

**SMALL CLAIMS COURT OF NOVA SCOTIA**

Citation: *McIntyre v. Tian*, 2022 NSSM 31

ON APPEAL FROM AN ORDER OF THE  
DIRECTOR OF RESIDENTIAL TENANCIES

**Date:** 20220711

**Docket:** SCCH 504298

**Registry:** Halifax

Between

Gaidheal McIntyre

*Appellant (tenants)*

-and-

Matthew Tian and Emily Tian

*Respondents (landlords)*

**REASONS FOR DECISION AND ORDER**

**Adjudicator:** Eric K. Slone

**Heard:** via Zoom in Halifax, Nova Scotia on March 10, March 17,  
April 7, April 14, April 30, May 1 and May 7, 2022

Written submissions received May 21 and 27, 2022

**Appearances:** For the Appellant, self-represented

For the Respondents, self-represented

**BY THE COURT:**

[1] This is an appeal by the tenant and cross-appeal by the landlords from a decision of the Director of Residential Tenancies dated February 9, 2021.

[2] It was heard via zoom in seven sessions each lasting several hours, over a period of about two months. As I will elaborate on, it was an extremely challenging case to hear due, in part, to the extreme level of animosity between the parties. I have tried to look beyond that personal hostility to determine what went wrong in this landlord tenant relationship, and to sort out the legalities of their situation.

**Factual background**

[3] Matthew and Emily Tian own a house in Bedford South on Starboard Drive, which they had bought in about 2019 to house themselves and their pre-teen daughter, Iris. That house has two extra bedrooms on the basement/garage level, which the Tians decided to rent out for extra income. The Tians do not appear to have had any previous experience as landlords.

[4] They advertised the rooms on Kijiji and interviewed potential tenants for proposed occupancy on August 1, 2020. Both Ms. McIntyre and a young woman named Grace Sangster signed leases to rent rooms. They did not previously know each other. At this stage, at least, the Tians appeared to be insisting only upon female tenants.

[5] What is critical to understanding this appeal are some of the representations that Mr. Tian allegedly made before Ms. McIntyre agreed to sign the lease. Ms. McIntyre has been adamant throughout that Mr. Tian told her that he was planning almost immediately to construct a kitchenette in the mechanical room in the basement. This, she says, was important to her because she foresaw problems sharing the upstairs kitchen with the Tians. Those problems included the fact that Ms. McIntyre is on a strict diet because of health conditions. She also has allergies that can be triggered by the residue of certain foods that other people cook, in particular seafood. Also, she did not want to be tied to the Tians' eating schedule.

[6] Mr. Tian testified that he talked about the possibility of building a kitchenette, but he says that he never promised it. He says that he learned that the

cost of building such a kitchenette would be higher than he wanted to spend.

[7] Ms. McIntyre says that she delayed moving in until August 10, 2020, because she did not want to be living in a construction site. She says that when she did move in, she was surprised to find that work had not yet started on the kitchenette. She says that she moved in anyway because she had nowhere else to go, and she hoped to learn more from Mr. Tian about when he would build the kitchenette. She says he was evasive and unwilling to discuss his plans in any detail.

[8] The kitchenette was never built, and at some point, she recognized that fact and expected to move out when she could to a more suitable place.

[9] The lack of separate cooking facilities created many problems. Ms. McIntyre says that she rarely had timely access to the kitchen and was unable to properly feed herself. She experienced allergic reactions to the smells or residue in the kitchen of some of the foods that the Tians had been cooking. She also felt that she was constantly being watched by the Tians and started to develop extremely negative feelings toward them, and in particular toward Mr. Tian.

[10] Eventually Ms. McIntyre and Ms. Sangster bought a small appliance, an inexpensive toaster/convection oven, to use in the utility room in the basement. This became a serious source of conflict as Mr. Tian believed it was a fire hazard and also complained about cooking smells permeating his living space, allegedly making him ill. The dispute over the convection oven, and Mr. Tian's refusal to allow it to continue in use, spawned visits or interventions from Halifax Building Standards Inspectors, police and eventually Residential Tenancies.

