SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Simmons v Burglund*, 2024 NSSM 33

Date: 20240515
Docket: 532598
Registry: Halifax

Between:

Carlo Simmons & Loretta Simmons

Appellants

-and-

Kristen Burglund & Jyelee Simmonds

Respondents

Adjudicator:	Darrel Pink
Heard:	May 13, 2024, in Halifax, Nova Scotia
Decision:	May 15, 2024
Counsel:	Both parties were self-represented

By the Court:

[1] Not all disputes between Landlords and tenants are rancorous. This matter is marked by respect and courtesy between the parties. The Appellants and Respondents have bona fide bases for their positions. The Residential Tenancies Act supports both perspectives. Yet after all the factors are considered, only one party can succeed.

[2] The Appellants have applied under s. 10(8)(f)(i) of the Act for an Order allowing possession of the Respondents' rental unit as they purport 'to require the premises for the purpose of residence by…a member of his family', namely their 27- year old daughter. The Director of Residential Tenancies dismissed the Application. This decision deals with the appeal of that decision.

The Facts

[3] The Appellants own two rental properties. One is listed for sale. The second, the subject of this hearing, is at 8 Owen Drive in Dartmouth. The Appellants purchased that property, consisting of two duplexes, from Mr. Simmons' father. Each two-storey unit has three bedrooms.

[4] The rent of $900/month for 8A Owen Drive is extremely reasonable. The Simmons, who have strong community connections and roots, believe in the

importance of making housing affordable and available. The evidence suggests they have done so at significant personal expense. The property they are selling no longer supports itself financially and thus they are extracting their capital.

[5] The Appellants always intended the duplexes would be sold to their two daughters when they became adults. As the older generation assisted the Appellants in building their assets, the Appellants have, for many years, intended to do the same for the next generation.

[6] They intend to have their older daughter, Kyla, move into 8A Owen Drive, the unit occupied by the Respondents.

[7] Kyla Simmons testified. She has grown up believing the house on Owen Drive would eventually be sold to her by her parents. She spoke of the inter-generational connection to the property from her grandfather to her father to her.

[8] Ms. Simmons is a Registered Nurse at the IWK Hospital. She works twelve-hour shifts and commutes to work from her parents' home in North Preston. She spoke of the length of the commute and noted if she was living at Owen Drive, she would have about twenty minutes less driving time. In the winter that is significant as the Appellants' home is rural. Winter driving conditions make a difference.

[9] She is engaged to be married in late August 2024. She and her partner intend to start a family.

[10] Ms. Simmons did not discuss whether she has any alternative plans for her husband and her if they cannot live in the duplex.

[11] The Appellants' second daughter is a student at the Atlantic Veterinary College in Charlottetown, PEI. She regularly returns to the Halifax area on weekends and school breaks. She intends to move into 8A Owen Drive with her sister and future brother-in-law.

[12] Once established in her profession, the family intends that she will purchase the unit at 8B Owen Drive.

[13] The unit at 8B Owen Drive has had several tenants in recent years. No tenancy has lasted longer than a few years.

[14] Though the plans of the Appellants relating to future ownership by their daughters are clear, there was no evidence on why an interim arrangement cannot be made that has them living in 8B until 8A becomes available.

[15] The Respondents have rented 8A Owen Drive since June 2011. They have maintained the property with ongoing repairs, decorating, lawn care and small renovations. Their relationship with the Appellants has been excellent. It is clear

both parties understand their obligations and rights as landlords and tenants and that has led to a positive and respectful rapport between them.

[16] The Respondents have four children, two older boys and two young daughters. Their oldest son is graduating from high school with plans to go to university in the Halifax area. The second is in high school. Both boys are heavily involved with sports. Their older daughter is three and a half years old. She attends daycare about ten minutes away from their home. They recently adopted a three-month-old baby girl.

[17] With the adoption, Ms. Burglund, who has been studying Social Work at Dalhousie University and working full time, will take an adoption /maternity leave for up to twelve months. She intends to return to study and work at the end of her leave and have the baby enrolled in the same daycare as her sister.

[18] Schooling and daycare are a part of the Respondents' strong connection to their community and neighbourhood.

[19] Early in 2024, the Appellants advised the Respondents of their intentions to have their daughter move into 8A Own Drive. Initially they asked for vacant possession in June and then changed that date to September. 2024, to accommodate the Respondents.

[20] The Respondents understood the Appellants' intentions and looked for alternate housing. The Respondent, Kristen Burglund, testified she was willing to relocate; however, her search for an alternate affordable rental has been unsuccessful. Because she has begun a leave with an infant at home, her income is reduced. She did not indicate what is affordable for her family but acknowledges the current rent is very reasonable.

