

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

**Citation: *Asselstine v. Chase*, 2023 NSSM 30**

ON APPEAL FROM AN ORDER OF THE DIRECTOR OF RESIDENTIAL TENANCIES

**Date:** 20230621

**Docket:** No. SCT522481

**Registry:** Truro

**Between:**

Bruce Asselstine

APPELLANT

and

Stephen Robert Chase

RESPONDENT

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

**Heard:** May 30, 2023 (via teleconference)

**Appearance:** Karen Wade, property manager, for the Appellant  
Stephen R. Chase, self-represented

**Matte, Adjudicator,**

1. This is an Appeal of an Order of the Director of Residential Tenancies dated March 23, 2023, dismissing the Appellant's request for vacant possession of the property. This matter was heard at the same time as a closely related appeal in file SCT 522480. The Appellant claims, in both appeals, that the Respondents actions present a safety concern and are causing damages to the Appellant.

2. An open window and a fan. This is all it took to set off a chain of events leading to tenant union, accusations of inappropriate conduct and a court hearing. The Appellant purchased the four unit property in October 2021 with the intention of converting the heating system to individual heat pumps for each of the four units. Despite the gain in air conditioning and efficiency, the tenants oppose the change as heating costs will no longer be included in the rent paid.
3. In and around January 2023 the property manager noticed that there was a fan in an open window. Given the cold weather, the manager approached the tenant for an explanation. The tenant advised that she had always put a fan in the window as it helps her with medical conditions. During the hearing, she testified that she has always used a fan and has been a tenant in the building for 16 years. After the Appellant sent the tenants a letter reminding them of rules for the property and citing a rule relating to landlord expenses as reason for closing windows, the window remained open prompting the Appellant to contact the police.
4. The police conducted a wellness check and left without requiring the window to be closed.
5. The Respondent began a series of gestures including initiating a “tenants union” among the four building occupants, all of whom testified. The Respondent also left his window open on a few occasions in February 2023.
6. As part of the other two tenants’ testimony, each when asked by the Respondent, alluded to feeling uncomfortable with the Appellant’s action while in the units taking pictures of the units. The questions and replies appeared to be thinly veiled attempts at casting a negative light on the Appellant and his motives for taking pictures. Based on the evidence, such allusions seemed to be without any merit. The Appellant was attending to the units with notice and for

reasonable purpose. In the end issues identified by the Appellant with the other tenants were addressed including blocking of exits with clutter.

## **Findings**

7. Having a fan in a window is not cause for termination of a lease. In this instance, the tenant in related appeal SCT 522480, has lived in the building for 16 years and has a medical condition that is eased with the use of a fan at night. Despite the concerns raised by the Respondent, in all of those years there is no evidence that pipes have frozen because of the fan being used in the winter. The tenant testified that she turned down her thermostat at night. Absent actions that are reckless, the tenant has a right to have a fan, particularly for medical reasons. Such a right is protected by law should those medical requirements rise to the level of a disability. The fact that the Appellant pays for heat has no bearing on the rights of the tenants.

8. With respect to the actions of the Respondent, leaving his window open was likely an act of solidarity with the other tenant. The Court finds that given the few instances noted in the evidence, the acts may have constituted a nuisance but do not rise to the level of grounding a finding of vacant possession. Without pronouncing itself on what might constitute grounds, any willful attempts to damage the Appellant's property would certainly attract the attention of anyone hearing the matter.

9. More concerning to this Court are the Respondent and other tenants' attempts to interfere with the landlord's right to upgrade the heating system to provide year round efficient heating and cooling to the tenants. Further, the tenant's allusion to inappropriate pictures being taken during routine landlord visits are an obvious attempt to discredit the Appellant. Such actions could conceivably ground an application for eviction.

10. Given the climate created by the Appellant in insisting on a fan being removed where such a demand was unreasonable, the actions of the Defendant appeared to be a misguided attempt at protecting his neighbour from eviction.

11. The Court finds that those actions do not ground a demand for vacant possession, at this time.

**Order**

12. The Appeal is dismissed, and the Order of the Director dated March 23, 2023, is affirmed

**Julien S. Matte, Adjudicator**