[11] Another major problem over the course of the tenancy concerned alleged inadequacies of the heating system. According to Ms. McIntyre, once the cold weather began in the fall of 2020, she started to feel uncomfortably cold in her room. She testified that Ms. Sangster's room was also too cold. This led to significant disputes with the Tians who refused to believe them and insisted that the heat in the house was adequate. Eventually Ms. McIntyre bought a small space heater, to which Mr. Tian objected because it added to his electrical bill.

[12] All of this took place in the context of the Covid pandemic which forced people to spend a lot of time in their homes and created many other complications and anxieties in everyone's lives.

[13] Ms. McIntyre had many other grievances against the Tians, and vice versa. Many of these were aired at Residential Tenancies and in the hearing before this court. Ms. McIntyre felt exploited, bullied and misunderstood. The Tians were frustrated because they felt that they were accommodating Ms. McIntyre but nothing was ever enough to satisfy her. But in my opinion, the root cause of the extraordinary level of animosity between these parties stems from Ms. McIntyre's perception that she was being denied two of the most basic necessities of life - the ability to feed herself properly, and a warm enough environment in which to live. What can be more basic than nutrition and shelter?

[14] By late December 2020 the home consisted of two armed camps. Police had intervened twice (at Ms. McIntyre's request) and attempted to keep the situation from becoming even worse (where someone might get hurt) by insisting that the parties avoid all contact with each other. Ms. Sangster was generally aligned throughout with Ms. McIntyre, though she did not participate in this appeal and the court did not have the benefit of her perspective.

[15] The parties then in early 2021 launched applications to Residential Tenancies seeking various items of relief:

- a. Ms. McIntyre and Ms. Sangster sought compensation for the cost of the heater and convection oven, compliance with the lease (alleging various types of infringement of peaceful enjoyment) and repairs - namely completion of the allegedly promised kitchenette.
- b. The Tians sought to terminate Ms. McIntyre's lease because of unpaid rent (Ms. McIntyre had deducted half the cost of the heater and convection oven - \$66.10) and because of Ms. McIntyre's alleged disruptive behaviour.

[16] The Residential Tenancies Officer largely sided with the Tians. She accepted that Ms. McIntyre was in arrears to the tune of \$66.10 and terminated the lease accordingly. She also found Ms. McIntyre to be in breach of Statutory Condition 9(1)(3) dealing with good behaviour and terminated the tenancy on that ground as well.

[17] The Residential Tenancies Officer's conclusions dated February 9, 2021, were as follows:

I find Statutory Condition 9(1)(3) is found in the Act and deals with behaviour. In essence a tenant must not through their behavior or actions, interfere with the possession or occupancy of other tenants or the landlord. Quite frankly reviewing the evidence it is clear that the tenant is interfering with the use and enjoyment of others (landlord) in the home. Landlords request for termination of tenancy due to bad behaviour is accepted.

I find the notice to quit issued to Ms. McIntyre due to rental arrears is valid. Rental arrears are outstanding in the amount of \$66.00 (January, 2021), therefore, the landlords request for termination of tenancy due to rental arrears is accepted.

Landlord has accommodated the tenants, however, Ms. McIntyre's demands and behaviour have far exceeded the landlords duty to accommodate. The landlord and tenant relationship has deteriorated significantly since November, 2020. I find the tenants by not wanting to cross paths with the landlord in a shared accommodation has resulted in setting up a private kitchen cooking space without permission from their landlord. I find no reduction of service exists on the part of the landlord who was diligent in his efforts to accommodate the tenants best he could.

Ms. McIntyre constantly alleges violations of the Residential Tenancies Act when there are none. Ms. McIntyre calls or threatens to call the police on the landlord for situations which do not warrant them, such as, when the landlord issued a notice to quit. I find the landlord diligently tried to address any issues about various matters no matter how small but the tenant treats the matter as though it was a serious human rights violation and implies while screaming that the landlord is 'evil' or is bullying.

