

SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: McIntyre v. Monteith, 2022 NSSM 37

Claim No. SCCH 500061

On Appeal From The Director Of Residential Tenancies

Between:

Gaidheal McIntyre

Appellant

v.

Elisha Monteith

Respondent

And In The Matter:

Claim No. Scch 509726

Gaidheal McIntyre

Claimant

v.

Elisha Monteith

Respondent

DECISION AND ORDER

1. These matters came on for hearing on September 16, 2022.
2. In these reasons, as most of the information relates to SCCH 500061 (the Residential Tenancies Appeal), Ms. McIntyre is called the Appellant and Ms. Monteith is called the Respondent.
3. The Respondent appeared represented by Mark Culligan, Community Legal Worker at Dalhousie Legal Aid Services.
4. The Appellant did not appear.
5. The hearing was to start at 9:30 am. When the Appellant did not appear, an email was sent to her by the Court, reminding her of the start time. The Court waited until 9:45, when the Appellant was still not present.
6. The Respondent applied to have the appeal dismissed for want of prosecution, given that the Appellant was not present to address the issues to be considered on this appeal. The application was allowed and the appeal is dismissed for want of prosecution.
7. The Respondent applied to dismiss the civil claim. A dismissal will be ordered.
8. To ensure there is a full public record of this matter, I provide detailed reasons along with the information in the Court's file.

Residential Tenancies

9. The original dispute between the parties arose in 2020. On June 2, 2020, the Appellant /tenant provided a security deposit to the Respondent/landlord in anticipation of renting premises on Southill Drive. Halifax. Subject to approval of the Respondent's social worker and receipt of a satisfactory background check, the Appellant/tenant was to begin occupying the premises on July 15, 2020.
10. The events around the relations between the parties are set out in the Order of the Director of Residential Tenancies dated August 20, 2020. It is repeated nearly verbatim here.

11. Ms. Monteith let the tenant move in before July 15, 2020 as a house guest pending approval by Child Protection Services (CPS). She testified that it was highly recommended by her social worker she not enter into a landlord and tenant relationship with the tenant as a background check of the tenant revealed a previous criminal record and a violent background. The landlord said that if CPS came to visit, they would have to be escorted by the police and it was recommended that the landlord not let the tenant move in.
12. Ms. Monteith stated the police were first called on July 11, 2020, and they were called numerous times by the tenant. The landlord said the tenant also interfered with her security system by blocking or moving it on July 22, 2020. On a. same date, the landlord was notified by police that they received a call from the residence and the police found broken glass and blood in the tenant's room. The landlord was told by the police she had been accused by the tenant of assault.
13. Ms. Monteith stated that she was unable to stay at the unit since the time the tenant first called the police. She also indicates that her children cannot stay in the unit and that her landlord has warned her she would be evicted if she does not rectify the situation. Copies of text message correspondence, emails, and tenant's notes were introduced into evidence supporting the landlord's claim.
14. Both parties initiated proceeding under the Residential Tenancies Act.
15. At the hearing before the Residential Tenancies Officer, the Respondent appeared. The Appellant did not.
16. The Director ordered the tenancy to be at an end and that the Respondent have vacant possession by September 1, 2020, though it appears the Appellant had vacated the premises prior to the Director's Order.
17. On August 27, 2020, the Appellant appealed the Director's Order.

Small Claims Record

18. As is the practice in this Court, after a matter is commenced, procedural and scheduling issues are addressed initially in a pre-hearing.

