

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: 4375421 Nova Scotia Ltd. v. Wilson, 2023 NSSM 62

Date: 20230518

Docket: 522509

Registry: Halifax

Between:

4375421 Nova Scotia Ltd.

Appellant

- and -

Gertrude Wilson

Respondent

DECISION

Adjudicator Michael J. O'Hara

Hearing Date: May 11, 2023

Appearances: Ian Armour, President for the Appellant/Landlord
Katie Brousseau, Community Legal Worker for the
Respondent/Tenant

By the Court:

[1] This is an appeal of an Order of the Director of Residential Tenancies dated March 20, 2023. Another appeal – SCCH 522510 – was heard at the same time. The evidence from the Landlord was essentially identical as between the two matters.

[2] In both cases there was no evidence from the Tenants.

[3] The matters dealt with applications filed by the Landlord seeking vacant possession on the basis of renovations, a so-called “renoviction” case.

[4] The relevant sections of the Nova Scotia *Residential Tenancies Act*, RSNS 1989, c. 401, are Sections 10AB, 10AC, and 10AD. I set them out in full.

Early termination for demolition, repairs or renovations

10AB(1) Where the landlord and tenant mutually agree to terminate a tenancy for the purpose of demolition or making repairs or renovations to the residential premises, the agreement must be in writing and in the form required by the Director.

(2) Where the landlord and tenant do not mutually agree to terminate a tenancy under subsection (1), the landlord may make an application to the Director for an order under Section 17A directing the landlord to be given vacant possession of the residential premises on the date specified in the order, but not less than three months and not greater than twelve months from the date of the order.

(3) In an application under subsection (2), the landlord shall satisfy the Director that the landlord has all the necessary permits and approvals required by law and that the landlord in good faith requires possession of the residential premises for the purpose of

- (a) demolition of the residential premises; or
- (b) making repairs or renovations so extensive as to require a building permit and vacant possession of the residential premises.

(4) When making a decision on an application under subsection (2), the Director shall consider any vacant possession guidelines prescribed by regulation.

(5) A tenant whose tenancy is terminated by mutual agreement or by an order of the Director under this Section may, at any time before the date specified in the agreement or order, terminate the tenancy effective on a date earlier than the date specified in the agreement or order but at least ten days after the tenant gives notice to the landlord to terminate the tenancy.

(6) For greater certainty, a landlord shall not terminate a tenancy for the purpose of demolition or making repairs or renovations to the residential premises except by mutual agreement or by an order of the Director under this Section.

Compensation

10AC (1) In this Section, "residential complex" means a building in which one or more residential premises are located.

(2) A tenant whose tenancy is terminated by mutual agreement or by order of the Director under Section 10AB is entitled to compensation equal to the rent payable for

(a) the last three months, if the residential complex contains more than four residential premises; or

(b) the last month, if the residential complex contains four or fewer residential premises.

(3) Where a tenant continues to reside in the residential premises until the date specified in the agreement or order, the tenant is not required to pay rent to the landlord for the applicable compensation period set out in subsection (2).

(4) Where a tenant exercises the right to terminate a tenancy early under subsection 10AB(5), the landlord shall pay the tenant, on or before the effective date of the termination, any remaining compensation owing pursuant to subsection (2).

(5) Where the landlord provides other residential premises that are acceptable to the tenant, and the tenant agrees to enter into a lease with the same benefits and obligations as the current lease for those other residential premises, the tenant is not entitled to the compensation set out in subsection (2).

Order by Director

10AD Where a landlord fails to comply with the requirements of Section 10AB or 10AC, on application by the tenant under Section 13, the Director may make an order requiring the landlord to pay to the tenant the compensation required under subsection 10AC(2) and any one or more of the following:

(a) reasonable moving expenses incurred by the tenant, up to such maximum amount as may be prescribed by regulation;

(b) reasonable additional expenses incurred by the tenant, up to a maximum amount that is equal to one month's rent payable under the lease; and

(c) all or a portion of the amount of increased rent that the tenants was obliged to pay under the tenant’s new lease for up to twelve months.