I will not make much more comment other than to say that the video, pictures, numerous email correspondence speak for themselves. The tenant,

I accept is in breach of Statutory Condition 9(1)(3) and as a result the landlord will be entitled to terminate the tenancy.

[18] In the result the Residential Tenancies Officer terminated the tenancy as of February 28, 2021, ordered Ms. McIntyre to stop using the furnace room as a kitchen and to stop using the space heater. Ms. McIntyre was also ordered to repay the landlord the small amount of rent she had withheld.

[19] On February 16, 2021, Ms. McIntyre appealed the Residential Tenancies order. The Tians entered a counterclaim. By then the monetary value of what each was seeking from the other had escalated into serious money, out of all proportion to what they had initially sought from Residential Tenancies.

[20] The last few weeks of the tenancy were fraught with incidents, accusations, mistrust, and nastiness.

[21] Ms. McIntyre ended up moving out on about March 10, 2021. Ms. Sangster had moved out earlier.

[22] For various reasons this appeal could not be heard until about a year after it was filed. The hearing itself was complicated by the fact that the Tians are not native English speakers. Mr. Tian has basic conversational English, but Emily Tian does not. Although she did not testify, Emily Tian observed the hearing, and it was necessary to have an interpreter translate everything into Mandarin. That created additional problems as the interpreter was a friend of the Tians and she found it too emotionally draining at times. For part of the hearing, Mr. Tian testified in his basic but halting English.

[23] Ms. McIntyre also was not happy about the particular interpreter who she believed was biased in favour of the Tians, who are her friends. She was also obviously frustrated by the fact that the interpretation slowed down the hearing considerably. She believed that Mr. Tian was faking his lack of spoken English but ignores the fact that the interpreter was necessary so that Emily Tian could also follow along.

[24] The parties each filed pictures, videos and lengthy written submissions to support their respective positions. The hearing itself took seven sessions between two and three hours each. Final argument was by way of written submissions, which were lengthy.

## **Findings**

[25] There is a popular expression that says, “everyone is entitled to their own opinions, but not their own facts.” I would expand this to also say that everyone is entitled to their own perceptions and their own experiences, but the objective “facts” may be something completely different. Where there is a court involved, it

is the responsibility of the court to arrive<sup>7</sup>at, and base a decision on, an objective view of what is true and what is false, imagined, or overstated.

[26] From my point of view, the parties not only do not see eye to eye; it is as if they inhabit different realities.

[27] Mr. Tian sees himself as a reasonable long-suffering landlord who bent over backwards to try to accommodate his tenant's increasingly unreasonable demands. The Residential Tenancies Officer held the same view.

[28] Ms. McIntyre presented a narrative that vilifies Mr. Tian (in particular), to a degree rarely seen, in my experience. She repeatedly referred to him as an abuser, a liar, a misogynist and a "malignant narcissist." Ms. McIntyre has testified that she was severely traumatized by her short tenure living in the same house as Mr. Tian, and she bases many of her claims on the mental and emotional damage that she says she has suffered. She insists that she remains traumatized to this day.

[29] I can see how the Residential Tenancies Officer came to the conclusion that she did, based on what she heard and saw. By the time the dispute was in full swing, Ms. McIntyre's behaviour could be seen as extreme and irrational. I see no need to elaborate. But what the Residential Tenancies Officer failed to appreciate, in my opinion, was that the dispute was actually being driven by Ms. McIntyre's inability to adequately feed herself and the fact that she was forced to spend much of her time in a room that was too cold.

[30] If one accepts these two premises, then different conclusions can be reached.

### **Cooking facilities**

[31] I find that Mr. Tian made statements before the lease was signed that led Ms. McIntyre reasonably to believe that she would have access to some basic cooking facilities on the downstairs level. I believe that he changed his mind when he learned how much it would cost, but by then it was too late for Ms. McIntyre to find somewhere else to live. I accept that she made some effort to share the kitchen, but she and the Tians were incompatible on many levels. Aside from the issue of Ms. McIntyre's food allergies, there was the fact that the Tians spent a lot of time in the kitchen and in the open-concept areas around the kitchen, such that Ms. McIntyre never felt totally comfortable or welcome. I accept her

evidence that on many occasions she skipped meals altogether because she could not get timely access to the kitchen.

