

**SMALL CLAIMS COURT OF NOVA SCOTIA**  
**ON APPEAL FROM AN ORDER OF THE DIRECTOR OF RESIDENTIAL**  
**TENANCIES**

**Citation:** *Sehh v Universal Realty Group*, 2023 NSSM 105

**Date:** 20230324  
**Docket:** 531186  
**Registry:** Halifax

Nourah Awad Al Sehh and Medyan Khaled Al Mohamad

Appellants/Tenants

v.

Universal Realty Group

Respondent/Landlord

*Editorial Note: The electronic version of this decision has been edited for format as well as grammar, punctuation and like errors. Addresses have been removed.*

**Adjudicator:** Sarah L. Greenwood

**Heard:** via Zoom conference in Halifax, Nova Scotia on March 10, 2023

**Decision:** March 24, 2023

**Appearances:** Tanya Jones, for the Appellant  
Respondent, self-represented

**By the Court:**

[1] This is an appeal by the Tenants from an Order of the Director of Residential Tenancies dated January 25, 2023 ordering termination of the tenancy and vacant possession on the grounds of breach of statutory conditions 3 and 4 listed in subsection 9 (1) of the *Residential Tenancies Act*, R.S., c. 401, s. 1 (“the Act”).

[2] In this decision the Appellants are collectively referred to as “the Tenants” and the Respondent is referred to as “the Landlord”.

[3] Ms. Aurora Voicu, a residential building manager for Universal Realty Group, represented the Landlord and testified as its only witness.

[4] During the hearing, Mr. Issam Khoury provided interpreter services for the Tenant and her husband who moved to Canada from Syria a number of years ago as refugees.

[5] There appears to have been a mistake in the manner the Tenants names were written in the court file which has been corrected in the style of cause in this decision.

**Law**

[6] Section 9 of the *Act* states:

9 (1) Notwithstanding any lease, agreement, waiver, declaration or other statement to the contrary, where the relation of landlord and tenant exists in respect of residential premises by virtue of this Act or otherwise, there is and is deemed to be an agreement between the landlord and tenant that the following conditions will apply as between the landlord and tenant as statutory conditions governing the residential premises:

#### 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.

....

3. Good Behaviour - A landlord or tenant shall conduct himself in such a manner as not to interfere with the possession or occupancy of the tenant or of the landlord and the other tenants, respectively.

4. Obligation of the Tenant - The tenant is responsible for the ordinary cleanliness of the interior of the premises and for the repair of damage caused by wilful or negligent act of the tenant or of any person whom the tenant permits on the premises.

### **Factual Background**

[7] The Tenants entered into the Lease with the Landlord for the 2 bedroom apartment in the Building on March 1, 2016 and have lived in the same apartment with their children since then. They now have six children aged five to sixteen years old.

[8] Ms. Voicu has worked for Universal Realty Group since 2007 and in the position of building manager since 2021. She is responsible for other buildings owned by Universal Realty Group and is present at the Building the Tenants live in part-time.

[9] Following an inspection of the Tenants' apartment and a confrontation with the Tenant's husband and teenage son (referred to herein as "the Incident"), Ms. Voicu filed an application with the Director seeking termination of the lease, vacant possession for breach of Good Behavior and Uncleanliness.

[10] The Tenants filed a counterclaim stating that they had been there since 2016, the Landlord does not complete their work and has not resolved ongoing maintenance issues. The Tenants did not attend the residential tenancies hearing, but filed an appeal with this court and retained their counsel through Legal Aid prior to this hearing.

[11] The Landlord primarily relied on the incident involving Mr. Al Mohamad and the Tenants' son, along with uncleanliness to support its right to vacant possession. The Landlord also submitted a series of letters issued to the Tenants regarding various issues dating back to 2016. In addition, the Landlord also brought up another incident involving the Tenants' son and a package delivered to another tenant in the building. As an overarching point the Landlord repeatedly emphasized that the Tenants' family was too large for a two bedroom apartment. The Landlord did not produce the lease with any rule about family size, and in any case such rule would be subject to assessment for reasonableness. The Tenants

had five children when they moved in and the fact that they had another child since then is not grounds for eviction.

### **Past Letters**

[12] Ms. Voicu was not involved and cannot give evidence to the circumstances giving rise to the letters or alleged violations cited in some of them. The letters address various issues over the seven year tenancy. Most of the letters concern minor issues such as using prohibited exits, improperly sorting or tying off garbage bags, or concerning the behavior of children in the building. There was a notice alleging violation of lease due to uncleanliness, but this was in 2018. The Landlord did not apply to the Director following any of the past letters.

[13] The Tenant, Ms. Al Sehh testified about the letters, and was forthright in acknowledging fault and/or explaining the context. Her testimony was that she addressed and/or corrected her children in response to the notices. The fact that the Landlord did not pursue application with the Director to enforce the Lease in relation to these past issues supports the conclusion that the Tenants addressed the issues to the satisfaction of the Landlord when brought to their attention.