[21] Ms. Burglund states if she must leave Owen Drive right away, her family will be homeless, as they cannot find an available apartment or house, they can afford and that meets their requirements. There was no evidence of whether there could be interim accommodations through family or others.

[22] There was no agreement between the parties on a date for vacant possession. The Respondents, given their change in circumstances, do not wish to vacate their home. The Appellants thus made an application under s. 10(8)(f)(i). Their application was denied by the Director of Residential Tenancies.

The Framework for Analysis

[23] Section l0(8)(f)(i) of the Act provides that a landlord may give a tenant notice to quit where:

- (f) the Director is satisfied that it is appropriate to make an order under Section 17A directing the landlord to be given possession at a time specified in the order, but not more than twelve months from the date of the order, where

- (i) the landlord in good faith requires possession of the residential premises for the purpose of residence by himself or a member of his family;

[24] In Hassan v Kirby, 2023 NSSM 76 I discussed at length this provision and how it should be applied. The section lets the Director abrogate a tenant's security of tenancy. That is not a power to be taken lightly, as security for tenants is an important element of their rights.

[25] In *Hassan* I noted:

> [75] The severance of a long-term tenancy is not something that the Director should do lightly. Built into the Act is the concept of security of tenancy.
>
> …
>
> [77] The *Act* has evolved over the last number of years, to increase security of tenure and to ensure landlords have sufficient grounds to seek vacant possession. The most recent examples include significant amendments to "renoviction" clauses and the introduction of the Interim Residential Rental Increase Cap Act 2021, c. 22. Interpretation of the Act must consider this context.
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> [78] Prior.to November 14, 2012, the *Act* did not provide security of tenancy. It permitted a landlord to terminate a tenancy with sufficient notice (in the case of a periodic, year-to-year lease, three months' notice sufficed).

> [79] Bill 119 amended the *Act* to safeguard security of tenancy for periodic tenants, absent specific exceptions as set out in section 10 of the Act.
>
> [80] Tenants with a periodic lease now have security of tenancy, providing them with stable and secure housing. Landlords can no longer evict at will, based simply on notice. These have also evolved over the years.
>
> [81] The *Act* sets obligations and limitations on the circumstances in which landlords can provide tenants with a notice to quit, to sever the security of tenancy. These **limitations are intended to balance the rights and interests of landlords with rights and interests of tenants**. They demonstrate that terminating security of tenancy is to be considered an exception.

[26] The Director should consider the respective rights of landlords and tenants in determining whether an order is 'appropriate'. In addressing the appropriateness of an Order, the Director must balance many competing factors, including:

- Security of tenancy and the length of the tenancy. Though security is not directly tied to longevity, the longer the tenancy, the more reluctant the Director should be to end it under s. 10(8)(f),

- The availability of alternate accommodations for the tenant,

- The nature of the rental accommodations (# of bedrooms, what is included in the rent, etc.) and the circumstances of the parties, such as the number of occupants in the rental unit, the number who intend to occupy it if an Order is granted,

- The value of the location/community to the parties as shown by their connections to the area,

- The nature of the housing/rental market as it is publicly known or as is clear from materials presented at a hearing.

- Owners' rights to use property as they choose, so long as it is legal and subject to any overriding interests.

[27] This is not an exhaustive list. It suggests the Director must consider a range of known factors when determining whether an order is appropriate and not be limited to the 'good faith' requirement of para. (i).

[28] The section adds a further consideration as it states that the effective date of possession can be made 'not more than twelve months from the date of the order'. This gives the Director the ability to manage, to some extent, the implications of dispossession of a tenant. The factors I have noted above also apply in determining when the order should take effect.

[29] In *Hassan* I noted at para. 90:

> I find it helpful to bring 'the requirement of justice' and the need to act 'honestly and reasonably and not capriciously or arbitrarily' into the analysis of 'good faith' in the *Act*. This allows the Director and this Court to look at a variety of factors in evaluating a landlord's motives, behavior and conduct as well as the consequences of a decision. By adding the

> 'justice' component to the analysis, the impact on the tenant is brought into the equation, as the Supreme Court did when evaluating the termination of a commercial contract. It is noted this is what Adjudicator Slone did implicitly in his recent decision *Shahisavandi v. Ballantyne*, 2023 NSSM 22[7].

[30] In *Hassan* the 'requirement of justice' was applied to the 'good faith' requirement, based on the jurisprudence cited. Though it might be appealing to include a broad consideration of fairness or justice when determining appropriateness, I am reluctant to do so as it would broaden the basis for the Director's discretion to factors that are not as readily ascertained as those I have noted above. For that reason, in the analysis that follows, I include nothing relating to the requirement of justice.

