

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA  
**Cite as:** *Connell v. Connell Estate*, 2016 NSSM 21

**Claim:** SCAR 448433  
**County:** Annapolis

**Between:**

HOLLY CONNELL

Appellant

– and –

ESTATE OF MILDRED CONNELL

Respondent

Adjudicator: Andrew S. Nickerson, QC

**Heard:** March 23, 2016

**Decision:** March 30, 2016

**Appearances:** The Appellant, self-represented  
The Respondent, represented by the Executors Nancy Ashby and Janet Coleman

FACTS

This matter comes before the court as an appeal from the order of the Director of Residential Tenancies dated February 16, 2016 directing that the Appellant pay the sum of \$31.15 and that the Respondent be given vacant possession of premises at 8803 Highway 201 Nictaux, Nova Scotia (herein called the “Premises”).

The Respondent produced at the hearing the Grant of Probate of the will of Mildred Connell granting executorship of the estate to the Respondents.

The file material also includes a copy of the will of Mildred Connell dated May 27, 2004. This will contains a provision purporting to grant to the Appellant a “life lease” of the Premises on certain conditions. The will also purports to create a fund to provide for the maintenance of the Premises and to pay “taxes insurance and water/sewer”. There are also clauses providing for the sale of the Premises on certain conditions.

On October 27, 2008 the matter of the Premises was before the Tenancies Board and the Board at that time purported to mediate a settlement between the parties.

## ISSUES

Did the Director of Residential Tenancies and consequently the Small Claims Court on appeal have jurisdiction over the subject matter of this matter.

## ANALYSIS AND DECISION.

After reviewing the material on file and presented and hearing the parties I was satisfied that the possession of the Appellant on the Premises is pursuant to the terms of the will of Mildred Connell. In order to determine the rights of the parties, I (and the Director at that level) would have to determine the nature of what the testator meant by a "life lease" and would have to interpret the various provisions of the will as to the maintenance and payment of expenses related to the Premises.

While I do not question the good faith of the Tenancies Officer, I am of the opinion that the background and training of that officer did not equip her to realize that there is a very serious jurisdictional issue involved in determining the proper forum for this matter to be resolved.

Neither the Director nor this court has any jurisdiction to interpret a will. That is the exclusive jurisdiction of the Supreme Court. I have found that such interpretation is essential to determine the rights of the parties. This is not a residential tenancy as defined by the Residential Tenancies Act. The relevant section reads:

### **Application of Act**

**3 (1)** Notwithstanding any agreement, declaration, waiver or statement to the contrary, this Act applies when the relation of landlord and tenant exists between a person and an individual in respect of residential premises.

(2) For the purposes of subsection (1), the relation of landlord and tenant is deemed to exist in respect of residential premises between an individual and a person when an individual

- (a) possesses or occupies residential premises and has paid or agreed to pay rent to the person;
- (b) makes an agreement with the person by which the individual is granted the right to possess or occupy residential premises in consideration of the payment of or promise to pay rent;
- (c) has possessed or occupied residential premises and has paid or agreed to pay rent to the person. R.S., c. 401, s. 3.

As I have indicated the Appellant did not come in to possession of the Premises in the manner described by this section. There is no agreement between the parties. Any payment is pursuant

to the will (which does not call the payment “rent”) not pursuant to an agreement and it is questionable that what was to be paid is “rent”, but that is for a Supreme Court Judge to determine. If I held otherwise I would be interpreting the will which I have no jurisdiction to do.

Since the purported settlement made in 2008 was made with a misapprehension of the Tenancies Officers authority I have no jurisdiction to act upon that and its effect will have to be left to the determination of the Supreme Court.

I find that the Director and this court do not have jurisdiction over the subject matter of this appeal. I therefore allow the appeal for lack of such jurisdiction and rescind and declare the order of the Director dated February 16, 2016 to be void and of no force and effect.

Dated at Yarmouth this 28th day of March, 2016.

Andrew S. Nickerson Q.C., Adjudicator