[32] Ms. McIntyre and the Tians started out on friendly enough terms, but for reasons that are no one's fault the effort to become friends was doomed. There were too many incompatibilities, both cultural and personal. Friendliness transformed into misunderstanding and eventually into outright hostility.

[33] Ms. McIntyre and Ms. Sangster's purchase of the convection oven was a small last-ditch effort to make the tenancy workable, from their point of view. Had the Tians accepted this with good graces, possibly this dispute would never have escalated the way it did.

[34] Mr. Tian's claim that the cooking spread fumes throughout the house cannot be ignored entirely, but I believe that his contentions are overblown. A more reasonable response would have been to approach the tenants to see if the appliance was perhaps too close to an air vent that was carrying the smells upstairs. Perhaps a particular food item was to blame, which could have been avoided in the future. Instead of trying to solve the problem, the Tians simply put their foot down and tried to ban the use of the small convection oven.

[35] I do not accept the Tians' assertion that it was a fire hazard. The evidence from the Halifax building inspector found no such hazard.

[36] Mr. Tian also complained that the tenants were not paying him for the use of the utility room. With respect, this is a petty and ungenerous complaint. Ms. McIntyre and Ms. Sangster were simply trying to feed themselves and allowing the appliance to be used a couple of times a day was the least that the Tians could have done.

[37] Had Mr. Tian not promised a kitchenette at the outset, none of this would have happened.

## **Heat**

[38] The Tians' home has a forced air heating system. There is only one thermostat for the entire house, i.e. it is a one-zone system. I accept that it can be tricky to balance the heat between the two levels.



[39] Hot air rises. Cooler air settles. Basements are inherently cooler than upper levels of a house. A balance may be achieved in one of two ways. Either some heating ducts upstairs must be completely or partially closed, or a supplementary heat source must be used in the lower level. Some houses have baseboard heaters designed into the lower level. Or portable heaters may be needed some of the time.

[40] Ms. McIntyre testified that she tried to explain the heating system to Mr. Tian, but he insisted he knew better and was unwilling to acknowledge that there was an issue.

[41] The use of a portable heater was a small effort to address the problem. Instead of encouraging Ms. McIntyre and Ms. Sangster to do whatever it took to stay warm, apparently concerned about the extra cost of electricity, the Tians went to war over the issue. They seemed to believe that Ms. McIntyre was making it up. There then ensued a silly contest of competing thermometers, photos of thermometers and videos of people taking photos of thermometers.

[42] Amidst all of the hyperbole emanating from both sides, I accept Ms. McIntyre's evidence that she was chronically cold and met with only resistance from the Tians.

[43] Unlike the Residential Tenancies Officer, I find that the Tians were not diligent in their efforts to accommodate the tenants.

[44] When a landlord denies a tenant such basics as the ability to eat properly and to stay warm, basic survival instincts may kick in. The tenancy became intolerable for both parties. Ms. McIntyre was not getting her basic needs met. And the Tians had an angry and belligerent tenant living in their basement.

[45] Viewed in this context, the behaviours exhibited in the photos and videos show everyone acting badly. It is true that Ms. McIntyre's behaviour was more flamboyantly disturbing, which is easy to focus on if one does not have a full picture of what was going on.

## **Remedies**

[46] It is clear to me that were I deciding the Residential Tenancies matter at first instance, having considered all of the evidence provided, I would have come to a different conclusion than did the Residential Tenancies Officer. I restrict my

comments to Ms. McIntyre as Ms. Sangster<sup>10</sup> decided not to participate in the appeal.

[47] I would have found that the Tians were in breach of their duty under Section 9 (1)(1) of the Statutory Conditions:

1. Condition of Premises - The landlord shall keep the premises in a good state of repair and fit for habitation during the tenancy and shall comply with any statutory enactment or law respecting standards of health, safety or housing.