Findings

[31] The evidence is clear that the plan to convey property to the Appellants' daughters is deeply ingrained in this family's values. As happened with the previous generation it is intended to happen here. The Appellants and their daughter spoke of this, and their evidence is beyond reproach. There is no doubt the intention to have the residential premises for use by a family member is put forward in good faith.

[32] The issue for this Court to determine is whether it is ‘appropriate’ to make an Order here giving the Appellants possession of the residential premises at 8A Owen Drive.

[33] Looking at the factors, noted above:

- Security of tenancy and the length of the tenancy.
    - The Respondents are long-term tenants. They have security of tenancy. Over thirteen years they have had a single home. Their sons have grown up on Owen Drive. It is the only home their three and a half year old daughter has known. Their length of residence weighs heavily in favour of not ending the tenancy.
- The availability of alternate accommodations for the tenant.
    - It is well known there is a housing crisis in the Halifax area involving a shortage of affordable housing. The Respondents have tried to find alternate accommodations within their budget. They have been unsuccessful. Ms. Burglund ‘s change of circumstances with the commencement of an adoption/maternity leave and a new baby have caused her to stop looking as she devotes her attention to a new baby in her home. A forced immediate dislocation may have dire consequences. This factor weighs in favour of not ending the tenancy.
    - Ms. Simmons, the person who plans to move into Owen Drive has a good reason for wanting to start her married life in a home that she will own. Though it is not clear where, as a married couple, Ms. Simmons and her husband will live, if Owen Drive is not available, I conclude that would be an inconvenience for them, but it would not likely have consequences beyond that. I consider this to be a neutral factor.

- The nature of the rental accommodations (# of bedrooms, what is included in the rent, etc.) and the circumstances of the parties, such as the number of occupants in the rental unit, the number who intend to occupy it if an Order is granted.

    - The Respondents have a family of six in a three bedroom apartment. The teenaged boys have always and continue to share a bedroom. The older daughter has her own room where she will eventually be joined by her new sister. The current arrangement seems appropriate.

    - If Ms. Simmonds moves to the duplex with her husband and her sister living there on weekends and holidays, there will be some excess space. It is not for this Court to determine optimal living arrangements, but having a three-bedroom property occupied by a family of six is making greater use of the space than would occur if a couple and a regular visitor occupied it. This factor weighs in favour of not ending the tenancy.

- The value of the location/community to the parties as evidenced by their connections to the area.

    - This factor recognizes that accommodations are more than a place to live. Residents establish roots and connections to the community, shown by the daycares and schools children attend, where they play sports and where their friends are. Childcare spaces, like rental accommodations, are not plentiful. The fact the Respondents have childcare that is relatively close and local schools is significant and something to consider when determining if a tenancy is to be ended under s. 10(8)(f) of the Act. The nature of these Respondents' connections favour not ending the tenancy.

    - Ms. Simmons and the Appellants did not speak to any community connections they have in this area. The fact the property has been in the family for many years would suggest they have them, but there is nothing presented to elaborate on that.

- The nature of the housing/rental market as it is publicly known or as is clear from materials presented at a hearing.

    - This Court hears regularly about the housing crisis in HRM. Homelessness has become a sad reality of our urban situation. Tent encampments have proliferated. The Respondents' efforts to find accommodation have not yet been successful. Terminating a tenancy when a family may have no safe place to move is something this Court will try to avoid.

- Owners' rights to use property as they choose, so long as it is legal and subject to any overriding interests.

    - The Appellants should have the option to use their land and property as they see fit, subject only to any legal constraints upon their rights. The Appellants' intention to transfer property to their daughters as part of a long-term plan should not be thwarted unless there is a strong public interest to do so. The Act allows landlords to convert rental properties to personal use, subject to the public interest factors discussed here,

Conclusion

[34] When weighing all the factors I conclude it is not appropriate to order that the Appellants have possession of the unit at 8A Owen Drive. Though the Appellants have made the application in good faith, when the consequences of an order on the Respondents are considered, the equities are in favour of maintaining the status quo and not disrupting the Respondents' living arrangements.

[35] I conclude it is not appropriate, for the reasons I have listed, to allow the Appellants to have use of their property at 8A Owen Drive for the use of their daughter.

[36] The appeal is dismissed, and the Order of the Director is confirmed.

[37] As noted at the outset of this decision, only one party can succeed. The Appellants appear to be exemplary landlords who have treated the Respondents courteously and respectfully. The Court's hope is that will continue even with the outcome of this matter, It is also the Court's hope that the Respondents, knowing of the desire and plans of the Simmons family, will continue their efforts to find accommodations that can work for them as a family. They now have time to do so and with Ms. Burglund being at home there may be greater opportunities to seek and find a place that will meet their requirements.

Darrel Pink, Small Claims Court Adjudicator