19. A pre-hearing was scheduled for September 10, 2020, to be held by conference call.
20. On August 31, the Appellant advised the Court Clerk, 'I won't be ready by the 10th and I'm confused about the pre-conference as the matter needs to proceed to Appeals. I won't be ready for a pre anything for about 3 weeks.....' Later in another email she asked that the pre-hearing be deferred for 2 weeks and explained how her health affects her ability to participate in proceedings.
21. Despite the Appellant's request, the pre-hearing was held on September 10, 2020. The notes from the hearing indicate the parties identified the number of and likely names of witnesses, the timing for exchange of documents and that a hearing would take about 4 hours, so a special time needed to be scheduled. The parties affirmed that vacant possession was no longer an issue, and the matter involved a claim for damages, with the Appellant seeking financial relief.
22. In September 2020, the Small Claims Court was operating under the COVID 19 Protocol. In person hearings were not being scheduled. All hearing were done by telephone or Zoom.
23. The Appellant had indicated to the Court, she was not prepared, for health reasons, to have his matter scheduled. On September 13, 2020, she requested the matter not be set for hearing 'until the Courts open to the public'.
24. She stated to the Clerk:
- So please suspend without date until I can have a proper hearing one that does not place outrageous and harmful barriers to my rights to due process. Again my (health issues¹) arell documented at the courts where my criminal matter had to be postponed last year for months combined with (health issue) with being involved with Dalhousie Legal Aid the courts and the abusive Monteith.'
25. Meanwhile, the Appellant became involved in another residential tenancies dispute, which affected the timing of having this matter set for hearing. The contemporaneous proceeding was *McIntyre v. Tian*, 2022 NSSM 31, a

¹ Details of the Appellant's health are redacted to protect her privacy

decision of Adjudicator Slone.

26. On March 15, 2021, the Appellant advised the Court she was ready to have this matter scheduled and asked about how it could be scheduled.

27. On September 21, 2021, the Appellant filed a Notice of Claim in SCCH 509726 – Gaidheal McIntyre v. Elisha Monteith (called ‘the civil matter’) claiming damages for ‘break/enter/property damages trauma/assault(repeat)’. The Claim was served. A defence was filed that stated:

The same matter is already before the Small Claims court under claim number 500061....

Claim number 509726 relates to a dispute between a landlord and a tenant and is not an appeal of an Order of the Director of Residential Tenancies. It should therefore be excluded in accordance with Section 10(d) of the Small Claims Court Act.

28. There were difficulties in scheduling the civil matter and this appeal. The file notes indicate it was because of the ongoing *Tian* file, though there is nothing to show the scheduling conflict.² On November 25, the Appellant indicated a conflict in dates for a proposed hearing. On December 8, 2021, the Court Clerk indicated the Court would look for dates in 2022 for an additional pre-hearing. On December 14, 2020, Dalhousie Legal Aid Services (DLAS), on behalf of the Respondent, objected to a delay in holding a pre-hearing.

29. The pre-hearing was held in the civil matter on December 16, 2021, before Adjudicator Davis. Though DLAS noted the jurisdictional issue, no ruling on it was made. The Adjudicator indicated it should be dealt with as a preliminary matter at a hearing.

30. Following the December 16 pre-hearing, the Appellant emailed the Court complaining about what had happened during the conference call. She uses strong language and makes numerous accusations of inappropriate conduct and ‘lies’ by DLAS. Though the pre-hearing was for the civil file, the Appellant addresses the Appeal matter in her email. She forcefully asserts the Residential Tenancies Hearing should not have been heard without her. She notes COVID has closed the Small Claims Court and that, because of

² The Tian hearing was held over 7 days between March and May 2022.

her health, she has difficulty with calls. She requests that the two matters involving these parties – the Residential Tenancies Appeal and the civil claim- be ‘heard on the same special time docket’. She notes the ‘Slone matter’, (*Tian v McIntyre*) which is the proceedings being conducted by Adjudicator Slone, should proceed first.

31. There were no steps taken to advance the scheduling of the two matters involving the Appellant and Respondent.
32. In April 2022, DLAS wrote to the Court requesting that SCCH 50061 ‘be scheduled without delay’ and noting the Respondent ‘does not consent to the request that SCCH 500061 and SCCH 509726 be joined’. A further request was made by letter of June 7, 2022.
33. On July 12, Melanie Kelly, Supervisor, Court Administration, emailed the Halifax Small Claims Court Adjudicators regarding scheduling of three matters. This is a common practice to determine whether an adjudicator has capacity to take on a file. The email stated:

I am looking for someone available to hear three separate matters as special video hearings.

The matters are:

SCCH# 500061 Gaidheal McIntyre vs. Elisha Monteith- 4 hours expected. Claimant request that the hearing be scheduled on a Thursday or Friday due to medical appointments.

SCCH# 509726 Gaidheal McIntyre vs. Elisha Monteith- Half Day expected. Claimant request that the hearing be scheduled on a Thursday or Friday due to medical appointments.

