

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**  
**Citation: *Hyson v. Schriver*, 2021 NSSM 56**

ON APPEAL FROM AN ORDER OF THE DIRECTOR OF RESIDENTIAL  
TENANCIES

**Date:** 20211215  
**Claim:** No. SCT511070  
**Registry:** Truro

**Between:**

Pearl Hyson

APPELLANT

and

Courtney and Brandon Schriver

RESPONDENTS

**Adjudicator:** Julien S. Matte, Adjudicator

**Heard:** December 13, 2021 (via teleconference)

**Appearance:** Pearl Hyson, self represented, for the Appellant  
Courtney Schriver, self represented, for the Respondents

**Matte, Adjudicator,**

[1] This is an Appeal of an Order of the Director of Residential Tenancies awarding the Appellant a net total of \$1,616.00 in damages and rental arrears. The Appellant is the owner of the property and rental unit subject to this appeal. The Appellant claims increased damages of \$8,537.50. The Respondent tenants counterclaim the sum of \$1,028.50 for loss of wages to attend hearings and the return of the damage deposit.

[2] Although termed an appeal, a hearing before this court with respect to an Order of the Director of Residential Tenancies is a new hearing. The Appellant testified on her own behalf and submitted seven exhibits totalling nearly 90 pages of pictures, receipts and application materials. Courtney Schriver ("Respondent") testified on behalf of both Respondents and submitted two exhibits including the tenancy agreement.

[3] The Appellant testified that she had been renting out the unit for 26 years and had initially started renting the property to support her and her children. The parties agree that the lease between them was initially a year to year lease starting in September 2018. However, the Appellant claimed that the lease converted to a month to month lease after September 2019. No further evidence was provided on

this point. The Respondent submitted the lease agreement as proof that the lease was a year to year lease throughout the term.

[4] The Appellant was aware that the Respondents had one or two dogs and one cat throughout the tenancy and testified that there was a fenced backyard for the dogs to use. There were no issues between the parties other than those that are the subject of this appeal.

[5] The Appellant testified that she provided two months notice to the Respondents to end the rental agreement in order for the Appellant's daughter to move in. The Appellant renovated the suite during the following month of October 2020 replacing the flooring, painting the walls and general cleaning.

[6] The Appellant says that the Respondents actions and failure to control their dogs caused damages to the basement suite which had to be repaired before her daughter could move in. The damages are described as:

- a. Painting of the suite without permission or due care;
- b. Failure to clean before vacating;
- c. Unpaid rent;
- d. Damage to window screens;
- e. Damage to flooring.

[7] The Respondent claims that the Appellant authorized the paint colours and while they left some portions unfinished, they were given too little notice to vacate

to complete the painting job. With respect to the remaining claims, they deny that the apartment had any odour of dog urine and that any damage to the floors was pre-existing and normal wear and tear.

## **Painting**

[8] The Appellant testified that the entire apartment was painted white, a fact confirmed by pictures tendered by the Respondents. The Appellant says that she told the Respondents that the unit could be painted but only on her approval of the colours. The Respondent testified that the reason the Respondent wished to paint was due to Mr. Schriver's job that left his hands and clothes dirty and greasy making the white walls dirty. The Respondent claimed she had permission from the Appellant to paint without the need to repaint upon leaving.

[9] The Appellant tendered a number of photographs showing that the paint applied by the Respondent was sloppy, at best, covering over and splashing onto baseboard, door frames, electrical outlets, smoke detectors, heat pump and more. It is apparent that no effort was made to tape off edges while leaving some of the walls unfinished and spotty.

[10] Painting is a skill that not everyone should attempt. Where a tenant wishes to paint a premises, it is prudent practice to obtain written consent from the landlord. As this was not done here, the Court is left with both parties' recollection on the

point. The Court does not find it credible that the Appellant, a seasoned landlord, would allow her tenants to paint the suite in the dark colours chosen. Even if the Appellant had allowed the painting, she was entitled to a reasonably executed paint job. This was not done.

[11] The Respondents claim that they had intended to finish the paint job but were not given sufficient time to vacate. While the Court finds that the parties had a year to year lease and the Respondents were not given the required 90 days notice to vacate, the Court does not accept that the Respondents had any intention to repaint the property. The Court finds that the Respondents damaged the Appellant's property.

