

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *X Gamoulakos v. GNF Investments Ltd.*, 2024 NSSM 39

ON APPEAL FROM AN ORDER OF THE
DIRECTOR OF RESIDENTIAL TENANCIES

Date: 20240612

Docket: 24-532057

Registry: Halifax

Between:

X Gamoulakos

Appellant/Tenant

v.

GNF Investments Ltd.

Respondent/Landlord

Adjudicator: Dale Darling, KC

Heard: May 28, 2024, and June 5, 2024, in Halifax, Nova
Scotia

Decision: June 12, 2024

Counsel: Nora MacIntosh, for the Appellant/Tenant
The Defendant was self represented

By the Court:

[1] This is an appeal by Ms. X, the Tenant, from the decision of the Director of Residential Tenancies dated March 19, 2024, which granted termination of her tenancy and vacant possession of her rental unit at 56 Walter Havill Drive, Unit 413.

[2] The Officer, in granting the Landlord's application, gave reasons that were extremely cursory, but it seems that she found the Landlord had provided evidence that showed that the unit was uninhabitable due to a pest issue and water damage causing mold, which she must have concluded were the fault of the Tenant.

[3] Ms. X appealed the Director's decision March 25, 2024, stating "termination of tenancy wrongfully accused of neglect. The neglect was from Landlord and ordered to vacate unit by or before April 15, 2024".

[4] The matter came before me for hearing May 28 and June 5, 2024, via Teams video call. Ms. X is an 83-year-old lady whose first language is Greek, and she had an interpreter at the hearing, Athea Milios, to aid her.

[5] Nora MacIntosh was counsel for Ms. X, and Kelsie Wournell, Property Manager for the Respondent Landlord, conducted the Landlord's case.

[6] Ms. X testified, as did her son Leo, her friends Maria Dikiosf and Grace Kennie, and Wayne Meade, a former superintendent at the building from July of 2023 to February of 2023.

[7] The Landlord called three witnesses to testify, Shannon Henley and Stephen Demone, former building superintendents who were superintendents at the building in question for several years (how many was not specified in evidence), and who left in April of 2023. The Landlord also called Mike Quigley, General Manager for the Respondent Landlord.

[8] Both parties submitted exhibit books, which were marked and entered into evidence.

[9] Neither party had witnesses speak specifically to all of these documents and photos, and neither party objected to any of these exhibits, excepting the Landlord's objection to an audio recording of a meeting held November 16, 2023, on the grounds that the Landlord's representative had not consented. I explained that Canadian law requires only that one party to the conversation consent, but Ms. MacIntosh indicated she would not pursue the use of the audio recording further except for the purposes of impeachment, which she did not do. I have therefore

not reviewed the recording and rely instead upon the evidence of witnesses as to what transpired at that meeting.

[10] Pursuant to section 28 of the *Small Claims Court Act*, I have reviewed the other evidence submitted and assessed its weight depending on its relevance and reliability.

Chronology of Events

[11] Ms. X initially lived at 57 Walter Havill Drive with her son Leo in unit 1210, where Mr. Quigley says they were both on the lease.

[12] Ms. X then moved into Unit 413 (hereafter, the “Unit”), November 1, 2017. It was a small bachelor apartment, and Mr. Quigley, who knew her before from his time in banking, says he got her a reduced price of \$1000.00 monthly (now \$1040.00) on a year-to-year lease.

[13] I heard from three of the superintendents who worked at 57 Walter Havill, Ms. Henley and Mr. Demone, and Mr. Meade.

[14] The tenancy appears to have been uneventful until late 2020, when Ms. Gamoulakos’s in-unit washing machine flooded twice, after which she was without a washer for a “few month”.

[15] A cockroach infestation was found in her unit in the fall of 2023.

[16] Ms. X says that approximately six months after the beginning of the COVID lockdown (March of 2020), her in unit washing machine malfunctioned. She described this as a “banging noise” and says significant amounts of water flooded over the floor. She says she told the superintendents, and a part was ordered. The part arrived a few weeks later, was installed, and the flooding occurred again. She was told it was the wrong part. The Landlord then ordered a new machine from The Brick which took months to arrive.