SCCH #509742 Gaidheal McIntyre vs. Urban Prosper- Half Day expected. Claimant request that the hearing be scheduled on a Thursday or Friday due to medical appointments

If you are able to hear any of these matters, could you please let me know and we can discuss possible dates?
34. Adjudicator Richardson and I replied we were available. We agreed that given there was a common party in all and two involved the same individuals, it would be appropriate that all three files be handled initially by the same adjudicator, in case they were all related and, if so, whether there will be a split claim, or excess of 25K, issue.

35. On July 19, the files were assigned, and they were sent to me.

36. On July 25, the following email was sent to the parties.

Good morning

The Small Claims Court has received recent correspondence from Ms McIntyre indicating she is now able to have these matters scheduled for a hearing.

I am the assigned adjudicator.

Since both matters involve the same parties, I will schedule them at the same time. It appears there is a preliminary issue regarding 509726, which can be addressed at the outset.

My intention is to set these matters to be heard at a Zoom Hearing during the first 2 weeks of September. To allow adequate time, I will set aside a full day (9:30 am - 4:30 pm) for these matters.

My hope is we can set the matter without the need for a phone pre-hearing conference call. If the process outlined below does not allow for scheduling, I will arrange a call with you to find a date for these matters.

Ms McIntyre - can you please indicate the days you will be available between Sept. 1 - 16. Send the dates to me with a copy to Mr. Culligan. Remember in providing dates you must be sure your witnesses will be able to attend. Mr. Culligan, pls advise which of the dates provided by Ms. McIntyre are convenient for your client and witnesses.

I need to hear from both parties by August 5th.

Once the date is set, I will confirm arrangements for the exchange of documents.

These matters have been outstanding for a long time. My intent is to have them addressed now so the delay last no longer an additional time than is absolutely necessary.

I look forward to hearing from you.

37. The third file assigned was SCCH 509742, Gaidheal McIntyre vs. Urban Prosper. On July 25, an email was sent to the Appellant to schedule this file. There was no email address in the file for the Respondent, Prosper.

38. The Appellant replied on the Residential Tenancies and civil files and stated:

...

I will be subpoenaing the police the detective that was involved and another police officer involved in other issues that were obvious .. there's overlap on both the matters that can be combined
At the time of the filing I was so traumatized that I really needed to keep them separate then for court sakes let's bring them together for time let me get them out of my face and then of course covid and then the police advised that we keep them separate because the tenancy issues are one thing the theft is another though without the tenancy there was no access, motive or opportunity to the second
So I hope that makes sense. I will have to get back to you on the dates I'm a person (redacted) and I should be getting my August and September medical days coming up soon so I will be in touch as soon as I can

39. DLAS replied on behalf of the Respondent they would advise on availability.

40. Following additional emails, the matters were set down for September 16, 2022, and this email was sent to the parties:

Good day

Given Ms. McIntyre's request that the date be as late in September as convenient, I will set these matters for September 16 at 9:30. A Zoom invitation will follow.

Mr. Culligan - Affidavit evidence is possible as an exception. The witnesses would still need to be present for cross-examination.

I will not rule on this yet as I have no evidentiary or other foundation for doing so.

Documents -

The documents for both matters must be dealt with as follows:

All documents are to be compiled into a single package with each page numbered sequentially. There should be a separate document package for each matter. A hard copy is to be delivered to the Court and mailed to the other side. Ms. McIntyre your documents are due no later than Thursday, September 1. Mr. Culligan your material is due on Thursday, September 8

If there is to be a USB drive with evidence to be used, a copy of the USB should be included with the document package in an envelope clearly marked to indicate its contents.

41. As the assigned adjudicator, I tried to arrange a pre-hearing on the *Prosper* matter. The Appellant provided her dates. I scheduled the pre-hearing for August 23 at 5:00 pm; advised the Appellant of that date and that the Court would provide the dial-in information. The Court advised Mr. Prosper of the date by mail sent to his address.

42. On August 23, the Prosper pre-hearing commenced at 5:00 pm. Mr. Prosper did not appear. As is my practice in such circumstances, I asked the Appellant (Claimant on the Prosper file) to outline the nature and details of her claim. She indicated she had difficulty talking so I told her to take her time and outline as best she could the nature of the claim. At the end of the call, I said I would issue an order.