Accordingly, I do not find the past letters establish a pattern of misconduct or otherwise support the Landlord's case for vacant possession.

## **Uncleanliness**

[14] A letter dated November 24, 2022, signed by another building staff member, Tammy Holland, stated that a staff member had visited the unit and had informed her that it was not being maintained in a satisfactory state. The letter stated that there was garbage, left out food, and all surfaces, floors and walls were dirty and cluttered. The letter instructed the Tenant to clean the unit by November 29, 2022, following which the unit would be re-inspected for compliance.

[15] Ms. Voicu inspected the unit on November 30 and testified that it was in poor shape and not up to standards. The Landlord submitted photos taken during Ms. Voicu's inspection. Some of the photos are blurry, but they show dirty damaged carpets, a cluttered kitchen countertop, kitchen cabinets without doors, damaged bathroom tiles, a cluttered messy desk, and a few items strewn about on the floors, in what I assume is a bedroom and living room.

[16] Ms. Al Sehh was home during the inspection and Ms. Voicu testified that she told her that she was going to proceed with eviction for uncleanliness. Ms. Voicu stated that she believed Ms. Al Sehh's English was good enough to understand her.

[17] What I understood from the Tenants' evidence with respect to these inspections is that they had been complaining to a building maintenance manager

named Mohammed about maintenance issues. Before the first letter, they had been talking to him about the old worn out carpets, which they believed was contributing to the pest issues. Ms. Al Sehh testified that she thought Mohammed was coming into the unit to measure the floors but when he was there he told them the apartment was not clean and that they should clean it. She also testified that she thought Mohammed's comments were about the items piled on the balcony and piled into closets, which she had filled in an effort to clear space for the carpet removal.

[18] I have concluded from Ms. Al Sehh's testimony that it was Mohammed's visit that provoked and informed the contents of the November 24, 2022 warning letter. Ms. Voicu testified that the only maintenance complaints she was aware of were in relation to cockroaches. This indicates that Mohammed had not been passing on the Tenants' concerns to Ms. Voicu or otherwise documenting them. It is unfortunate that the Landlord did not bring Mohammed to give evidence at the hearing, because it appears he played a central role in the issues and events giving rise to the Incident. I have accepted the evidence of the Tenants that they had been communicating their maintenance concerns to Mohammed and that based on their conversations with him, they believed that their carpet was going to be replaced. I have also concluded that this belief influenced the state of the apartment during both inspections.

[19] Ms. Al Sehh said she did not immediately understand the November 24th letter. After she realized it was about cleanliness she tried to throw out extra items and clean out closets before the inspection. The Tenant testified that she thought the representatives of the Landlord were aware that the floors and walls of the apartment were old and worn out, because she had brought it up to Mohammed. I took this to mean that because the Tenant thought these maintenance issues were being addressed it influenced her understanding of the letter and how she prepared for Ms. Voicu's inspection.

### **The Incident**

[20] Ms. Voicu testified that on December 5, Mr. Al Mohamad came to the building office to inquire about the inspection, but they could not communicate because of the language barrier. He then left and returned with the oldest son to translate. Ms. Voicu testified that she tried to explain to them that the unit was unclean and damaged, after which Mr. Al Mohamad became verbally aggressive. Ms. Voicu said she then told the son to translate that she was proceeding on eviction at which point the son started swearing. Ms. Voicu testified that she then asked him to leave and the son said "I leave when I want and I will do what I want to do" and swore at her. Ms. Voicu testified that she said she would call the police, which the son responded to by saying "do whatever you want, the police know me



very well". Ms. Voicu said she then called the police and walked out into the lobby to wait for them to arrive. The police did not arrest the Tenant but upon Ms. Voicu's request told the Tenant's husband to only communicate in writing.

[21] Ms. Voicu testified that after the police left the Tenants' sixteen year old son started playing loud music on the balcony and when she walked by outside he gestured to her in an aggressive manner.

[22] Mr. Al Mohamad also testified regarding the incident. Ms. Voicu's testimony did not conflict with his testimony. Rather, Mr. Al Mohamad's testimony provides additional context from his perspective. Mr. Al Mohamad said that he was already in the office talking to Mohamad about the inspections when Ms. Voicu came in and was frustrated and confused as to why the maintenance they had requested was not being done. He testified that he was sitting down as Mohamad instructed him to do when Ms. Voicu entered the office and told him to leave. He said that he did not know who Ms. Voicu was or that she was the manager. I understood this to mean he initially perceived her as someone intruding on the conversation. Mr. Al Mohamad testified that he would have shown her appropriate respect if he was aware that she was a figure of authority, as that was emphasized in the orientation training he received upon moving to Canada.

