residential Tenancies Board and therefore he did not appeal the findings set out in that Order.

The Appellant gave evidence again at this Appeal Hearing of the apartment needing repairs and that there was presence of mold. The Appellant felt these issues affected his families' health and safety. The Appellant contends these issues were not addressed by the Respondent, and therefore, the Appellant gave Notice to Vacate the premises on December 30, 2009. The Appellant had already been served with a Notice to Quit by the Respondent on December 14th effective December 31st. The Appellant points to the Building Inspector's report letter dated December 17, 2009, that was obtained a few days later from the Town of Antigonish (Exhibit 3) and takes the position that the Respondent was not addressing the mold issue and that this as well as the items set out in the December 17, 2009 report made the premises unsafe for he and his family.

The Appellant tendered into evidence a letter dated November 19, 2009 (Exhibit 6) from Lisa Apfeld, agent for JTL Properties. At this time the Appellant had not yet received the Inspection Report of Mr. Day of the Town of Antigonish dated December 17, 2009. Ms. Apfeld notes in this letter that the Respondent wanted to enter the premises for the purpose of repairs on November 19th and have a professional inspect the property for mold. I found as a fact, this step was in compliance with the Order from the Director dated November 9, 2009. The Appellant stated in his evidence, however, that he refused to allow the Respondent to send in their people referred to in the November 19, 2009 letter and noted at the bottom of this letter that was returned to the Respondent "This is not a good time for me. Please reschedule this."

The Appellant stated in his evidence that they did not have the Inspection Report of Mr. Day and he therefore contacted the Residential Tenancies Officer and obtained a copy of an inspection report of System Care Cleaning and Restoration dated November 17th (Exhibit #7).

The Appellant's evidence was that the report dated November 17th says mold was present in the premises. He, however, resisted any attempts by the Respondent's representative to clean up any mold while the Appellants were present. In my opinion, there was no just reason to prevent the landlord from addressing the very issues that the Appellant was complaining of and wanted addressed. The Appellant's actions lead me to believe the Appellant had an ulterior reason for preventing the landlord's representative from entering the property and those reasons appear to be borne out in the emails that the Appellant sent to the Respondents and are noted later in this decision.

The author of the System Care Cleaning & Restoration report states he was asked by Lisa Apfeld to visually inspect and take moisture readings on the property in regard to reports of the presence of mold or mildew by the tenants. System Care Cleaning & Restoration did a visual inspection and took moisture readings in the kitchen where there were stains on the vinyl flooring around the refrigerator which appeared to be mold or mildew. Moisture readings found the area dry. The upstairs bathroom was inspected and noted paint on the ceiling had begun to flake off. This area was also checked for moisture and found to be dry. The author notes the flaking could be caused by latex paint being applied over oil based paint or when the shower is in use the exhaust fan is not being used. Also noted in the bathroom was what appeared to be mold or mildew under the vinyl floor around the toilet. Moisture test was found to be dry. System Care also checked the downstairs bathroom and under the stairs beside the hot water heater. The moisture content was found to be dry. While making their visual inspection of the home, they found no odors that would cause concern; however, they found large onions in cups in the living room, kitchen and basement which did give off an odor. The author of the report recommended the dehumidifier in the basement should be turned on as the basement has carpet directly on the concrete slab which will hold moisture when conditions are right. The author says all the above noted will require repairing or replacing. He then states "…at this time, it does not appear that these items noted are a health concern but should be addressed as soon as possible."

I find as a fact the issues regarding mold as noted in the report from System Care and Restoration were of a very minor nature at best and did not create a health hazard for the Appellant. I found as a fact the premises were fit for habitation.

The Appellant sent an email dated December 11, 2009 (Exhibit #17D) to System Care Cleaning and Restoration entitled "Consumer Complaint" suggesting criminal negligence and informed System Care Cleaning and Restoration that "This message is to serve as my formal complaint against your company for maliciously conspiring to place me, my family and others in harms way.". The Appellant goes on to say System Care's expert failed to follow proper testing procedures and finishes by saying his message may form a part of his complaint to the proper authorities and that System Care may be named in a civil action. This email is one of many, I found, that contained threats and intimidation that the Appellant directed at essentially everyone that dared question his allegations against the Respondent.

Rather than let the Respondent address these issues immediately, the Appellant gave Notice to Vacate on December 30th effective January 14, 2010 and filed the Appeal to the Director on December 23rd, claiming there was a mold problem that was injurious to the health of the Appellant family and therefore requested a rebate of the rent and relocation costs.