41. On reviewing the Small Claims Court Act, I realized that s. 10(d) would likely be determinative of this matter. It states:

10. Notwithstanding Section 9, no claim may be made under this Act

...

(d) which involves a dispute between a landlord and a tenant to which the Residential Tenancies Act applies, other than an appeal of an order of the Director of Residential Tenancies made pursuant to Section 17C of that Act

42. I advised the Appellant of this and offered an opportunity to make representations on this issue. She declined to do so.

43. On August 26, I issued an Order, based on s. 10(d) of the Small Claims Court Act, staying the proceeding without prejudice to the Claimant acting on the matter under the Residential Tenancies Act. A copy of that Order is attached as Appendix A to these reasons.

44. On August 26, the Appellant sent the following email:

1.1 Darrell Pink : an adjudicator without prejudice on GM cases?

Small Claims Court

Fri, Aug 26,
9:03 AM

1.1.1 gaidheal mcintyre

to me, Becky, gaidheal

Darrel Pink

I want to address... ironically I would normally say the pink elephant in the room ...but I don't want that to be misconstrued

You sat on the NS Barrister Society of which I filed very serious grievances against several lawyers none of which would be in life but for the degenerate depraved behaviour of one (lawyer in private practice) one (lawyer at Dept. of Justice) and one (lawyer at Public Prosecution Service) and of course nobody was ever held accountable which is why we're going to a multi-million dollar civil litigation and why I constantly sit on fabricated criminal charges

So moving forward: do you and I ask you this in good faith we're adults here though I do this with great trepidation because Nova Scotia is the land of retaliatory practices.... are you able to adjudicate on my matters regardless of who they are and what they are... can you do that with honest introspection.... can you hear my cases without prejudice given what I have published to the barrister society regarding some very depraved criminal behaviour of several lawyers and again like I said I wouldnt know most of them but for the depravity of the first three who gave me my disabilities and my poverty status which you would be aware of having access to all those documents

Have you been handpicked to be on my SC cases?

Now when I say that I mean I know there's a selected group of adjudicators that I will allow at my cases because of the disturbing level of casual camaraderie that takes place instead of focusing on enforcing the law. There's a different type of handpicking that goes on with my cases in any department where one of the three (lawyer at Dept. of Justice) ...tends to have conversations outside of the process and handpicks people for example my disability workers with

community service that would be the 1350 I think you were referring to... they're all handpicked to be as abusive as possible

So moving forward I ask you this in good faith.... are you with the capacity to hear my cases without prejudice and hear them with the merit and integrity of which each case deserves ?

It's a fair question given the history I've had with lawyers in this province and giving your position with the barrister society who never held anybody accountable for disturbing levels of pathological abuses and cover ups

I have known since I've seen your name who YOU are as it pertains to NDBS ...did you know who I was when you first heard my name...

And did you have any conversations prior to taking on my cases officially with (lawyer at Dept. of Justice)

GMcIntyre

BAADM,MSW

45. On August 30, I replied to the Appellant:

Ms. McIntyre

I will continue to handle the files to which I have been assigned unless there is an application to have me disqualified.

I can confirm I was unaware of you or your name before this matter was assigned to me.

It would be inappropriate for me to discuss any file with anyone prior to adjudication.

46. The Appellant replied:

Thank you for that clarification Darrel Pink and given your response I see no reason at this time for any disqualifications.

47. The Appellant sent emails to me, as Adjudicator seeking advice on procedural matters, in particular the issuance of subpoenas, attached as Appendix B. I advised her it was not my role to advise a party on such matters and if there were problems with issuing or serving process, she should ask for an additional pre-hearing where the Court could address procedural questions and provide the appropriate order or direction. A provisional time for a pre-hearing was assigned, but no request for Court direction was made by the Appellant, so no hearing was held.

48. On September 6, the Appellant sent the following to the Small Claims Court:

1.2 Re: Hali-Prov Court I'm requesting Darrel Pink to be disqualified from the Monteith matter I will get back to you ASAP with a detailed itemized account of my rationale ranging from blatant conflicts of interest to pathology, I just wanted to give you ...

