

Claim No. SCCH 436529

THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Asselstine v. Drake, 2015 NSSM 14

Between:

DANIELLE ASSELSTINE & STEPHEN ASSELSTINE

APPELLANTS

-and-

PHILOMENA DRAKE & MARK AURINI

RESPONDENTS

ADJUDICATOR: David TR Parker QC

HEARD: March 10, 2015

DECISION: March 11, 2015

The Appellants were represented by Danielle Asselstine
The Respondents were represented by Philomena Drake

1. This was an appeal from an Order of the Director of Residential Tenancies dated February 12th 2015 and being file number 201404744.
2. The parties were explained that this was a trial de novo, and they were informed of the procedure and whether or not they wished to amend anything on the notice of appeal or response to same. There being, none, the court then advised of the procedure.
3. I referred to the Directors Order in order to ascertain what the issue was before the court. The Appellant Danielle Asselstine advised the court she had a counterclaim for \$9000.00 and the Respondent stated that she was seeking termination of the tenancy immediately.
4. While the Director had ordered termination of the tenancy on February 28, 2015 and vacant possession on that date, the Appellant advised that she and her husband were still in the premises, that she had paid rent up to date including March month's rent. She also advised the court that her purpose was to overturn the Director's Order and remain in the premises until May 31, 2015 the end of the on year lease .
5. The main focus of the Appellant's evidence was that she and her husband, also an Appellant in this matter had been good tenants. That she and her husband had paid rent as required in the lease although they had a verbal agreement with the landlord/Respondent to reduce the rent from \$795.00 per month to \$695.00 per month. Apparently there was a rat problem which the Appellant husband dealt with on behalf of the landlord,

thereby having the rent reduced accordingly.

6. It was also the focus of the Appellants' evidence that the landlord/Respondent, Ms. Drake attended to the other two Units in the rented premises, however, did not attend to the various problems in the Appellants' rental Unit.
7. Although the Appellant and her husband were good tenants, Danielle Asselstine did not get along with the Respondent Ms. Drake and she did not get along with one of the other tenants in the 3 Unit rental premises, a Mr. Ian Whytock.
8. The Respondent on the other hand, argued that the Appellants were interfering with the quiet enjoyment of the other tenants in the rental premises. And as a result the Appellants breached statutory condition 9 (1) (3) of the ***Residential Tenancies Act***. The specific section of the Act and statutory condition complained of and referenced by the Respondent are as follows:
 9. **9(1) Notwithstanding any lease, agreement, waiver, declaration or other statement to the contrary, where the relation of landlord and tenant exists in respect of residential premises by virtue of this Act or otherwise, there is and is deemed to be an agreement between the landlord and tenant that the following conditions will apply as between the landlord and tenant as statutory conditions governing the residential premises:**

Statutory Conditions:

(3) Good Behaviour - A landlord or tenant shall conduct himself in such a manner as not to interfere with the possession or occupancy of the tenant or of the landlord and the other tenants, respectively.

10. Ian Whytock and his spouse Carla were called as witnesses by the Respondent landlord. They were living in the Unit #2 formerly occupied by Tamara Mohammad and Beatrice Waterfield. The Whytocks moved into the premises on November 26, 2014.
11. According to Ian Whytock the first altercation with the Appellant Danielle Asselstine occurred on December 2, 2014. There was a piano in Ian's apartment or Unit that the Appellant told him it was her piano and that she would take it out as soon as possible.
12. Ian Whytock said that he, Scott McFarlane and Mr. Asselstine took the piano apart and put it in the hallway. After this occurred he said the Appellant Danielle Asselstine warned me not to threaten her husband and I was to watch my back or she would fuck me up.
13. On February 12, 2015 Ian Whytock was shoveling snow off the balcony and the Appellant husband came out and said do you want to fuck with me. At this time Mr. Whytock then called the police and found out that the Appellant husband also called the police.
14. On February 28, 2015 Mr. Whytock said that she called the police as she believed she heard a family dispute in Ian's Unit #2, however there

was no one inside and his wife was at work. This was confirmed by Carla, Ian's wife.