[48] A premises that is too cold during the winter is not fully fit for habitation. A premises that provides no reasonable cooking facilities is not fully fit for habitation. I would have found that the withholding of \$66.10 to cover half of the cost of a space heater and convection oven was a reasonable deduction from the rent, and no reason to terminate the tenancy. I would have recognized in some fashion that the tenancy was not viable, in fact dangerous and volatile, and would have encouraged the parties to go their separate ways. Residential Tenancies Officers have a mandate to try and mediate disputes that come before them, and I might have used that tool to negotiate an end to the tenancy.

### **Remedies**

[49] It is not entirely clear what remedies each party sought at Residential Tenancies, but I believe it is fair to say that both sides' demands, and expectations have mushroomed since then. Both parties seek significant damages for the alleged harms they have incurred to their mental and physical health, as a result of the actions of the other.

[50] The fact that this is an appeal from Residential Tenancies does not invite a new scale of claims or demands. The parties should be reminded that the authority of an adjudicator is to make an order that the Director of Residential Tenancies "*could have made*": s.17D(1)(b) *Residential Tenancies Act*.

[51] This is not the first time I have had to consider claims of this nature. In *M. v. Oxford Properties*, 2011 NSSM 26 (CanLII), I was faced with a similar long list of claimed items of relief and had this to say about the limitations of the Residential Tenancies system:

9 The Residential Tenancies Act which came into being in its present form less than twenty years ago, created an administrative agency and clothed it with the exclusive quasi-judicial authority to resolve certain disputes between Landlords and Tenants. The Director, which in practice means a Residential Tenancy Officer, who is usually not a lawyer, is specifically directed by the Act to investigate complaints and attempt to mediate a settlement. Only if the matter cannot be resolved, does it then go to a quite informal and usually short hearing, following which an order is made. The rules of evidence play little role at those hearings.

10 The scheme is designed for relatively simple disputes, which is not to minimize their importance to the parties. It is supposed to be expedient. It is not equipped to address the type and level of grievances that this Tenant has sought to advance.

11 The Tenant's position is set out in her Brief, supplemented with her Reply Brief, which are anything but "brief" - being approximately 100 pages of dense, single-spaced text, containing a total of more than 80,000 words. This is the length of many novels. To put this into perspective, the rules of most courts, including the Nova Scotia Court of Appeal or the Supreme Court of Canada, would only permit a written submission of less than one-quarter this amount of material, and those Courts hear and decides matters of the highest importance and issues of considerable legal and factual complexity. Furthermore, such courts impose a specific template which makes the submissions much easier to follow.

12 I concede that I did not specifically limit the Tenant - either in terms of format or length - when I agreed to accept written submissions, but the end result is something which stretches the process to a virtual breaking point.

13 The problem is complicated by the fact that under the Residential Tenancies Act I am directed to render a decision within 14 days of the conclusion of the hearing, which here would be the receipt of the last submission. This is a deadline that I will not have met by the time this decision is issued.

14 As must be obvious, it has been a major challenge for me to sift through the dense documentation to extract the merits that may be there. The Brief and Reply Brief are partly a detailed inventory of complaints and costs, and partly an unfocussed screed, fulminating against the Landlord and its agents. ....

15 While I acknowledge and respect the Tenant's obvious intelligence

and commitment, this is not a forum that can or should be responsive to all of her complaints or concerns. It is my responsibility and challenge to bring some perspective to this matter and perform the function that the law has entrusted me to do. That this will undoubtedly frustrate and disappoint the Tenant is as inevitable as it is unfortunate.

[52] I would add that Residential Tenancies hearings are now held exclusively over the telephone and are usually conducted in a few hours, at most. The limitations of such a process should be obvious.