Small Claims Court

Tue, Sep 6, 5:45 AM
(12 days ago)

1.2.1 gaidheal mcintyre

1.2.2

to Halifax, Becky, me, Mark

... I just wanted to give you a heads up to reassign it to a new adjudicator preferring a female adjudicator (but not LD) as we had to do in the past
I find the covert misogyny epidemic amongst male lawyers too distracting to deal with ...but I'll address that in my expanded rationale and yes if we can proceed from there with a reassignment to a new adjudicator- female
I really don't like being put into position to gender it because that assumes all females are fine when they're not
Nobody misses David Parker more...nd I have been in front of really good male adjudicators whose names escape me at the time but I don't know if they're currently active
Regardless of being assigned to a female will immediately remove the distraction of the misogyny that I cannot tolerate
again I will expand my rationale when I get a free moment on the disqualification of Darryl Pink who knew he was in a conflict of interest position to begin with and I did have concerns with him being assigned to 2 of my cases back to back so I will address that as soon as I can but in the meantime if you can just reassign it that would be great the sooner I get this Monteith case out of my face.. the healthier I will be ..
Again I thank the court clerks for your patience and all the time you've had to put into this it has been a very long hard journey with dealing with concussion and delays for that and the other criminal

matters and delays that are out of both of our controls so again I thank you I'm sure you want to get this case out of your face as well
thank you

49. The Appellant sent several additional emails to the Court asking that the Adjudicator be re-assigned. The emails use strong language to describe the assigned adjudicator.

50. On September 12, at my request, Melanie Kelly sent the following message to the Appellant:

From: Small Claims Court <SmallClaimsCourt@courts.ns.ca>

Sent: Wednesday, September 14, 2022 11:18:09 AM

To: gaidheal mcintyre <mcgaidheal@live.ca>; mark.culligan@dal.ca <mark.culligan@dal.ca>

Subject: RE: Witness DET J Murphy- PLS suspend Monteith matters without day until his return.. I will keep you posted.

Good afternoon,

Adjudicator Pink has been assigned to hear these matters and there is no basis for re-assigning these files to another adjudicator. If you wish to apply to Adjudicator Pink to recuse himself, based on the issues you have identified, the proper process is to make that application before him. There is no authority for Court Administration to re-assign this matter.

Should you want the Court to consider the availability of witnesses or any other matters, Adjudicator Pink has indicated he would address them in a pre-hearing if you request that. If no such request is made the Court will deal with the matters on their merits at the scheduled time, and we advise you to be ready to address the matters on their merits at the scheduled Zoom hearing.

If you have any questions, please feel free to contact the court.

Kind regards,

Melanie Kelley

Supervisor, Court Administration
Halifax Provincial Court

51. Though the Appellant had had to file documents supporting her claim by September 1, 2022, she did not do so. The Respondent also filed no documentary evidence, if it had any, by September 8.
52. The hearing of the two files 509726 (the civil matter) and 500061 (the RT Appeal) were scheduled for September 16 at 9:30 am via Zoom. The Respondent and DLAS were present: two police officers who had received subpoenas were present; the Appellant was not present.
53. The Court emailed her reminding her of the start time.
54. The Court waited for the Appellant to appear until 9:45 am. When she did not appear, Mr. Culligan from DLAS made a motion on behalf of the Respondent to dismiss the appeal for want of prosecution and to dismiss the civil claim based on s. 10(d) of the Small Claims Court Act, as the claim arose because of a landlord-tenant relationship between the parties.

Findings

55. Most civil cases dealing with dismissal for want of prosecution are dealt with under the Civil Procedure Rules, which do not apply in this Court. Generally, they focus on delay and whether inordinate delay results in prejudice that justifies a dismissal.
56. It is common in this Court, if a Claimant does not appear at the time of a scheduled hearing for an adjudicator to dismiss the Claim unless there is a clear basis to adjourn the matter without day, thus allowing the Claimant an opportunity to have the hearing rescheduled.
57. In considering an application to dismiss for want of prosecution, this Court is governed by the straight forward principle enunciated by the Nova Scotia Court of Appeal. In **R. v. Fletcher & Smith** (1990), 1990 CanLII 2507 (NS CA), 99 N.S.R. (2d) 258, Macdonald, J.A. at p. 260 made the following statement :
"A trial judge has, of course, a discretion to grant or refuse a non-suit motion, an application for an adjournment, or an application to dismiss a charge for want of prosecution. Such

discretion, however, is not absolute but must always be exercised judicially."