15. Mr. Whytock said he had to deal with consistent complaints and he said the perfect example is I have to be in court to deal with this.
16. Carla Whytock gave evidence that she was frightened for her husband, Ian. She said "I do not feel safe and we hve given our notice to the landlord and were moving regardless of the outcome of this case."
17. Scott McFarlane did maintenance work at the landlord's rented premises. He said he did repairs on all the Units. The first time he met the Appellant Danielle Asselstine was in respect of "the piano kerfuffle."
18. He said yes, the Appellant Danielle Asselstine was aggressive to all of us and he confirmed she commented about fucking us up.
19. On cross examination he said he did come back to fix the window in the Appellants' Unit.
20. Tamara Mohammad and Beatrice Waterfield gave evidence on behalf of the Appellants. They lived in the same Unit that was eventually occupied by Mr. Whytock, Unit #2. They gave positive evidence about Mrs. Asselstine. They said they were never threatened by her, they never felt threatened and they never called the police. They lived in Unit #2 for six months while the Appellants were in the premises.
21. Mrs. Asselstine said her husband dealt with the problem of rats and fixed everything in the house. She said she called police on several occasions complaining of noise in Unit # 2 where Ian and Carla were renting. She said work was being done on the other Units but not on hers.

She said she did not smoke and she was not smoking marijuana in the Unit.

22. Mrs. Asselstine entered into evidence a doctor's report dated December 19, 2014 which stated that there were no drugs except for methadone and clonazepam in the urine test of the Danielle Asselstine and that she had adhere to all guidelines of the Nova Scotia methadone maintenance treatment program.
23. Danielle Asselstine brought in documentation from the Supreme Court of Nova Scotia dealing with custody and family maintenance of her children. She brought in her power bill showing the cost to heat the Unit. She confirmed she did not like Ian, "I don't like people who are sneaky." She said she has yelled and screamed but I have done nothing wrong. She said I am the one who called the police on them.
24. The Appellant, Mrs. Asselstine was her own worst witness. She simply did not like Ian in Unit #2. She never met his wife, Carla and so there was no comment on whether she liked or disliked Ian's wife. She did not like the landlord Ms. Drake but she had no issues with the other landlord who was not in court to give evidence.
25. The F-bomb rolls off Danielle Asselstine tongue as if it were part of her lexicon. She was certainly very intense in getting her points forward to the court and I can see where some would be concerned when she tells them you better watch your back.
26. It is incumbent upon the landlord to show there is a breach of statutory

condition 9(1) (3) and ironically the best evidence to go in that direction would be that of the Appellant Danielle Asselstine herself.

27. The Court heard from former tenants supporting the Appellants as being good tenants and we have the current tenants in Unit #2 saying that the Appellant Danielle Asselstine used a very aggressive tone of voice and Carla saying that she feared for her husband.
28. The question is did the evidence before this court come to a level which supports that the tenant/Appellants conducted [themselves] in such a manner as to interfere with the possession or occupancy of the landlord and the other tenants. See **Martin v. Killiam Properties Ltd.**[2007] N.S.J. No. 397;2007 NSSM 59.
29. The evidence does not come to the level necessary to show that the Appellants interfered with the possession or occupancy of other tenants, which this case is really all about.
30. The Appellant's language including body language may have been aggressive and not in keeping with an ordained minister and professional photographer which the Appellant said she was. The Appellant in calling police on matters that are possibly a nuisance to the police and others do not interfere with the possession or occupancy of the other Units.
31. To terminate a tenancy the court must be certain there is enough evidence based on the civil standard to show there has been a breach of the **Residential Tenancies Act**. It is not something this court takes lightly.
32. For these reasons I shall vary the Director of Residential Tenancies

Order to say that the lease shall continue until the end of the term of the lease which is the end of May 2015.

It Is Hereby Ordered That the Director's Order dated February 12, 2015 and being file number 201404744 be varied and that the tenancy between the Respondents/landlord and the Appellants/tenant shall continue and will terminate on May 31, 2015 in which time the tenants/Appellants and any occupants will provide vacant possession of the premises known as 1114 Barrington St., Unit 1, Halifax Nova Scotia to the landlord/Respondents

Dated at Halifax Nova. Scotia this 11 day of March 2015

David T.R. Parker QC
Adjudicator of the Small Claims
Court of Nova Scotia