[17] Ms. X says it was “Stephen” the building superintendent she told, and that he came right away. She was told she could use the washing machines near the gym in the building, as the gym was closed due to COVID. She says she did not need a lot of clothes during COVID, and hand washed her clothes until she got a new washer. She was without a washing machine for some months.

[18] She says Stephen helped her mop up the water, and both “Steven and Shannon” looked at the floors, but nothing was done further with respect to the flood.

[19] In the fall of 2023, she was in the living room and heard a “bang”. Her kitchen sink had dropped deeply into the countertop. She told “Wayne” (Mr.

Meade) the superintendent and took pictures which she believes were sent to Mike Quigley, but which Mr. Meade says were sent to Ms. Wournell.

[20] She says nothing was done, and she went down to the office every few days. Water was running out of the drain, and she was getting up several times a night over her concern about the flooding.

[21] She says Mr. Meade told her the floor sink and water damage would be fixed, but she would need to move out while that happened.

[22] At some point in the fall of 2023, Ms. Gamoulako's family and friends became involved with the situation in her unit. Of particular concern was the sink, which she could not use in any way, and which was preventing her from preparing meals.

[23] On November 16, 2023, a meeting was held with Ms. X, her friend Maria Dikiofs, Mr. Meade and his partner Linda Dobson, and Ms. Wournell (who was on the phone).

[24] Ms. Dikaios says that at that meeting, Ms. Wournell said that if Ms. X signed "paperwork" to move out, the sink would be fixed.

[25] After that meeting, and that same day, Ms. Dikaios emailed Ms. Wournell, thanking her for the meeting, and stating “X would like to know when the sink will be repaired as that is the most important for her day-to-day current situation”.

[26] A day later, November 17, 2023, Mr. Meade’s partner Linda sent an email to Kelsey Wournell, the Property Manager. In that email, she says that Ms. X herself and Mr. Meade about the sink on October 17, 2023, and they checked it right away. The email says that the sink had fallen into the counter and that there was “significant leaking”.

[27] On November 17, 2023, the email from Linda of that date says, “Wayne and I entered the unit to make a list, every baseboard will need replaced [sic], drywall will need replaced, door frames have water damage and discoloration.”

[28] The email continues:

Bathroom – all baseboards are swelled and discolored. Bathroom cabinet will need replaced due to water damage.

Kitchen – sink will need replaced. Cupboard under sink damaged due sink falling in and water damage. Wall behind sink has significant black mold. Laminate on cupboards will need replace also as they are all damaged.

Flooring – Coming apart and lifting due to water getting under the floorboards.

[29] On November 21, 2023, the Landlord applied to the Director for termination of the Tenancy and vacant possession “for the purpose of renovations or making repairs, stating” severe mold, water damaged flooring, mold in drywall, as per environmental and pest reports vacant possession is required. Also, the unit is a health hazard until rectified.”

[30] Under “other reasons”, the application states “cockroach infestation was never reported and is out of control. Spread to surrounding units. Hazard to this unit and the overall building.”

[31] Ms. X testified that she thought the “bugs” in her apartment were silverfish. Mr. Wayne Meade testified that he identified a significant cockroach infestation in the Unit on October 17, 2023, and that that time Ms. X told him not to worry, that they were silverfish.

[32] Mr. Meade identified the insects as a significant cockroach infestation. He says that Ms. X was initially concerned about the spray and its potential effects on her health, but after she spoke to Mr. Quigley and an alterative spray was found, the unit was treated November 6th and November 21, 2023. The November 21, 2023, Service Report provided in evidence by the Respondent Landlord stated, “No sanitation concerns noted at time of service”.

[33] There is no evidence of an ongoing infestation in the Unit. There was no evidence before me of spread. The evidence confirms that after the treatments, the cockroach issue was resolved. The superintendents who testified indicated that there were sometimes a few units with cockroaches in the building, but no one attributed this to Ms. Gamoulakos's unit.