Subsequent to the Appellant's moving, he contacted System Care Environmental Nova Scotia requesting they check on the mold in the premises where the Appellant had been living. The Respondent, I find did not object in any way to this inspection and met System Care Environmental Nova Scotia at the premises on January 19, 2010 at which time the inspection

was carried out, following which System Care Environment Nova Scotia prepared their report dated January 26, 2010 (Exhibit #8). The author states there were three areas of concern with respect to mold growth, i.e., behind the toilet, in the upstairs bathroom; behind the refrigerator in the kitchen; and one wall in the basement adjacent to a crawl space under the stairs. The author states in addressing these areas:

> "None of these areas appear to be the result of any unusual conditions. It is very common to have mold growth behind a toilet. Cleaning regularly with common detergent will look after it. Heavy toilet usage during the summer may result in sweating on the tank which should be simply wiped off. The mold growth behind the fridge appeared to be the result of a leak. The wall in the basement bathroom may have resulted from a spill or small flood at one point."

The author of the report then refers to two sets of guidelines to clean up the mold:

> "There are two sets of guidelines for mold remediation: the Institute of Inspection Cleaning and Restoration Certification Standard S520 and the New York City Department of Health Protocol. Both consider the amount of mold associated with this residence to be minor clean ups or level 1."

The author then states:

> "We do not feel the amount of mold in this home is of an unusual or hazardous level. The remediation project is now under way."

I find as a fact, the findings in this report were similar to the findings in the Inspection Report from System Care Cleaning and Restoration of November 10, 2009 that the Appellant

had in his possession before he have Notice to Vacate and before he filed his Appeal to the Director on December 23rd.

I find as a fact the System Care Environment Nova Scotia Report of January 26, 2010 confirms again that the mold found on these premises is of a minor nature, not unusual to find in homes, and may be easily remedied without danger to health and safety. I find that the presence of mold in the premises did not provide a basis in fact for the Appellant moving from the premises on January 12, 2011.

At the Hearing on January 26, 2010 the Appellant sought to introduce a guideline for cleaning mold. He referred to it as "The New York Protocol". Ms. MacGillivray on behalf of the Respondents objected to its introduction on the basis a copy had not been provided to her prior to the Hearing. The Appellant's evidence was that he provided the guideline to Ms. MacGillivray with his email of January 21, 2011. I find as a fact the email of January 21, 2011 does not say it is enclosing the "New York Guideline Protocol". I did not allow its introduction and I concluded it would be of no assistance in my reaching a decision on the Appellant's Appeal in any event, as there was other evidence that I had before me as to how to address mold issues.

Whether the Respondent had a proper basis for giving the Notice to Quit on December 14th, effective December 31, 2009, will be dealt with later in this decision.

With regard to repairs and whether the Respondent addressed in a timely manner the issues raised in the Inspection Report of Sean Day dated December 17, 2009, Mr. Day addresses

this issue in a letter (Exhibit #9) in response to an email from the Appellant dated February 17, 2010, a little over a month after the Appellant vacated the premises, Mr. Day states:

> "Since issuing the Order to carry out improvements, I have been in constant contact with Ms. Lisa Apfeld-the agent for the property. She has made every effort to meet the timelines of my order, however, due to the scarcity of trades in this area, arranging for timely inspections has proven difficult. Confirming this, I have copies of correspondence from the various trades contacted confirming when they would be able to attend to the required inspections. All reports have now been submitted to the Town."

I accepted Ms. Apfeld's evidence that the Respondent attempted to have both the mold issue and the repair issues, including those that the Appellant complained of prior to receiving the December 17, 2009 report addressed immediately. I find as a fact the Appellant refused to allow any repair people and/or the inspectors for the mold on the premises on November 19, 2009. I find the Appellant subsequently made it clear to the System Care Cleaning and Restoration people they were wrong in their opinions regarding the mold and they would not be allowed in the apartment. I also accepted the Respondent's evidence that the various trades people who were contacted by the Respondent and had contact with the Appellant, were refusing to attend the premises to carry out any remediation work because of the Appellant's aggressive behavior towards them. I find as a fact, once the Appellant vacated the premises, the Respondent immediately had repairmen and inspectors on the premises and I find as a fact this is supported by the email dated January 27, 2010 (Exhibit #11) as well as the report from C.A. Smith Mechanical dated January 15, 2010 (Exhibit #12).