[53] In this appeal (quoting her verbatim) Ms. McIntyre has itemized the relief she is looking for:

- 1) Rent abatement: 3675.00 (75% of the rent Aug-Feb)
- 2) Moving costs : 300.00 (U-haul/rental/gas)
- 3) Medical reimbursement since Oct 1 -May: 5000.00
- 4) Lost wages/general 9000.00 still owed 650 hours 15/hour
- 5) garbage bags reimbursed back to work 20.00
- 6) heater reimbursement 28.72
- 7) convection / toaster oven 103.48
- 8) damaged two pair of winter boots 240.11
10. Loss of produce-food/no stovetop 100.00
11. Broken picture mirror from daughters jumping 35.00

[54] These items total in excess of \$18,500.00.

[55] The Tians in their counterclaim (also quoted verbatim) seek in excess of \$11,000.00 for the following items:

1. The shortfall rent of January \$66.10
2. The shortfall rent of February \$350.
3. The rent of March \$700
4. The rent of the other room (Feb & Mar): \$1300
5. The rental fee of the furnace room: 4 months (Dec-Mar) \$350/m, total \$1400
6. The maintenance fee for the furnace room (material & labor): \$1000.
7. The extra power fee (toaster oven & heater): 6 months (Oct-Mar) \$100/m, total \$600.
8. My wife's and my physical and mental health: \$5000.
9. The damage loss of the lock: \$50.
10. The damage loss of her room (material & labor): \$150.
11. The damage loss of the weather stripping (material & labor): \$150.

12. The damage loss of the garage door bracket (material & labor): \$150.
13. The cleaning fee: \$50.
14. The garbage disposal fee: \$20.
15. The counterclaim fee (Residential Tenancy Board): \$31.15.

[56] The “big ticket” items that Ms. McIntyre seeks are “medical reimbursement” and lost wages in the amounts of \$5,000 and \$9,000 respectively. The big-ticket item that the Tians seek is \$5,000 for alleged damage to their physical and mental health.

[57] My initial response to these claims is that I do not believe that such claims belong in the Residential Tenancies regime. To repeat what I said in the above quoted case, “[o]nly if the matter cannot be resolved [by mediation], does it then go to a quite informal and usually short hearing, following which an order is made. The rules of evidence play little role at those hearings. The scheme is designed for relatively simple disputes. It is supposed to be expedient. It is not equipped to address the type and level of grievances that this Tenant has sought to advance.”

[58] Claims of the type and magnitude made by the parties here more properly belong in the Supreme Court of Nova Scotia, with all of the procedural protections that the Civil Procedure Rules provides. It has now been settled that the jurisdiction of the Director of Residential Tenancies is not exclusive. The Supreme Court has concurrent jurisdiction with the Director of Residential Tenancies to entertain complex claims. Justice Bourgeois in *Roumeli Investments Ltd. v. Gish*, 2018 NSCA 27 explained:

[49] It is not difficult to contemplate property claims, similar to this one, or personal injury claims which may arise in the context of a residential tenancy. It would seem to me highly unlikely the legislature intended the Director to have exclusive jurisdiction to hear significant or complex claims that would normally require days or weeks of trial and perhaps competing expert evidence on issues of causation or quantification of damages. Often these claims are advanced with the assistance of pre-trial motions, with the parties being entitled to pre-trial disclosure and discovery. Should it have been the intention of the legislature to remove claims of this nature from the jurisdiction of the NSSC, it must explicitly declare such an objective.

[50] For the above reasons, I would allow the appeal. In doing so, I would add that there may be circumstances where, given the nature of the claim,

the matter is one more suited to be adjudicated by the Director. Others will be better suited to the procedural and evidentiary safeguards of a court proceeding. ....

[59] The big-ticket claims and counterclaim are essentially claims for personal injury, both physical and emotional, medical expenses and wage losses. Ms. McIntyre seeks \$14,000.00 for these items. The Tians seek \$5,000.00.

[60] Such claims are ill-suited to the Residential Tenancies process. I appreciate that many parties cannot afford lawyers and the other costs associated with a formal court process, but that fact alone does not dictate that the Residential Tenancies system must stretch itself out of shape and attempt to adjudicate significant claims of the type brought here.