[23] Mr. Al Mohamad also testified with respect to his frustration and confusion regarding the maintenance issues, which provided context to his confused and emotional state on the day of the Incident.

### **The Package**

[24] The Landlord also brought up an incident involving another tenant's package and one of the Tenant's children. The tenant involved was not present at the hearing but Ms. Al Sehh acknowledged there was an incident but said the issue was resolved to the satisfaction of the other tenant.

### **Maintenance Issues**

[25] Both of the Tenants testified regarding their failed attempts to have maintenance issues addressed in the apartment. In addition, photographs were submitted into evidence showing that the apartment is in a poor state of repair. There is unrepaired plumbing, rusted radiators, visibly old and ripped carpet, unpatched holes in the wall left after plumbing repairs and missing bathroom tiles. There was a flood in the bathroom and no repairs of floors or walls occurred afterwards. In addition, the Tenants testified that they believed the maintenance issues were contributing to the pest problem. Mr. Al Mohamad testified that other tenants in the building had been able to get holes repaired and kitchen replaced.

Both the tenants testified that they were communicating their concerns to Mohamad and believed he had come into the apartment to replace the carpet, not to inspect for cleanliness.

[26] Ms. Voicu testified she was only aware of the cockroach issue despite having inspected the apartment herself on November 30, 2022. She testified that everything will need to be replaced when the Tenants move out. I took this to imply that she was of the position that there was no point in addressing neglected maintenance in the Tenants apartment while they still live there. In general I understood Ms. Voicu to be maintaining the position that the Tenants were solely to blame for the poor conditions in the apartment.

### **Decision and Analysis**

[27] Both the Tenant and the Landlord are in a difficult position. The Tenants testified they are on a waiting list for larger public housing, which would obviously be better for everyone involved. While I have doubts that this decision or my orders will be able to remedy the situation in the longer term, all this Court can do is apply the law to the facts as I have found them, make appropriate orders and provide reasons that may help the parties better understand their obligations going forward.

[28] With respect to the Incident, I have concluded that cultural differences and the effects of communication barriers accumulated over time played a large role, both in precipitating the Incident and in how Ms. Voicu experienced it. As a general observation, during the hearing Mr. Al Mohamad communicated in his own language in an animated and emphatic manner. His manner of communication *initially* seemed to me, as someone born and raised in Canada with the conditioned biases of my own culture, to be quick, emotional, forceful and loud. He also communicated with his body, gesturing and moving around for emphasis. However, I immediately recognized that my initial impression was due to cultural differences and appropriately adjusted them.

[29] It is understandable that Ms. Voicu would, in the heat of the moment, perceive Mr. Al Mohamad's manner of communication to be threatening. However, it is incorrect for her to continue to hold that conclusion after emotions have settled. Pursuant to the *Human Rights Act*, R.S., c. 214, s. 1, we are obligated to second guess and correct these sorts of biased reflexes or assumptions in our public dealings. Ms. Voicu pointed out that English is not her first language either, but refugees come to Canada in very different circumstances, socio-economic backgrounds and preparation than those who move here through standard immigration channels. They also face different barriers to adjusting to Canadian cultural norms. Ms. Voicu is legally obligated to take that into account

in the manner she deals with the Tenants. In addition, Ms. Voicu chose to verbally communicate her intention to evict in that conversation and accordingly should have expected this to provoke emotions. Based on these considerations, and the manner the maintenance employee Mohamad appears to have contributed to the confusion on that day, I have determined that the Incident is not a breach of good behavior sufficient to justify an order for vacant possession.

[30] Notwithstanding these conclusions, bringing his teenage son into the situation to act as interpreter was an obvious error of judgment on the part of Mr. Al Mohamad. The Tenants acknowledged in the hearing that their son has a history of behavioral problems and is currently under house arrest. The son's behavior during the Incident was a breach of good behavior, albeit not sufficient by itself to justify eviction. In order to comply with the statutory conditions and avoid being evicted in the future, the Tenants will have to do more to manage their son's behavior and minimize contact between their son and the other tenants and building staff.

[31] With respect to the Landlord's submissions regarding the general behavior of the children and the incident involving the package, the evidence is not sufficient to justify eviction. If a Landlord is alleging that a Tenant's bad

behaviour is interfering with the rights of other tenants, testimony from other tenants should be submitted to support this claim.

[32] I have concluded that the apartment is in a state unfit for habitation, this is not primarily due to the Tenants' uncleanliness, but more so due to the Landlord's breach of statutory condition #1. The Tenants have been living there for seven years and it appears from the photographic evidence, as well as the testimony of the Tenants, that the Landlord has failed to properly address routine maintenance throughout the tenancy. Replacement of an already old carpet, replacing or reattaching old cupboard doors, repainting the walls, replacing damaged or missing tiles, maintaining functional heating and patching walls after plumbing repairs are all routine maintenance items the Landlord has neglected. The Landlord has not led evidence sufficient to establish that the poor state of maintenance is the fault of the Tenant.