[12] The Appellant submitted approximately \$555.00 in painting related receipts and a \$1000.00 receipt for labour without HST charged. The receipt for labour is from the Appellant's relative who is also referred to as the superintendent and was present at the hearing but did not testify. Based on the dates on the receipt, and assuming a week of work for a total of 40 hours was needed at a non-professional rate, the Court allows \$600 in labour for a total of \$1155.00 in damages pursuant to s.17A(c) of the *Residential Tenancies Act*.

### **Cleaning**

[13] The Appellant submitted photos showing a dirty stove and oven as well as

wax dripping down the wall behind the toilet as well as receipts for cleaning supplies. While the Court finds that the shortened notice period provided by the Appellant had no bearing on the claim for damages relating to painting of the basement suite, the Court accepts it would have made it more difficult to get the usual cleaning done by the Respondents.

[14] This portion of the claim is rejected.

### **Unpaid Rent**

[15] It is acknowledged by the Respondents that rent was not paid for the last month of September 2020. No explanation was provided for the non payment other than the receipt of insufficient notice to vacate. Insufficient notice is not a reason to withhold rent. The Court finds that the Appellant is entitled to unpaid arrears in the amount of \$925.00 pursuant to s.17A(h) of the *Residential Tenancies Act*.

### **Screens**

[16] The Claimants tendered pictures of broken window screens and claimed reimbursement for new ones purchased. The Respondent offered little evidence on this point. The claim for \$103.50 is allowed pursuant to s. 17A(c) of the *Residential Tenancies Act*.

### **Flooring**

[17] The Appellant alleges that the Respondents allowed their dogs to urinate in the suite causing damage to the flooring. The Claimants says that the suite had a strong odour of dog urine throughout and points to a picture of the subfloor having a dark area as proof of the damage. In addition, the Appellant noted numerous areas where there were scratches on door frames, floors and window sills as well as laminate boards separating.

[18] The Appellant also submitted three letters from persons who had witnessed the urine smell. None were called to testify.

[19] The Respondents claimed that the flooring was already separating when they began renting the property in 2018 and offered a number of pictures as proof. The Respondents denied that any of their dogs or their cat urinated on the floor nor that there was any smell of urine in the apartment. The Appellant also submitted a letter of someone noting they did not smell anything in the apartment. No one was called as a witness.

[20] Despite being hearsay, the Court accepts the letters tendered by both parties into evidence but can give them very little weight. Whether a witness smelled dog urine or not absent explanation and context and without the opportunity to cross examine is not helpful to resolving the issue. Both parties claim an opposite state of affair, the Appellant testifying to strong urine smell throughout and the

Respondent testifying to the animals being housetrained with no urine smell in the basement suite.

[21] The Court accepts, based on the evidence given by both parties, that much of the laminate flooring needed replacement from wear and tear no doubt contributed by the Respondents' dogs. However, the pictures only provide inconclusive evidence of damage by dog urine. No witnesses were called by the Appellant.

[22] The Appellant bears the burden to show on a balance of probability that her property was damaged by the Respondents. After a quarter century of rental and while taking out all flooring and sub-flooring, the Appellant testified there was a smell of urine. Without better proof, it is speculative to find what was or was not done by the Respondents and their dogs. While it is possible that the Respondents animals contributed to the damage, there is insufficient evidence to support the Appellant's claim that significant animal urine by the Respondents' dogs is what caused the bulk of the damage to the apartment flooring.

[23] This portion of the claim is denied.

### **Counterclaim**

[24] The Respondents claim for missed time off work and the return of the damage deposit. The claim for missed work is in the nature of a cost and



disbursement request. The only costs available are for fees paid to the Court on this appeal. None were paid by the Respondents.

[25] As allowed under the s.17A(k) of the *Residential Tenancies Act* the damage deposit is applied against the damages awarded.

[26] The Respondents' counterclaim is dismissed.

### **Damages**

[27] The Court assesses damages as \$1155.00 plus \$925.00 for unpaid rent minus the security deposit of \$462.50 for a total of \$1,617.50, a total of \$1.50 above the amount awarded by the Order of the Director of Residential Tenancies dated November 23, 2020.

[28] Given the small difference and the fact that this Court, independent of the decision below arrived largely at the same result, the Court exercises its discretion and confirms the amount of \$1616.00 as previously awarded to the Appellant.

### **Order**

[29] The Appeal is dismissed. As per the order under appeal, the Respondents must pay the Appellant \$1,616.00.

Julien S. Matte, Adjudicator