58. To make a decision judicially on an application to dismiss for want of prosecution, the Court must look at all relevant factors keeping in mind the rights of the parties to have their matter determined by an impartial court. Those factors include advancing the purpose of the Court as set out in s. 2 of the Small Claims Court Act.

It is the intent and purpose of this Act to constitute a court wherein claims up to but not exceeding the monetary jurisdiction of the court are adjudicated informally and inexpensively but in accordance with established principles of law and natural justice. *R.S., c. 430, s. 2.*

59. Though not listed as a stated principle, this Court strives to address matters expeditiously as well and it is for that reason, during COVID 19, the Court developed the capacity and systems to handle its complete docket virtually, using a combination of telephone and Zoom hearings to deal with all matters. I therefore include handling matters expeditiously as an aspect of natural justice as it is applied in this Court.

60. The first consideration is whether the party responsible for the claim or appeal attends the hearing at the scheduled time. This requires the Court to assess if the party was aware of the hearing date, had the technology to participate and whether anything occurred to prevent or interfere with the party's participation.

61. Another factor to be considered are fairness to both parties, so that while the Appellant has an obligation to prosecute an appeal, a Respondent has a right to have a final determination made and the matter not to sit in limbo indefinitely.

62. Co-operating with the simple and straight forward procedural rules is another factor. This Court does not have detailed or complex rules of procedure, but its adjudicators and court staff set expectations that parties are to meet in order to hold virtual hearings and manage many files with participants on the end of a phone line. These include calling into a conference call when their case is to be heard, participating in such calls while many others are doing likewise, delivering documents to the Court and

the parties as specified by a pre-hearing adjudicator and organizing the materials so they can be used by all participants.

63. Treating the Court and its staff courteously is also a relevant factor because staff have close and direct dealing with parties who do not have the benefit of counsel. Adjudicators, unlike any other judicial officials communicate directly with parties as their files are being set for hearing. Parties have adjudicators' email addresses, and it is accepted that some will engage personally with an adjudicator via unilateral communications, even if, as in this matter, they are advised not to do so.
64. In considering an application for dismissal, the presiding adjudicator must weigh all these factors and make a decision that reflects the principles of law and natural justice.
65. The Appellant may have a legitimate claim against the Respondent arising from the brief landlord tenant relationship they had. There may be merits in her assertions. The Residential Tenancies Officer could make no findings relating to the Appellant's claims as she did not attend the hearing. She appealed the Order of the Director, which gives this Court jurisdiction to hear the matter *de novo* and to make any order the Director could have made. The Appellant failed to attend to present evidence, apply for a recusal of the Adjudicator, or to seek an adjournment based on issues regarding subpoenas.
66. In these circumstances, the Court is duty bound, having afforded the Appellant several opportunities to have her issues addressed in various ways, to recognize that the Respondent also has rights. The Court must not forget there is a party who has remained in jeopardy for over two years since the matter originated under the Residential Tenancies Act (July 16, 2020). She has participated at each stage. The claim was initially dismissed and for 26 months she has waited for an appeal to be heard.
67. Though some of that time involved the closure of the Court due to COVID, most involved waiting for the Appellant to be healthy enough to proceed with the appeal. That occurred in the late spring of 2022 and since the early summer the Court has advanced the matter and scheduled it for hearing,

while accommodating the serious limitations imposed by the Appellant's health.

