

# IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Keddy v. McGill, 2014 NSSM 15

Claim No: SCK 424945

## BETWEEN:

Name Michael Keddy  
Josie Keddy

**Appellants/  
Tenants**

Name Carl McGill by his attorney  
Marsha McGill

**Respondent  
Landlord**

### EDITORIAL NOTICE

Addresses and phone numbers have been removed from this electronic version of the judgment.

Michael Keddy and Josie Keddy – Self Represented

Nicole R. Slaunwhite appeared for the Respondent/Landlord

Date of Hearing: April 7, 2014

### DECISION

This matter is an appeal from the Decision and Order of Residential Tenancies Officer, Chantal Desrochers, dated February 21, 2014. In her decision, she orders the tenant, Michael Keddy, to give vacant possession of the premises, located at 989 Thompson Road, Waterville, Nova Scotia (“the premises”), by March 4, 2014. Due to a procedural issue, the Tenancies Officer did not specifically order Mrs. Keddy to vacate the premises. Mr. Keddy is also ordered to pay \$450 in rental arrears.

## Appeal and Adjournment

Mr. and Mrs. Keddy appealed this decision alleging the tenancy is part of a larger agreement for the purchase and sale of the premises. It was clear at the hearing held on April 7, 2014, that there are many legal and factual issues to be considered. Mr. Keddy requested an adjournment to enable him to consult counsel. Ms. Slaunwhite, for the landlord, had no significant objections. That is a reasonable and proper request. Accordingly, this matter is adjourned for hearing until May 5, 2014 at 7 pm at the Kentville Justice Centre.

I declined Mrs. McGill's request to hold a hearing on the validity of the lease and claim for arrears at the hearing on April 7. It is clear that issue may be part of the larger issue to be addressed. In my view, it is best to leave the hearing and possibly the severance of that issue for the Adjudicator hearing the matter on May 5. It would be unfair to exclude that issue before the tenants have had the opportunity to consult legal counsel.

## Power of Attorney

The landlord, Carl McGill, executed a power of attorney dated October 17, 2012. In it he names Mrs. McGill as attorney and John Foster as her alternate should she be unable to act. Paragraph 11 of the Power of Attorney provides the attorneys with authority to appoint a substitute or additional attorney. Mrs. McGill and Mr. Foster executed a subsequent agreement providing they are to be joint attorneys ("the amending agreement"). Mrs. McGill indicated that she was advised by Service Nova Scotia that only one of the attorneys needs to file an application under the *Residential Tenancies Act* to enforce the provisions of the lease. If her understanding of the direction by the Residential Tenancies Officer is correct, then I respectfully disagree. The decision to allow Ms. McGill to proceed without the involvement of Mr. Foster is an error in law.

A power of attorney is a relationship designed to authorize one or more named attorneys to manage the donor's financial affairs and property. It is a fiduciary relationship meaning that it is one of the highest forms of relationships recognized in law. The named attorneys have significant duties of good faith to their donor and can be held liable for breach of these duties. The relationship is an agency relationship. It does not result in a change of ownership of the property. The attorneys' actions are limited to the powers and duties prescribed in the document as well as those recognized by common law or statute.

The law relating to multiple attorneys is well summarized in a discussion paper released in March 2014 by the Law Reform Commission of Nova Scotia entitled *Powers of Attorney Act*, where it states as follows at p. 101:

"The common law of agency provides that a donor may appoint multiple agents that can act jointly or severally. Attorneys who are appointed to act jointly must act together, and their decisions must be unanimous. Attorneys who are appointed to act severally may act independently of each other.

There is a presumption that unless the donor states otherwise, multiple attorneys are to act jointly, and decisions are to be made unanimously. Therefore, where a donor appoints two attorneys to act but does not state how they are to act, they must act together. The power of attorney will terminate at common law if one of the joint attorneys is no longer able to act.” (underlining mine)

The effect of the common law principle directing that a power of attorney terminates on the death of a one of the joint attorneys was addressed by the enactment of s. 7 of the *Powers of Attorney Act*, which states as follows:

**TWO OR MORE ATTORNEYS**

7 (1) Subject to the provisions of the enduring power of attorney, where two or more attorneys are appointed to act jointly and one or more of the attorneys

- (a) dies;
- (b) renounces the appointment;
- (c) is legally incapacitated;
- (d) is unwilling to act; or
- (e) after reasonable inquiries by another of the attorneys, is unable to be found,

the remaining attorney or attorneys may continue to act without that attorney or attorneys.

