

Claim No: 413354

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

Cite as: Webber v. Chediak, 2013 NSSM 51

BETWEEN:

JANE WEBBER and DAVID MORASH

Tenants (Appellants)

- and -

TINA CHEDIAC

Landlord (Respondent)

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**REASONS FOR DECISION**

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**BEFORE** Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on September 3, 2013

Decision rendered on September 22, 2013

**APPEARANCES** For the Tenants self-represented  
For the Landlord self-represented

## REASONS FOR DECISION

[1] This is a Residential Tenancies Appeal by the Tenants from the decision of a Residential Tenancy Officer dated February 19, 2013. That decision arose from an application by the Landlord asking for termination of the tenancy at 25 Irving Street in Dartmouth, Nova Scotia, two months of rent in arrears (totalling \$1,900.00) plus a disposition of the security deposit. The order awarded vacant possession as of February 28, 2013, rent arrears of \$1,900.00 minus the security deposit, including interest thereon, of \$451.06, for a net award of \$1,448.94. Essentially, the Landlord received everything that she had asked for.

[2] In his reasons, the Residential Tenancy Officer stated that the parties had “agreed” to these terms, and that there was “no restriction on either party filing a new application to Director at a later time for matters not dealt with in this hearing.”

[3] On the face of it, the Residential Tenancy Officer appears to have engaged in more of a mediation than a hearing. Indeed, the Tenant, Ms. Webber, at the hearing before me characterized that hearing as a mediation. If that were truly the case, it is difficult to see how any party can launch an appeal from something to which they had agreed. Nevertheless, at a previous hearing before me on August 6, 2013, the Tenants asked for and received an extension of time for the appeal, as ten days from the decision date had expired months ago. At that August hearing, Ms. Webber insisted to me that the Residential Tenancy Officer had rejected claims that she and her co-tenant Mr. Morash had made concerning the poor condition of the home and the lack of a reliable heat source, which had led to the premises being extremely cold and uncomfortable.

[4] When I extended the time for appeal, I made it clear to the Tenants that I could only deal with claims that had been squarely before the Residential Tenancy Officer. The proper procedure for bringing any new claim is to start that process at Residential Tenancies. Indeed, it appears from the evidence that the Tenants sought to bring a fresh application to the Director shortly after this decision of the Residential Tenancy Officer.

[5] After having held a much fuller hearing on September 3 than I did on August 6, it is quite clear to me that the Residential Tenancy Officer did not reject the Tenants' claim for compensation, but rather he obtained some form of agreement from the parties to deal with the urgent issues and defer other issues to a later application.

[6] In the result, after the hearing on February 7 resulted in a February 28 deadline to vacate, the Tenants actually chose to vacate on February 19, and according to the Landlord did so without informing her that they were leaving early. They also apparently had the power shut off, with the result that pipes froze in the home, causing water damage.

[7] It would appear that there is considerable unfinished business between these parties.

[8] The gist of the claim by the Tenants which they sought to bring before me primarily concerned the fact that the furnace was apparently not working through much of the tenancy, with the result that they had to use space heaters to keep from freezing. The Tenants claim that they should not have to pay rent for a home that did not have a proper heating source. They also claim that there

were many other deficiencies that make the home undesirable, though not completely uninhabitable.

[9] The position of the Landlord was that these individuals initially presented themselves as physically and technically capable of helping the Landlord to upgrade the property, which the Landlord entirely concedes was in need of upgrading. She says that she gave them a considerable discount on the rent, in exchange for that promise to embark upon a number of improvements which were set out in a separate schedule in the lease. It is her view that the Tenants are in no legal or moral position to complain about deficiencies that they themselves had undertaken to rectify.

[10] In the final analysis, I am convinced that there is nothing appealable about the order of the Residential Tenancy Officer. Had I known everything that I subsequently learned, I would not have extended the time for appeal. I am satisfied that the Tenants participated in a mediation-like process that resulted in an agreement to vacate the premises, established their rental arrears at the amount ordered, and deferred their other claims to a subsequent application. The Landlord herself could not have anticipated at that time that she might have a claim against the Tenants resulting from the frozen pipes, or anything else that she might have discovered only after the Tenants vacated. Nevertheless, the Residential Tenancy Officer appeared to make clear to the parties that his order did not preclude such claims being made in a timely fashion.

[11] The fact that the Tenants sought to bring a further application to Residential Tenancies reinforces my view that they knew that this was the appropriate procedure. My understanding is that they failed to show up at the scheduled hearing before a Residential Tenancy Officer and the application was

treated as abandoned. For reasons that only they know, they then waited a number of months and sought to revive an appeal to this court, which as indicated was launched as a motion for an extension of time to appeal and proceeded at that August hearing on very limited information.

[12] Given that the path is still open for applications to the Director of Residential Tenancies to deal with alleged deficiencies and/or any claims by the Landlord for damage to the property, it would be inappropriate for me to make any findings of fact on the evidence that I heard.

[13] To recap, the Residential Tenancy Officer made no error. The Tenants did not make a claim to him that was rejected. The Residential Tenancy Officer secured agreements from the parties to make the order that he did, and left the door open for a further application. Although I expect that the Tenants, and Ms. Webber in particular probably mentioned the issues about the heat and so forth, it is important to note that there was no application by the Tenants before him - he was dealing with an application by the Landlord.

[14] In the result, the appeal from the order of the Residential Tenancy Officer is dismissed and the order stands.

**Eric K. Slone, Adjudicator**