[5] Of most significance to the matter here is subsection 10AB(3) which contains the requirements which must be satisfied by a landlord to be issued an order allowing vacant possession. As I view this provision, in respect of a renovation (which is what is at issue here), the landlord must satisfy the court of four elements¹, as follows:

1. the landlord has all the necessary permits and approvals required by law for the intended renovation;
2. the landlord in good faith requires possession of the residential premises for the purpose of making renovations:
3. the renovations are so extensive as to require a building permit; and
4. the renovations are so extensive as to require vacant possession of the residential premises.

[6] All four of these must be proven by the landlord.

[7] Here, the intended scope of work is described under the heading, “Description of Work” in the building permit dated January 31, 2023, as follows:

Description of Work

The units that will be renovated are units 2, 3, 5, 7, 8

Bare stud demolition of units 2, 3, 5, 7, 8

Re-wiring electrical in units 2, 3, 5, 7, and 8

Switching off all hot water heating to electrical, oil heating to baseboard electric, install heat pumps in each unit. Install brand new electrical panels for each unit.

All new plumbing as per code

All new insulation as per code

All new drywall fire rated to code one hour fire separately provided

¹ To date, there have been no vacant possession guidelines prescribed under subsection 10AB(4).

Water will be shut down to units for the duration of construction.

[8] Based on the evidence here, I find that the Landlord has satisfied requirements 2, 3, and 4 as I have described them.

[9] Clearly, a building permit was required as one was issued.

[10] Vacant possession would, in light of the scope of this work, which clearly was major and it would be wholly unreasonable and impracticable to imagine someone continuing to live in such a construction zone.

[11] None of this was contested by the Tenant's representative.

[12] The Landlord appears to be acting in good faith. I note that three of the eight units in the building in question have already been updated. There is nothing here that would indicate lack of good faith.

[13] That leaves the first requirement – that the landlord has “all necessary permits and approvals required by law”.

[14] It was pointed out in evidence and acknowledged by the Landlord that an electrical permit would be required for the intended scope of work. Such a requirement clearly falls within the language of Subsection 10AB(3) – “all the necessary permits and approvals required by law”.

[15] When asked about why an electrical permit has not been secured, the Landlord's witnesses indicated that they needed to name the specific electricians who would be doing the work and, as I understood it, that was impractical to do at this stage.

[16] Also, it was stated that at this stage the Landlord did not yet know whether the application would be approved by the Court.

[17] Finally, it was indicated that there is a deposit required for an electrical permit. The amount was not indicated.

[18] These may or may not be legitimate reasons for some purposes but in respect of subsection 10AB(3) would appear to be irrelevant. The legislation makes no exceptions but simply states in plain language that the landlord shall satisfy the Director/Court that it has all the necessary permits and approvals required by law.

[19] The Landlord has not satisfied that requirement. Therefore the application must fail.

[20] I am supported in this conclusion by the following passages from the British Columbia Supreme Court case of *Beumann v. Aarti Investments Limited*, 2018 BCSC 636, where a nearly identical provision was considered and the Court states:

[42] Finally, I agree with Ms. Baumann that the Arbitrator erred in issuing the Eviction Notice despite Aarti not having all the necessary permits for the proposed work to be carried out. As noted, s. 49(6) of the *Act* allows a landlord to end a tenancy for renovations or repairs only if "...the landlord has all the necessary permits and approvals required by law [Emphasis added]". There are no exceptions in the *Act*. Characterizing the additional permit as an amendment or an update does not save the matter.

[43] It is not disputed that Aarti's electrician admitted that the electrical permit did not cover all the proposed work, The Arbitrator acknowledged this deficiency with permits, yet failed to apply s. 49(6). Even though insufficient evidence does not establish patent unreasonableness, I find that there was no evidence from which it could be inferred that "all the necessary permits" were acquired. The requirement for "all" the necessary permits is not satisfied by obtaining "some" of the necessary permits.

[Emphasis added]

[21] Based on the preceding the appeal must be dismissed and the result of the Director of Residential Tenancies confirmed, although for somewhat different reasons.

Order

[22] The appeal herein is hereby dismissed and the Order of the Director of Residential Tenancies of March 20, 2023, is hereby confirmed.

Michael J. O'Hara, Small Claims Court Adjudicator