[34] Halifax Regional Municipality conducted an inspection of the Unit on December 15, 2023, and a Notice of Violation dated December 15, 2023, issued by Officer Meagan Best is found in the Appellant's evidence. Ms. Best did not testify, but the document records orders to the Landlord to conduct the following repairs:

1. A repair to reinstate the location of the kitchen sink was done with some 2 x 4s and shims which the Inspector concluded did not appear to be an adequate solution to repairing the sink which had been previously falling into the cabinet. She ordered the Landlord to ensure the sink was installed as per the manufacturer's recommendations and requirements.
2. The Report noted that there was "some evidence of water damage on the wall under the kitchen sink, which has resulted in what looks like fungal growth. At the time of inspection, the wall was still damp to the touch." The Inspector ordered the repair of the areas of water damage "so that it meets the above noted section of the M-200 bylaw" [which requires that floors, ceilings and interior surfaces be maintained free of dampness].
3. The Report noted "multiple areas throughout the unit which have water damage, possibly as a result of flooding. In some areas, the

trim has been exposed to so much water that it has expanded to many times its width. There is also evidence of fungal growth under the living room window, possibly from the same cause. The Inspector ordered that the Landlord “ensure all interior surfaces of the unit meet the above noted section of the M200 Bylaw” [which requires that floor, ceilings and interior services be maintained free of dampness].

4. The Inspector noted “there are multiple areas of fungal growth in the unit. You are by ordered to obtain the services of a professional to conduct an air quality test of the unit. All reports and recommendations from the professional and lab shall be sent to the above signed immediately upon receipt, and all recommendations shall be carried out as part of this order”.
5. The inspection noted that “the bathroom sink is not able to drain and ordered the Landlord to “obtain the services of professional to assess and repair the blockage in the sink”.
6. The inspection noted that “the loaded hinges on the unit door leading to the common corridor are not calibrated correctly and are not enabling the door to fully close and latch under its own power. The inspector ordered the Landlord to “make the necessary adjustments to the hinges so that the door is able to fully close and launch under its own power, and so that the occupant can still use the door”.
7. The inspection noted that “the flooring in the kitchen area is lifted and bowed upwards and shows signs of extended exposure to water. The Inspector ordered that the Landlord “repair or replace the flooring which was affected by the exposure to water so that it meets the above noted section of By Law 200 [every floor in a ...kitchen...shall be impervious to water.

[35] The evidence provided by the Landlord includes a “Certificate of Mold

Analysis” prepared by Wilcox Inspections, collected January 3, 2024, and reported

January 4, 2024. The report is technical in nature, and no one testified to its contents, but it found multiple mold growths.

[36] Also in the Respondent Landlord's evidence, there is a text message from "Tony" at Wilcox Inspections. He is answering a text from Ms. Wournell which was not included in evidence. In it, he states "From a pragmatic perspective, I do not recommend any occupant (let alone a senior) remain in the apartment based on the lab report. Obviously, I am not a health practitioner, but I think common sense has to prevail here. It is unsafe for her to be in the apartment based on current mold levels, which will elevate during remediation as spores will be spread around. Even now, I would suggest a reasonable precaution of wearing a mask indoors."

[37] From the evidence provided by the Tenant, it appears that the unit was re-inspected by a different inspector, Mr. Hugh Layton from HRM. There is in evidence an email between himself and Ms. Wournell from February 21, 2024. At that point, the bathroom sink was draining but nothing else had been done.

[38] By the time of hearing before me, Mr. Quigley testified the door had now been repaired.

[39] The evidence submitted by the Landlord includes a bill for \$457.65 from Main Drain plumbing for snaking the kitchen and "repairing pipes". Ms. Xinitially

did not let the plumber into the bathroom, but he returned on another day and snaked the vanity.

[40] Ms. Kennie says that the Landlord sent Ms. X the bill from the plumber.

[41] On February 23, 2023, Mr. Layton wrote to Ms. X and told her that the Landlord was “waiting till the end of the tenancy hearing before doing anything about the mold issues in the apartment”. He explained that he could only suggest they find her other accommodation during repairs, as that was a matter for residential tenancies.

Decision:

[42] This dispute as presented by the parties centres around section 9(1) of the *Residential Tenancies Act*, the Statutory conditions that apply in every lease, and in particular, Statutory Condition 1, which states:

Condition of Premises – The Landlord 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.

Also, Statutory Condition 4, which states:

Obligation of the Tenant- The tenant is responsible for the cleanliness of the interior of the premises and for the repair of damage caused by willful or

negligent act of the tenant or of any person whom the tenant permits on the premises.