I find as a fact based on all the evidence before me, the repairs or items referred to in the December 17, 2009 report from Mr. Day as well as the repair issues raised by the Appellant before receipt of the December 17, 2009 report did not affect the safety of the tenants and did not constitute a violation by the Respondent of Statutory Condition No. 1 of the *Residential Tenancies Act.* I find the Appellant has not proven on a balance of probabilities that they are entitled to a rental abatement or relocation costs.

The Appellant takes the position that the remediation of the mold issue and the carrying out of the repairs and/or addressing the issues set out in the December 17, 2009 report, forced him to move out of the premises as these issues could not be addressed while he and his family resided there. He therefore claimed the sum of $1,079.15 for moving expenses. I find such a position is not supported by the facts.

Brian Lynch, P. Engineer, carried out an inspection of the premises regarding the fire rating and sound separation on January 26, 2010. He states:

> "An inspection of 15 Tigo Park was been (sic) completed on January 26, 2010.
>
> The building appears to be structurally sound and appears to be well maintained.
>
> There are issues in regards to fire rating and sound separation which the current owner would not have been aware of due to the fact that the current owner purchased the building as a residence with a completed 1 bedroom apartment in the basement.
>
> It would appear that the one bedroom modification was completed some time ago as I believe the Town of Antigonish has not allowed a second electrical meter to be

> installed without a building permit for a number of years. This should be verified with the Town of Antigonish.
>
> A report covering the fire rating and sound separation issues will be completed shortly."

Having considered all of the Appellant's evidence, I am not convinced that the Appellant has proven on a balance of probabilities or preponderance of evidence that either the mold issue or repairs in question made the premises unfit for habitation or dangerous to their health and safety. In fact, the reason the Appellant moved was as a result of the Notice to Quit served on him on December 14th, effective December 31st. This was a given pursuant to s. 10 (7A) of the *Residential Tenancies Act.* The Respondent's reasons for giving notice are very clear from their evidence.

Respondent's Notice to Quit—Appellant's Conduct:

It was Mr. Apfeld's evidence that he was first contacted by the Appellant by email on October 17, 2009 (Exhibit 13D) regarding some issues with the apartment that he felt Lisa Apfeld wasn't dealing with. The Appellant states that if Mr. Apfeld didn't respond immediately, Mr. Buteau would advertise or make known through various media that Mr. Apefeld was a "slumlord". Mr. Apfeld stated he received hundreds of emails from the Appellant but he didn't respond to them as Lisa Apfeld his property manager was addressing the Appellant's concerns. Mr. Apfeld referred to an email dated December 23rd (Exhibit 20D) from the Appellant as one example of the Appellant's demeanor. In this letter, the Appellant states:

> "Furthermore, given that you have had ample opportunity to digest the Municipal Inspector Report, I am confident that you agree that your best course of action at this time would be to buy out your tenant's leases, salvage what you can, and destroy the property. Failing, I understand from others that the media is interested in exposing Slumlords and it just might be you who ends up destroyed…"

Lisa Apfeld is the building manager for the Respondent company and acts as agent for the Respondents. I found her evidence to be forthright and honest and I found she did not try to embellish her evidence. Notwithstanding Ms. Apfeld's evidence of the Appellant's aggressive, threatening and intimidating statements, I found she remained calm and focused on her evidence. A chronology of the events that took place from the time the Appellant made his first inquiry on August 20, 2009 regarding the apartment were set out by Ms Apfeld. She stated that the Appellant and his family were staying in a hotel and out of sympathy for them, she allowed them to move into the apartment at 15 Tigo Park on August 23rd, on the agreement they did not have to start paying rent until September 1st.

The beginning of what Ms. Apfeld was to encounter by way of complaints started on August 30th, when the Appellant complained they had no hot water. Plumbers were sent the next day to look at the hot water tank and had it fixed, so they believed. However, the following day, the Appellant called again and said they had no hot water and if not fixed, they, the Appellant would go and purchase a new tank and charge it to the Respondent. Two plumbers were sent to the apartment the next day and had the hot water problem rectified.

On September 9th, the Respondent received a letter dated September 3rd from the Appellant complaining that a light in the adjoining hallway downstairs was a code violation and that they, the Appellant would not be paying any more power as it was on their meter. This was followed by other complaints, all of which were addressed at the Residential Tenancies Hearing on October 28, 2009, which found that the Respondent addressed all the concerns in a timely fashion but wanted a follow up on the mold issue and the inspection report.