[61] Quite apart from the unsuitability of the Residential Tenancies system to consider these individual claims, they fail on factual and evidentiary grounds.

[62] I am not satisfied that anything that either party did, objectively created the type of harms alleged. As I have said earlier, these parties occupy different realities and have radically different perceptions. The parties happened to be engaged in a residential tenancy dispute, which created a great deal of conflict that negatively impacted everyone involved. I do not deny the validity of anyone's experience, but nor can I place legal responsibility on either party for the negative experiences suffered during the tenancy unless there is a clear nexus between those experiences and the breach of an obligation under the Residential Tenancies Act. And damages, to be recoverable, must be foreseeable.

[63] There was precious little evidence to substantiate these claims. They are essentially bald statements with almost no cogent evidence to corroborate them.

[64] As for the alleged damage to Ms. McIntyre's health, I acknowledge that there is a letter from a naturopathic practitioner treating Ms. McIntyre, who states (among other things) that he is "aware of the housing situation she is in and it has negatively impacted her health and treatments causing other health concerns." This individual was not called as a witness and discloses nothing in his letter concerning his credentials and experience. Such a letter would never be deemed sufficient evidence in a Supreme Court proceeding. Moreover, it says nothing about the alleged health related expenses that are claimed. Nor are there receipts for the additional medical treatments allegedly incurred.

[65] As for the \$9,000.00 wage loss claim, the Claimant did not provide any evidence concerning what she does for work, who she works for, or how much she is paid. She called no witnesses supporting the claim that she was unable to work. In fact, she testified on several occasions that she was on a disability pension, which calls into question whether she works for pay, at all.

[66] The Tians' claim for alleged health impacts are also not supported by any evidence at all.

[67] The claims by Ms. McIntyre for medical reimbursement and lost wages in the amounts of \$5,000 and \$9,000 respectively, and the claim by the Tians for \$5,000 for alleged damage to their physical and mental health, are all dismissed for the reasons stated above.

### **Rent abatement**

[68] It is through this vehicle, which is a well-worn path in Residential Tenancies matters, that I propose to address the fact that Ms. McIntyre was denied sufficient heat and access to cooking facilities.

[69] The rent being paid was \$700 per month. The total amount that she paid for the seven months of the tenancy was \$4,900.00. She has claimed an abatement of 75% of that amount.

[70] I believe that amount to be excessive. Ms. McIntyre did not cite any legal authority for her claim. My own research shows that most abatements - even for significant deficiencies - are for considerably less than that. In this case I am prepared to order an abatement of 40% or \$1,960.00, which I believe to be a significant abatement reflecting the seriousness of the finding I have made against the Tians.

### **Other claims**

[71] The other claims will be considered below:

- a. Ms. McIntyre claims "**Moving costs: 300.00 (U-haul/rental/gas)**". I do not consider this recoverable as Ms. McIntyre would have incurred such costs eventually, whenever she moved.

- b. Ms. McIntyre claims **“garbage bags reimbursed back to work 20.00”** This was not substantiated and is moreover *de minimis*.
- c. Ms. McIntyre claims **“heater reimbursement 28.72”** I am prepared to allow this.
- d. Ms. McIntyre claims **“convection / toaster oven 103.48”** I am prepared to allow one-half of this, as it appears that it was an expense shared by Ms. Sangster.
- e. Ms. McIntyre claims **“damaged two pair of winter boots 240.11”** This claim was based on an allegation that Emily Tian stomped on and ruined two pairs of boots. There was some video evidence of Ms. McIntyre’s personal items being roughly handled by Emily Tian, but this claim is not supported by the evidence. There are no photos showing the alleged damage to the boots in question.
- f. Ms. McIntyre claims **“Loss of produce-food/no stove top 100.00”** The allegation here is that food that Ms. McIntyre bought initially could not be used because she did not have access to the kitchen. I am prepared to allow it.
- g. Ms. McIntyre claims **“Broken picture mirror from daughters jumping 35.00”**. The allegation here is that Iris Tian’s stomping on the floor above caused an item to fall off the wall.” I do not consider this claim to have been adequately proved.