[33] Difficulties in communication, or perhaps negligence of Mohamad or other building maintenance workers, have played a role in the Landlord's failure to properly maintain the apartment. Whatever the reason is, the Landlord is obligated to maintain the unit in a good state of repair, fit for habitation. It may be easier to allow the Tenants to move to another apartment in an appropriate state in the same building, but how the Landlord chooses to comply with this order is their

decision. The Tenants did not apply for rent abatement, and accordingly I have not made any order in that regard, but failure of the Landlord to comply with this order in a timely manner may put them in a position to make such an application to the Director.

[34] As I have concluded that the primary reason the apartment is unfit for habitation is due to maintenance neglect, the evidence is insufficient to support eviction for uncleanliness. For an eviction to be justified on the grounds of uncleanliness, the unit must be made unfit for habitation due to the uncleanliness of the tenant [See: *W.W. v Shelter Nova Scotia*, 2014 NSSM 10]. Notwithstanding this, the Tenant is still in breach of statutory condition #4 because they have failed to maintain “ordinary cleanliness”.

[35] The Tenants need to make more effort to keep their apartment clean and tidy and should expect that going forward the Landlord will be paying closer attention to incidents of damage or excess wear and tear after they have repaired the apartment or moved the Tenants to a new apartment. Cluttered surfaces, leaving food out, objects strewn about the floor, and leaving garbage piled up inside the unit does not meet the standard of ordinary cleanliness.

[36] Diligently attending to routine housekeeping tasks is necessary to maintain ordinary cleanliness, particularly with such a large family in a small apartment. For

example, dishes should be washed, food and dishes put away in cupboards, and countertops cleared and wiped after meals. Toys, clothing, and other personal items should be kept stored in containers, furniture cabinets or on shelving and put away daily. Dirty laundry should be kept contained in baskets and washed regularly to avoid pileup. Floors should be swept daily and Carpets vacuumed regularly and spills cleaned immediately to avoid stains. Floors, sinks, bathtubs and toilets should be scrubbed at least once a week and walls and windows washed periodically. While a single person or small family may need to work less to maintain ordinary cleanliness, with a large family in a small apartment, the Tenants and/or their older children will have to work diligently on a daily basis to comply with their obligations and avoid damage or excess wear and tear of their unit.

[37] I recognize that maintaining ordinary cleanliness is made difficult if not impossible given the size of their family and the apartment, but they have a statutory obligation to do so and this will be expected of them by any Landlord. Moreover, the Tenants have complained about pests, but they need to understand that they have a large role to play in preventing pest issues and adjust their maintenance of cleanliness accordingly. Left out food, garbage in the unit and excess clutter all contribute or cause pest issues. All of this was visible in the photographs submitted into evidence by the Landlord and needs to be corrected going forward in order to comply with their statutory obligations, this Order and to



avoid being evicted from their unit in the future. In addition, especially given the amount of beds in the unit, they should make an effort to understand and follow recommendations regarding bed bugs, such as keeping mattresses off the floor and keeping them wrapped in sealed plastic mattress covers.

[38] As a general comment, the Tenants may be able to better avoid future issues by engaging the assistance of their various advocates in the community to ensure concerns around maintenance are put in writing, being forwarded to Ms. Voicu or appropriate person and that they understand the contents of letters from the Landlord delivered to them.

[39] In addition, it is my hope that the Tenant's legal counsel Ms. Jones will meet with the Tenants and interpreter as soon as possible to ensure they understand the contents of this decision and orders made herein.

## **Conclusion**

[40] The order of the Residential Tenancies Officer for termination and vacant possession is hereby set aside.

[41] In addition I order the following in accordance with section 17A of the *Act*:

[42] The Tenant is ordered to comply with the statutory conditions pursuant to section 9 (1) of the *Act* and to not breach conditions #3 (good behavior) and #4 (uncleanliness) in the future.

[43] The Landlord is ordered to comply with statutory condition #1 pursuant to section 9 (1) of the *Act* and either provide the Tenant with an agreed upon, comparable unit in the Building that is in a good state of repair, fit for habitation or make the following repairs to the Tenant's unit:

1. Repair all malfunctioning plumbing and fixtures in the unit;
2. Repair any holes in the walls;
3. Replace the flooring;
4. Paint the walls and baseboards;
5. Replace the kitchen cabinetry or repair and replace the missing doors;
6. Engage pest control specialist to remediate all pests and insect infestations and clearly communicate their recommendations in writing to the Tenants;
7. Replace or repair and paint the heating units and any exposed piping; and
8. Repair or replace any other item not specifically mentioned herein necessary to comply with statutory condition #1.

Sarah L. Greenwood, Small Claims Court Adjudicator