

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Venidam v. Fernandez*, 2025 NSSM 51

Date: 20250525

Claim: No. 544736

Registry: Antigonish

Between:

Elizabeth Venidam and Pierre Venidam

Appellants / Landlords

And

Ashrin Fernandez

Respondent / Tenant

DECISION

Adjudicator: Douglas J. Lloy, K.C., Adjudicator

Heard: July 18, 2025 and August 5, 2025, via phone, in
Antigonish, Nova Scotia

Counsel: Elizabeth Venidam, self-represented, for the Appellants
Ashrin Fernandez, self-represented

By the Court:

[1] This is an appeal to Small Claims Court from an Order of the Director dated June 20, 2025 by the Appellants / Landlords (henceforth, “the Landlords”). The Director ordered the return of the Respondent / Tenant’s (henceforth, “Mr. Fernandez’s”) damage deposit the Director thought was held by the Landlords.

[2] The basis of the Order of the Director was that the Landlords did not comply with the provisions of ss. 12A and 12B of the *Residential Tenancies Act* regarding damage deposits paid by their tenants for renting 116 College Street, Antigonish. These provisions require landlords to abide by strict filing deadlines if they seek to keep their tenants’ damage deposits.

[3] The Landlords did not return the damage deposit within ten days after the termination of the lease (contrary to s. 12A(1)), nor did they file a security deposit claim form within ten days after being served with Mr. Fernandez’s application for the return of the damage deposit (contrary to s. 12B(1)).

[4] While the Landlords contend that they incurred an over-\$3,000 cleaning expense of the premises after Mr. Fernandez and his fellow tenants vacated the rental units, the Landlords admit that they did not file the requisite forms.

[5] If this issue was all that was in contention, this should have been the end of the matter. This would be the case, save for a surprise twist which apparently the Director was not aware of, or at least did not record.

[6] The twist was that the Landlords, through their spokeswoman Mrs. Venidam, claimed that they never received, nor even requested, a damage deposit *directly* from Mr. Fernandez. The Landlords claim they have nothing to return to Mr. Fernandez.

[7] The qualification of no *direct* receipt of a damage deposit from Mr. Fernandez, repeated a few times by Mrs. Venidam in her testimony, struck the court as very suspicious.

[8] Mrs. Venidam was asked directly by the court whether she *indirectly* received a damage deposit from Mr. Fernandez or from an agent acting on behalf of Mr. Fernandez, such as a former tenant. Her reply was no. No explanation was made as to why she earlier used the qualifier of “no direct damage deposit”.

[9] Another mystery is why the Landlords did not ask for a damage deposit from the tenants on the May 6, 2024 lease (Exhibit Six) which included Mr. Fernandez. Clause 11 of this lease, which is where a damage deposit amount would be set out, is left blank.

[10] Mrs. Venidam, who, with her husband, has been involved in leasing premises in Antigonish since 1998, gave sworn evidence that she forgot. She manages multiple rental properties and this rental's damage deposit was missed.

[11] Strangely, Mrs. Venidam claimed that she did not return the damage deposit from the immediate prior tenants of the premises (the "outgoing tenants") on their February 13, 2023 fixed term lease (Exhibit Four). In this lease, Clause 11 specifies that a damage deposit must be paid. She testified that she did not return the damage deposit because she was not requested by them to return it to them.

[12] She thought the outgoing tenants did not ask for it back because most of them vacated the premises early. She testified that she believed that the damage deposit was left as compensation to the Landlords for their potential trouble in locating new tenants.

[13] Mr. Fernandez provided an explanation for this behaviour. He says that he was informed by a tenant of the immediate prior lease of the premises ("Ann K.") that he, and his fellow incoming tenants, had to pay the damage deposit to the outgoing tenants as opposed to the Landlords.

[14] Ann was one of the tenants on the February 13, 2023 lease. She also apparently stayed on as a tenant a little past the February 28, 2024 lease end date.