[43] The Appellant alleges the Landlord is in breach of Statutory Condition 1, while the Respondent Landlord alleges a breach of Statutory Condition 4, in that the tenant did not tell the Landlord of needed repairs.

[44] Procedurally, I find that the application made by the Landlord in the first instance was in point of fact an attempted “repair-o-viction”, and that the Director should have been considered *Residential Tenancies Act*, section 10AB (2) and (3), instead of the fault-based analysis regarding good behaviour that appears to have taken place.

[45] That section outlines the process to be undertaken when the Landlord and Tenant are unable to come to an agreement for early termination of a tenancy:

- (2) Where the landlord and tenant do not mutually agree to terminate a tenancy under subsection one, 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 12 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.

[46] The HRM report of December 15, 2023, identified water damage primarily to baseboards and floors, normal repair issues such as the unclogging of sinks, and necessary structural repairs, primarily to the kitchen sink which was rendered unusable.

[47] The Landlord also continued to cite a “pest issue” before Residential Tenancies and me, evoking the “good behaviour” issue.

The Cockroaches

[48] In *MS v. SC*, 2022 NSSM 28 (Canlii), at page 5, I considered the circumstances by which the responsibility for pest control (in that case, bedbugs) could shift from the Landlord to the Tenant:

Section 9.1.1 of the Residential Tenancies Act states,

Condition of Premises – The Landlord 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.

The Act, by that section, requires that a Landlord address issues such as vermin, sanitation and safety. I find that that section encompasses a landlord’s requirement to eradicate bedbugs, and the only grounds for seeking compensation from the

tenant would require something more than a usual bedbug infestation, that being, that the tenant knew of a bedbug infestation, and did nothing to address the issue, with the result that the tenant knowingly made the situation worse.

There must therefore be some act or omission sufficient to transfer liability for the expenses that follow from bedbug infestations to the tenant.

[49] It is not blameworthy that Ms. X could not identify a cockroach. She only knew of the issue once she knew what they were. When she was advised that this is what the insects were, she complied with the eradication process. After November 21, 2023, there is no further evidence of an ongoing cockroach infestation. All evidence supports that her unit was kept clean. The issue was resolved, and no evidence has been provided to attribute an ongoing cockroach issue with her tenancy.

[50] I find that the “cockroach issue” did not, and does not, merit termination of the lease with respect to either good behaviour or the need for repairs.

Water Damage and Repairs:

[51] Ms. MacIntosh argues that the Landlord was negligent in its failure to repair the unit. The Landlord through Ms. Wournell argues Ms. X is herself responsible

for the state the unit is in now, which by all the evidence, is uninhabitable and should not be inhabited.

[52] The Landlord alleges that Ms. X has failed to produce any emails or text messages of her communication with the superintendents. However, the evidence from the superintendents in the building makes it clear that she chose to come to the office or telephoned them, and they confirm she did that, and that they were telling Ms. Wournell the property manager. She was not required to communicate in a specific format.

[53] I find that Ms. X has met the requirement of demonstrating that she was communicating.

[54] The Landlord alleges that Ms. X refused entry to her unit to make repairs. The evidence was clear that she did not refuse entry with 24 hours notice, only when notice was not provided. There is nothing wrong in her taking that position, it is her right under the Act to do so. Since required repairs were never carried out, it is in fact largely a moot point.

[55] In terms of reporting by Ms. X, there is no question that she reported both washer floods. The superintendent of the time Mr. Demone confirms this, parts

were ordered and eventually a new machine was required. The superintendents knew there had been a flood. Ms. X had fulfilled her responsibility in telling them.

[56] The fact that everyone who had evidence refers to these events as “floods” gives a sense of the water involved. This is a bachelor unit, a small space. There was constructive knowledge on the Landlord of a water event at that time, but no evidence before me that anyone representing the Landlord this hearing even considered that the washing machine failure had caused a problem, excepting Mr. Meade.

[57] In fact, at the time of the departure of Ms. Henley and Mr. Demone in April of 2023, their evidence is that there were no issues with the unit. At the very least, they say they were doing yearly fire inspections. The unit was available for inspection on those occasions.

[58] The first indication of something really wrong, comes with Mr. Meade examining the unit after the sink fell. The evidence is clear, that at the very least, there were months between Mr. Meade assessing the sink issue and the temporary repair effected in December of 2023.