[72] The total of the items above is \$180.46. Together with the \$1,960.00 rent abatement, the Tians will be ordered to pay Ms. McIntyre \$2,140.46.

[73] As for the items claimed by the Tians:

- a. The Tians claim **“The shortfall rent of January \$66.10”** The \$66.10 withheld is allowed as Ms. McIntyre is receiving a credit and should not be doubly compensated.
- b. The Tians claim **“The shortfall rent of February \$350.”** I am not satisfied that this amount was not paid.



- c. The Tians claim **“The rent of March \$700”** The Tians ask for an entire month’s rent of \$700. The evidence is that Ms. McIntyre moved herself and all her belongings out by March 10, which was as soon as she was able. There is no basis to charge her a whole month’s rent. She should pay the prorated amount of \$225 for those ten days.
  
- d. The Tians claim **“The rent of the other room (Feb & Mar): \$1300”** I believe that this claim relates to the fact that once Ms. Sangster moved out, Ms. McIntyre impeded the Tians’ efforts to rent out that room. She actively interfered with showings by posting signs on the downstairs fridge that the Tians were abusers and that potential tenants should beware. As over-the-top as this behaviour was, I believe that no tenancy could have been secured until Ms. McIntyre had moved out as a result of all of the bad blood that existed, for which I hold both parties at fault. This claim is denied.
  
- e. The Tians claim **“The rental fee of the furnace room: 4 months (Dec-Mar) \$350/m, total \$1400.”** I believe it was reasonable for Ms. McIntyre to use the furnace room, as she had been promised a kitchenette. Moreover, the amount sought is totally out of proportion. This claim is denied.
  
- f. The Tians claim **“The maintenance fee for the furnace room (material & labor): \$1000.”** There was no evidence to support such a claim.
  
- g. The Tians claim **“The extra power fee (toaster oven & heater): 6 months (Oct-Mar) \$100/m, total \$600.”** There was no evidence supporting such a claim. Moreover I believe it was reasonable for Ms. McIntyre to draw on whatever electricity was needed to meet her minimal needs.
  
- h. The Tians claim **“The damage loss of the lock: \$50.”** There is no evidence that Ms. McIntyre broke a lock. Ms. McIntyre testified that it simply failed.

- i. The Tians claim “**The damage loss of her room (material & labor): \$150.**” There is insufficient evidence supporting this claim.
- j. The Tians claim “**The damage loss of the weather stripping (material & labor): \$150.**” There is no evidence supporting this claim.
- k. The Tians claim “**The damage loss of the garage door bracket (material & labor): \$150.**” I accept Ms. McIntyre’s evidence that this was already broken before she used the garage door on the day she was moving out.
- l. The Tians claim “**The cleaning fee: \$50.**” There is no evidence that the room was left so dirty as to require special cleaning.
- m. The Tians claim “**The garbage disposal fee: \$20.**” This is a petty claim that is not justified.
- n. The Tians claim “**The counterclaim fee (Residential Tenancy Board): \$31.15.**” The Tians did not succeed to any degree in this court and are not entitled to any costs.

[74] The Tians are accordingly entitled to credits totalling \$291.10.

[75] Offsetting the claims, the Tians will be ordered to pay to Ms. McIntyre the sum of \$1,849.36.

[76] There is no need to interfere with the vacant possession aspect of the order as Ms. McIntyre has vacated many months ago and any variation would be moot.

## **ORDER**

[77] It is accordingly ordered that the order of the Director of Residential Tenancies dated February 9, 2021, with respect to Ms. McIntyre, is varied to provide as follows:

- a. **IT IS ORDERED** that the landlords Matthew Tian and Emily Tian pay to the tenant, Gaidheal McIntyre, the net sum of \$1,849.36.

- b. IT IS FURTHER ORDERED<sup>19</sup> that all other claims and counterclaims are dismissed.

**Eric K. Slone, Adjudicator**