[15] Ann allegedly told Mr. Fernandez that she had an arrangement with the Landlords that the incoming tenants had to pay the outgoing tenants their portion of the damage deposit. (This was, of course, hearsay evidence. Although it was admissible evidence, it was subject to weight allocation by the court.)

[16] As the Landlords rent by the apartment as opposed to the premises, Mr. Fernandez's portion of the rent was \$300. He e-transferred this amount, plus a \$25 share of the insurance/admin charge on the premises, to Ann on August 1, 2024 per Exhibit Ten.

[17] Mr. Fernandez also produced as an exhibit a screenshot of another e-transfer made by another of his fellow incoming tenants (Mr. Sailaja) to an outgoing tenant, Vineet K. (not related to Ann K.) in December 2023. He submitted that this shows a pattern validating how damage deposits were expected to be paid by the incoming tenants on the May 6, 2024 lease.

[18] Mr. Fernandez was asked directly by the court whether he ever confirmed the veracity of this arrangement directly with the Landlords. He replied no.

[19] He was asked directly by the court whether he ever approached Ann for the return of his damage deposit, now that his lease was at an end. He testified that he did not do so, as Ann was a stranger to him.

[20] Mr. Fernandez also produced copies of text messages he sent to Mrs. Venidam asking for the return of the damage deposit. The March 30, 2025 initial reply was that he would get his damage deposit when he was expected to move out at the end of April 2025 (Exhibit Seven).

[21] On May 7, 2025 Mrs. Venidam texted Mr. Fernandez in reply to his second inquiry for the return of the damage deposit. She told him that “There is no deposit to go back it just cause [sic] me \$2177.40 to clean the apt and there is a broken blind and the handle on the fridge is gone” (Exhibit Nine). Soon thereafter, Mr. Fernandez filed his application to the Director for the return of his damage deposit per s. 12B(1).

[22] The Landlords would have me believe that they, contrary to the clear provision of s. 12A of the *Residential Tenancies Act*, did not return to the damage deposit from the outgoing tenants as the outgoing tenants did not ask for it back.

[23] The Landlords would also have me believe that they then “forgot” to ask the incoming tenants (including Mr. Fernandez) for their damage deposit. Indeed, the May 6, 2024 lease is silent on the payment of a damage deposit. Both occurrences fly in the face of the experience expected of veteran landlords, presumably well-versed with the *Residential Tenancies Act*.

[24] There is a critical gap in the evidence here. There is no direct, first-person evidence as to whether there was an arrangement between the outgoing tenants with the Landlords to collect the damage deposit from the incoming tenants.

[25] Ann would have been a prime witness to confirm this arrangement. The court was not told that she was unavailable; rather, Mr. Fernandez seemed uncomfortable in subpoenaing her to attend telephone court because he did not know her very well. Not subpoenaing Ann to attend court may be due to possible *naiveite* of the college-aged Tenant. Mr. Fernandez presented verbally before the court as a capable young man of limited rental experience.

[26] This is understandable. Nevertheless, the failure to call Ann or another member of the outgoing tenants as a witness, or request that the Landlords produce their ledgers to prove that they did not acquire the incoming tenants' damage deposits from the outgoing tenants, leaves open another possibility: the outgoing tenants collected the money and then kept it without the Landlords' knowledge.

[27] The court cannot resolve this conflict in the evidence, although the Landlords' evidence has raised concerns with me. The evidence I heard regarding payment of the damage deposit was completely absent from the Director's decision, as apparently it was not presented to her.

[28] Without a clear link in the evidence connecting Ann to the Landlords on this issue, the court cannot order the Landlords to pay Mr. Fernandez the \$300 he paid to this third party. The evidence is evenly balanced with this evidential omission. I must grant the Landlords' appeal, set aside the Order of the Director and dismiss Mr. Fernandez's claim.

[29] Order accordingly.

Lloy, D. Small Claims Court Adjudicator