

Claim No. 317929

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA  
Cite as: Suevrk Management v. Atkinson, 2010 NSSM 1

BETWEEN

**Suevrk Management**

APPELLANT

- and -

**Andrea Atkinson, Shirleen Atkinson, Kelly Meuse and Alice LeBlanc**

RESPONDENTS

**DECISION and ORDER**

This is an appeal of an Order of the Director of Residential Tenancies dated October 1, 2009 and File #200901491

The parties were advised that this was an appeal from a decision and order of the Director of Residential Tenancies and as such will be conducted as a new trial.

The parties were asked if there is any questions about the procedure to be followed in the Small Claims Court hearing and there being none the matter proceeded accordingly.

The original application to the Director was made by the landlord the appellant herein wherein he was seeking payment of money and compliance with a lease. There was a counter application made by the tenants, the respondents herein, seeking termination of the tenancy, payment of money and disposition of a security deposit.

The appellate landlord did not appear during the Director's hearing. The order of the Director went on to state at paragraph 3:" the tenants testified that the tenancy terminated on April 30, 2009 based on two physicians Medical Condition Reports and a 1 months notice to quit as per section 10C of the Residential Tenancies Act. Without any testimony by or on behalf of of the landlord I find that the tenancy terminated on April 30, 2009."

"As a result the security deposit of \$538.22 was to be returned to the tenants Kelly Meuse and Andrea Atkinson and the landlord's application against the tenants and co-signers was dismissed for want of prosecution."

### **FACTS:**

Into the second year of a lease the tenant Kelly Meuse became ill over a three-month period. The apartment had continuous water problems and this tenant had a history of breathing problems and according to her evidence it seemed to become worse, to the point she saw her doctor on three occasions. On March 24, 2009 the physician completed a "Physician's Medical Condition Report pursuant to section 10B and 10C of the Residential Tenancies Act. Another person on the lease and one of the respondents herein, Andrea Atkinson visited the doctor's office and the same physician provided a similar report on March 27, 2009.

The lease was a year-to-year lease commencing on September 1, 2007. The respondents Kelly Meuse and Andrea Atkinson left the apartment on April 30, 2009. The appellant rented the apartment one month later.

The monthly rent was \$1050.00. The lease agreement is signed by Andrea Atkinson, Shirleen Atkinson, Kelly Meuse and Alice LeBlanc.

A notice to quit was given by the respondents to the appellant.

## ANALYSIS:

Section 10C of the Residential Tenancies Act states the following:

### **Early termination for health reasons**

**10C Notwithstanding Section 10, where a tenant or a family member of a tenant in a year-to-year tenancy has suffered a significant deterioration in health that, in the opinion of a medical practitioner, results in the inability of the tenant to continue the lease or where the residential premises are rendered inaccessible to the tenant, the tenant may terminate the tenancy by giving the owner**

**(a) one month's notice to quit; and**

**(b) a certificate of a qualified medical practitioner evidencing the significant deterioration of health.**

**1993, c. 40, s. 9; 2002, c. 30, s. 17.**

In this particular case the appellant was to cross examine the physician on his report referred to earlier. The physician was not present at the hearing to be cross examined. The appellant made an attempt to subpoena this particular physician but did not follow the procedure as required by law. As result the physician's Counsel wrote to the court and advised the court that the physician would not be appearing.

The report was challenged by the appellant who also happens to be a physician specializing in ears, nose and throat conditions. The physicians report while entered into evidence is still hearsay evidence that has been challenged and as a result it carries less weight than it would if the physician had been present.

A physician's report is only one indicator that a tenant has suffered a significant deterioration in health to the point it results in an inability of that tenant to continue the lease. Other indicators might be information gleaned from the tenant in their testimony and from exhibits presented. In this particular case the evidence of Kelly Meuse and the physician's report along with other exhibits is sufficient to draw the conclusion that she has a significant deterioration of her health resulting in her inability to continue living in

that apartment. However I am not convinced on the testimony and physician's report that the tenant Andrea Atkinson was suffering from the same significant deterioration of health as a result of living in the rental premises. There is no evidence respecting the other parties or signatories to the lease. Therefore the tenancy with respect to Kelly Meuse is terminated pursuant to 10C of the Residential Tenancies Act. The other three tendencies are not terminated and therefore they shall owe the appellant three quarters or their portion of the rent for the one month period the apartment was unoccupied and not rented and the security deposit shall be returned as there is no evidence the tenants caused any damage to the apartment.

IT IS THEREFORE ORDERED that the Respondents, Andrea Atkinson, Shirleen Atkinson, and Alice LeBlanc shall pay the appellant the following sums:

\$845.00 representing 3/4 of one months rent.  
Less \$538.22 security deposit  
**\$306.78**

Dated at Halifax, January 7, 2010

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David T.R. Parker  
Small Claims Court Adjudicator