(2) This Section applies to powers of attorney whether executed before or after the coming into force of this Section.

In short, when two or more persons are named in a power of attorney, they must act jointly and unanimously, unless:

- The power of attorney specifically provides otherwise;
- The named attorney is unable to act and is either subject to paragraph 7(1) of the *Powers of Attorney Act* or a provision of the power of attorney dealing with the removal of an attorney or his/her inability to act.

The amending agreement is brief and I shall quote its substantive provisions below:

“Whereas Carl McGill on or about the 17th day of October, A.D., 2012 granted Power of Attorney to Marsha McGill, Waterville, Kings County, Nova Scotia and if she was unable or unwilling to act; the Power of Attorney was then granted to John Foster of Grafton, Kings County, Nova Scotia.

And whereas it is the desire of Marsha McGill and John Foster that the said power of attorney be joint, such that the **signatures of both attorneys be required** to affect any of the powers granted under the said power of attorney.

Now witness that pursuant to paragraph 11 of the said Power of Attorney, each assigns to the other all rights and powers as contained herein that they each may have, subject to the consent of the other with the intent that both their

signatures are required to act under the said Power of Attorney except in the case of death of one of them or the resignation of either of the said attorneys."

The power of attorney provides that it shall remain in effect during Mr. McGill's incapacity. While this Court is not authorized to rule on its validity, I am satisfied for the purposes of this hearing that it is an enduring power of attorney. It deals with financial matters and management of property and contains several paragraphs commonly contained in powers of attorney in this province, including the following:

"3. To receive and collect rents, dividends, profits, interest, commissions, fees, salaries, debts and claims of every kind and to give receipts and discharges therefore(sic) and to distrain for rent and interest.

4. To purchase, sell, rent, exchange, mortgage, charge, lease, surrender, manage, and in every way deal with real estate and any interest therein, and to execute and deliver deeds, transfers, mortgages, charges, leases, assignments, surrenders, releases and other instruments required for any such purpose."

In looking at the provisions of the Power of Attorney of Mr. McGill, I find that the lease of any property, their administration including the collection of rent, and the enforcement of a lease are governed by the provisions of paragraphs 3 and 4. Mrs. McGill and Mr. Foster made it abundantly clear in the amending agreement that the "**signatures of both Attorneys (will) be required** to effect any of these powers granted under the said Power of Attorney." In my view, this includes any actions taken in the name of Mr. McGill as landlord pursuant to the *Residential Tenancies Act*. I make this finding notwithstanding the absence of a specific power to sue or defend litigation in the name of Mr. McGill. To do otherwise would leave the landlord without a remedy in the event he is incapable of amending his power of attorney.

The instrument provides two exceptions to the requirement for joint signatures, either attorney's resignation or death. Section 7 of the *Powers of Attorney Act* provides a longer list of possibilities. It is not necessary for me to consider which conditions prevail as Mr. Foster continues to reside in Kings County and from Mrs. McGill indication, he is capable of acting. In making this finding, I am not unmindful of the possibility of Mr. McGill revoking the power of attorney if he has the requisite capacity to do so. There was no evidence given on this point.

In my view, for this matter to continue, it is necessary to either obtain Mr. Foster's consent for this application or provide proof that he is no longer acting. As a practical matter, it may be done simply by Ms. Slaunwhite confirming her instructions from both attorneys once she receives them or the landlord tendering documentary evidence of Mr. Foster's decision not to act. I do not believe it will unduly prejudice the tenants if this is received on or before the hearing on May 5, 2014. This assumes that the power of attorney is not revoked by Mr. McGill in the interim.

### **Summary**

In summary, the matter is adjourned for hearing until May 5, 2014. The order for vacant possession shall be suspended until further order of this court. In order to proceed, the landlord

must obtain the consent of John Foster to the continuation of the proceedings under the *Residential Tenancies Act*, or in the absence thereof, she must provide proof that Mr. Foster will no longer continue to act under the power of attorney.

Order accordingly.

Dated at Halifax, NS,  
on April 11, 2014.

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**Gregg W. Knudsen, Adjudicator**

Original: Court File  
Copy: Claimant(s)  
Copy: Defendant(s)