68. The Court will always accommodate bona fide limitations on the ability of a party to participate in a hearing. Information provided directly by the Appellant indicated that bona fide limitations exist and they were accounted for. The Court responded to reasonable requests, such as scheduling a hearing on days when medical appointments are not happening. The Court will and did allow extra time as it was said it was required. The Court will provide directions to assist the parties with court process if it is asked to do so.
69. The Appellant was accommodated in each request, except that of having the Adjudicator replaced, but she was advised of the proper process to make that application.
70. If a party does not attend, it cannot expect the Court to intuit its position or to act as its advocate when there is no basis for doing so.
71. The Appellant's failure to attend on September 16, given the facts
- a. she did not attend the RT hearing;
 - b. she did not file documents she intended to rely upon at the scheduled hearing;
 - c. in communications with the Court, the Appellant used strong language and made inflammatory and baseless allegations, or if there was merit to them, failed to produce any evidence to support them, regarding the Adjudicator and the legal representative for the Respondent (See Appendix B).
 - d. she did not ask the Court to schedule an additional pre-hearing to deal with procedural matters, such as the difficulty she apparently had in serving subpoenas,
 - e. she did not try to have the adjudicator recuse himself, though she was advised this was the appropriate procedure to follow, and
 - f. the Court has responsibility to look out for the legitimate interests of all parties, including the Respondent, to have this matter adjudicated according to the principles of law and natural justice,
- makes it appropriate to order the appeal be dismissed for want of prosecution.

72. Further, as I ruled in the *Prosper* matter, this Court does not have jurisdiction to address civil claims arising from a landlord tenant matter. The claim in SCCH 509726 is dismissed. Because the Appeal has been dismissed in SCCH 500061, there is no basis for another application under the Residential Tenancies Act, which is the reason I have dismissed the matter rather than entering a stay of proceedings.

Dated at Halifax, Nova Scotia, September 18, 2022

Darrel Pink, Adjudicator, Small Claims Court

Appendix A

Claim No. SCCH 509742

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

BETWEEN:

GAIDHEAL MCINTYRE

CLAIMANT

and

URBAN PROSPER

RESPONDENT

ORDER

This matter came on for hearing on August 25, 2020, with notice having been sent to the Defendant by letter from the Court

The Claimant appeared; the Defendant did not appear;

1.3 AND UPON FINDING

- (a) that the Defendant was served with a notice of the claim and notice of this hearing; and
- (b) that the Defendant did not file a defence and the time for filing a defence has elapsed;
- (c) the matter involves a dispute between a tenant and a landlord over the condition of premises occupied by the Claimant as a tenant at 31 Mount Edward Rd, Dartmouth, NS and damages and loss of property incurred by the Claimant/tenant because of the alleged breach of the Defendant/landlord's obligations under the Residential Tenancies Act,
- (d) under s. 10 of the Small Claims Court Act, 'no claim may be made under this Act (d) which involves a dispute between a landlord and a tenant to which the Residential Tenancies Act applies...',
- (e) the Claimant initiated, but has not fully utilized the Residential Tenancies Act procedures to address the issues arising from her former tenancy at 31 Mt. Edward Rd, and

- (f) the Residential Tenancies Act applies to this dispute and the dispute resolution and adjudicative processes provided by that Act must be used and a decision made as a condition to this Court having appellate jurisdiction.

I THEREFORE ORDER that the Claim is stayed because the Court does not have jurisdiction to hear this matter, which decision is without prejudice to the Claimant bringing this matter forward for consideration under the Residential Tenancies Act.

Dated at Halifax, Nova Scotia on August 26, 2022.



Adjudicator, Small Claims Court

Appendix B

From: **gaidheal mcintyre** <mcgaidheal@live.ca>

Date: Thu, Sep 1, 2022 at 12:33 PM

Subject: Re: Subpoenas-interference by Respondent / uncooperative witness and HRP

To: Darrel Pink <pinkdarrel@gmail.com>

Cc: Mark <mark.culligan@dal.ca>, McInroy, Becky <becky.mcinroy@courts.ns.ca>

vetting information as much as I can here

WE will have to do that as this critical witness Ryan Murphy is now being uncooperative and had ignored 6 text messages

I still havent heard back from DET Justine Murphy.. Iam sure no relation... and I cant proceed without him on the damages to my property in retaliation...his inetnt to lay charges against the Respondent and the converstaions with crown.....

I do need the other two HRP especially since BR witnessed the Respondent priming her furniture -however Mark Culligan felt it necessary to accuse me of that vandalism.... she is a vital witness as she had to come to the house 3 times. and witnessed on one occasion 1 time EM damaging my property(250.00 toaster /convection oven) sadly no charges were laid..