[59] Mr. Meade’s evidence was that the issues started with this flood. The evidence as a whole supports the conclusion that a sink that no longer had

structural integrity, and by Ms. Gamoulakos's evidence was leaking to the extent she was losing sleep over it, was a major cause of the moisture and associated mold growth in the unit. The evidence is also clear, that the Landlord refused to fix the sink, and instead attempted to compel Ms. X to abandon her lease.

[60] The sink issue was identified in October of 2023. All evidence points to the superintendents and Ms. Wournell being aware of the issue. The mold was identified initially in November by Mr. Meade and his partner, but not investigated or followed up on by the landlord until January of 2024, when the Municipality demanded that tests be performed.

[61] I find that the Landlord has failed in its duty to maintain the unit occupied by Ms. X, in breach of section 9 (1) 1 of the Residential Tenancies Act, which as I quoted earlier, requires:

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.

[62] Mr. Quigley, the General Manager, described himself as his evidence as having known Ms. X for 30 years, and being "appalled" by the state of the unit.

His position was that repairs to the sink could not be accomplished until Ms. X was out of the unit, due to the mold.

[63] With recourse once again to section 10AB, there was no evidence provided as to how long repairs would take to accomplish, although the general theme was that it was the disturbance of the mold that would require Ms. X's absence, not the time required. Prior to the orientation to attempted eviction by the Landlord, Mr. Meade thought he would move her to a unit in the other tower of the building until completion. It did not appear this would take long, and there was no evidence before me of required permits, or time involved.

[64] The tipping point appears to be the meeting held on November 16, 2023. There were suggestions from the Tenant's witnesses attending at that meeting that the Landlord wanted to terminate the lease. I find as an abortive attempt to initiate a section 10AB eviction.

[65] On all the evidence, there is nothing to show that these repairs required eviction. The Landlord had an ongoing duty to repair the unit, which takes us back to the statutory conditions.

[66] From October of 2023 at the latest it was clear to the Landlord that the sink needed to be repaired, and from January of this year it was clear to the Landlord that no one should be living in this unit until it is remediated.

[67] It is now at least six months since that clear indication of potential health issues was provided. The landlord is in violation of their duty to repair under the Act, and I must determine what remedy is appropriate.

[68] Ms. MacIntosh cited a number of authorities to me, which were provided to Ms. Wournell so that she could review them and respond, which she did on June 10, 2024.

[69] Of these decisions, I find *Al Sehh v. Universal Realty Group*, 2024 NSSM 36 to be of assistance in crafting a remedy. In that decision, Adjudicator Greenwood, in ordering compliance with Statutory Condition #1 pursuant to Section 9(1), created a concrete list of requirements for the Landlord in terms of repairs. I propose to treat this case with similar specifics.

[70] My authority in the appeal of the decision of the Director allows me under section 17D (1) to a) confirm, vary or rescind the order of the Director, or b) make any order that the Director could have made.

[71] I hereby rescind the Order of the Director, and order the following:

1. The order for termination of the tenancy and vacant possession, is rescinded forthwith and set aside.
2. The Landlord is ordered to comply with statutory condition #1 by either meeting the conditions of clause a. or b as outlined below:
 - a. They can provide the Tenant with an agreed upon comparable unit in the building that is in a good state of repair and available for immediate occupancy, to which her year-to-year lease at the rate of \$1040.00 per month will be applied: or
 - b. They can make the following repairs to the Tenant's unit:
 - i. Repair of the kitchen sink to manufacturer's standards;
 - ii. Remediation of all water damage in the unit, including walls, ceilings. floor, cupboards and any other surfaces affected by moisture;
 - iii. Confirmation that the mold issue has been remediated.
 - iv. Repair of any other deficiencies that may be revealed by the repair process.
 - v. Should option b. be chosen, Ms. X will be provided with appropriate accommodation though either through another unit in the building on a temporary basis, or through an Air B & B, hotel or motel for the duration of the repairs.
3. Regardless of whether option a. or b. is chosen, Ms. X is to be provided with alternative accommodation by the Landlord as of ten days of the date of the Order in this matter.

[72] An order will issue accordingly.

Dale Darling, KC, Small Claims Court Adjudicator