I find as a fact, after reviewing all of the complaints of the Appellant noted in Mr. Apfeld's evidence, the complaints in question were minor in nature and neither individually nor collectively made the premises unfit for habitation or breached Statutory Condition 1 of the *Residential Tenancies Act.*

On November 22, 2009 Amy Buteau (Exhibit 22D) spouse of Allan Buteau, the Appellant, writes Lisa Apfeld in response to Ms. Apfeld's request to the Appellant that they use the dehumidifier and bathroom fans to address humidity issues as recommended by System Care. Ms. Buteau states in her letter:

> "Again, we require that you advise us immediately how you intend to repair and compensate us for these very serious and potentially dangerous items.
>
> Aside, if you wish to make new rules regarding our occupancy of this house we will require that you provide us with a new lease detailing those rules and dictating how we will be compensated for your additional requirements.
>
> TAKE NOTICE that you are reminded that you will be requested to compensate us for any entry and that there will no longer be any unsupervised entry to this house by you or

> your agents. Any unauthorized entry will be construed as trespassing and the RCMP will be notified accordingly."

Ms. Apfeld referred in her evidence to another example of threats made by the Appellant against the landlord occurred after Ms. Apfeld sent a letter dated October 7, 2009, to the Appellant (Exhibit 23D). Ms. Apfeld in her evidence stated that the Appellant telephoned her and suggested she not do any other repairs until he had the inspector's report arising from the inspection done on September 3, 2009. It was her evidence that the Appellant kept making threats that "he had taken down bigger companies" than the Respondent.

In a subsequent email (Exhibit 25D) the Appellant suggested the Respondent should reduce the rent to $600 per month and pay for relocation costs associated with the Appellant moving. In a further email dated December 10, 2009 (Exhibit 32D) the Appellant stated he was considering completing repairs on his own with cost including his time of $72.00 an hour being deducted from further rent with the balance being added to any possible future statement of claim. On the same date, the Appellant files a complaint with the Minister of Services Nova Scotia and the Justice Minister requesting their intervention in regard to the mold issue. The email is copied to the Respondent.

Not surprising, in my opinion, the Respondent decided it was finally time to notify the Appellant they were to move out of the premises not later than December 31st, having been given the notice required under the *Residential Tenancies Act*, s. 10(7A). wherein it states:

> (7A) Notwithstanding subsections (1), (6) and (7), where a tenant poses a risk to the safety or security of the landlord or other tenants in the same building on account of the contravention or breach by that tenant of any enactment, notice of termination may be given to the tenant effective not earlier than five days, or such shorter period as the Director may direct, after the notice is given.

In my opinion, I find as a fact, the Respondent had the right to give the Appellants Notice to Quit the premises pursuant to the *Residential Tenancies Act*. In my opinion, a Notice of Quit could have been given much earlier and it appears only due to the Respondent's desire to try to satisfy the Appellant's never ending complaints and what appears to be their desire to convince the Respondent that the Appellant should only have to pay one-half of the monthly rent by way of rental reduction, that the Respondent could no longer endure the ongoing threats, intimidation, and aggressive manner of the Appellant.

Having found that the Respondent was in their right to terminate the tenancy, I find the Appellant is not entitled to relocation costs. Further, the Appellants gave Notice to Terminate the tenancy and vacated the premises on January 14, 2010 on their own accord, without justification. They are then also not entitled to relocation costs.

NON-SUIT APPLICATION BY RESPONDENT:

At the February 22, 2011 Hearing on the Appellant's request to set a new accelerated date for completion of the Respondent's evidence, that had not yet begun, the Respondent indicated it

would be making a motion on March 17th, before the Respondent commenced their evidence, for non-suit. The Court notified the parties they could file Briefs on the non-suit motion if they wished to do so, but were under no obligation to do so. Prior to the resumption of the March 17th Hearing both parties filed Briefs.

On March 17th, the Respondents were present; however, the Appellant was not present, having notified the Court on March 16th, he would not be present unless Ordered by the Court.

The Court heard Ms. MacGillivray's arguments for the non-suit. I found that although there was merit in her motion, I felt the administration of justice would be best served in hearing evidence from the Respondent in response to the Appellant's evidence, particularly as it related to the mold; repairs; and Notice to Quit issues. The Respondents then presented their evidence and made their final submissions. The Court then reserved its decision on the merits of the Appellant's Appeal.

EX PARTE APPELLANT

The Appellant noted in one or more of his written email/letters to the Court that the Court proceeded on an Ex Parte Application of the Respondent.

There were no Ex Parte Applications before the Court on any matters that were before the Court.

The Appeal is therefore dismissed and the Order of the Director dated February 9, 2010 is confirmed.

DATED THIS 31st day of March, 2011 at Antigonish, Nova Scotia.

Ray E. O'Blenis
Adjudicator