HRP W Hunter had to come 4 times I believe...once when I was locked out and is party to deletions EM made to our txt messages to change the content intent.... Heather Ross is still being located and I am told by her supervisor she may have to seek legal advice... to see if she can share information that may be seen as private as it relates to the DCS- EM child welfare/abuse file although I don't need her for any of that information albeit it is related on several points indirectly.

All these people are vital to my case... hence the subpoenas..I'm thinking Ryan Murphy views himself as a hostile witness (to borrow a criminal term) but MC could call him and all is addressed with him. After all he IS the Respondent's landlord and she was mine per the RTAct and this is where the issues start so his input is required as he had no idea I was moving in and he didn't give her permission, at that time, to sublet to anybody yet she did to 3 others before me.. Again a communication has been sent out to RM this morning to not avail... We need to discuss this and perhaps suspend without date but hopefully by October end until all are counted and included.

Until the Small Claims stops being so informal others will take it more seriously as well (my comment excludes HRP)

I do fully appreciate and perhaps RM has as well, is that SmallClaims may also deflect some compensatory responsibility onto him as well. I view him as a victim as I was so it is not my intention of including him that makes him hide now. I do have text messages between myself and RM that I will be submitting so it is only fair to include him to speak to them and have the Respondent have access to him as well though I'm sure they are why he is not responding to me..just as before.

The only reason he called me back is I went looking for him at his workplace via phone of which his brother lied for him. RM called me back and agreed to meet me once the subpoena was filed officially with the NSPC...he has since reneged on that arrangement

GM

take care and be safe

gaidheal

U and I are found in commUnItY

From: Darrel Pink <pinkdarrel@gmail.com>

Sent: August 30, 2022 4:05 PM

To: gaidheal mcintyre <mcgaidheal@live.ca>

Cc: Mark <mark.culligan@dal.ca>; McInroy, Becky
<becky.mcinyroy@courts.ns.ca>

Subject: Re: Subpoenas-interference by Respondent / uncooperative witness and HRP

Good afternoon

If there are issues for the Court to consider to address the presence of witnesses, I am prepared to schedule a special or additional pre-hearing conference for that purpose.

A request should be directed to Ms McInroy who will make arrangements for a special time.

Darrel Pink

[Adjudicator](#)

902-430-7209

On Tue, Aug 30, 2022 at 3:54 PM gaidheal mcintyre <mcgaidheal@live.ca> wrote:

Hello Darrel Pink,

August30/22

I have tried several times to communicate with Ryan Murphy the landlord of Elisha Monteith. She was still living there when I delivered the Notice which she obviously received so I assume she is still there?

Dont care just using current tense

RM and I spoke on the phone and he was aware I was filing a subpoena for him on the matters of 3 Southill his house who he rented to Elisha Monteith and Im vetting here as I did on the phone obviously not to share evidence. HE

RM knew I would contact him to deliver it to him. 6 texts have been sent since and he is not responding. This is what happened while I was living there that we spoke and then he spoke to EM and I assume her lawyer MC or through EM and refused to communicate with me further where his lack of cooperation created 'permission' for EM to do what she did.

I have great concerns that once again MCulligan has interfered directly or indirectly through his client, RMs tenant, EMonteith to not cooperate with me as MC knows RMs testimony is very damning to his client EM, its also damning to Ryan Murphy himself :depend on what gods you answer to.

How am I to proceed when a vital witness RM is now being uncooperative and I dont doubt it is Respondent directed.

Also I havent heard back from DET J Murphy yet All HRP were delivered and accepted as usual but they may all be on vacation and I cant proceed without them

as they were called by me so many times for assistance for issues belonging to both matters that are about the back bone of both my filings.

Looking to you for Darrel Pink for direction on this matter... if we have to suspend without date for vacations for HRP?

Also Heather Ross no longer works for DCS but she is in the process of being located.

I have been waiting a long time to get this matter gone with so many barriers I'm still here and want it gone but reality and legally and logistically I cannot proceed without my witnesses for confirmation and collaboration of my facts..

If it were in the tenancy level we would have time on Appeal but we are at the Appeal level...given the seriousness and grave nature of these issues it is important that we do hearings properly not half assed (Covid has limited my vocabulary).

GM