

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Walton v. McDow, 2017 NSSM 69

Claim: SCAR No.463226
Registry: Annapolis Royal

Between:

CLARK WALTON

Appellant

– and –

MATHEW MCDOW

Respondent

Adjudicator: Andrew S. Nickerson, QC

Heard: September 13, 2017

Decision: September 19, 2017

Appearances: Claimant, self-represented
The Defendant did not appear

[1] This case involves an appeal of the order of the Director of Residential Tenancies dated April 26, 2017 issued to enforce a mediated settlement dated March 22, 2017.

[2] The Appellant's evidence satisfied me that the Respondent failed to make even one payment required by the mediated settlement.

[3] The Appellant alleges that the Respondent entered into the mediated settlement in bad faith and I am inclined to agree with him based on the rather immediate way in which the Respondent left his job and moved from the area just days after the mediated settlement.

[4] The Appellant suggests that in these circumstances that the only just resolution would be to set aside the mediation and allow him to pursue his full claim.

[5] At the hearing I advised the Appellant that I only had the powers granted by statute and was uncertain whether I could grant the relief he wanted but would examine the question and render a decision.

[6] Section 16 of the **Residential Tenancies Act** reads as follows:

Duties and powers of Director

16 (1) Upon receiving an application pursuant to Section 13, the Director shall investigate and endeavour to mediate a settlement of the matter.

(2) Where a matter is settled by mediation, the Director shall make a written record of the settlement which shall be signed by both parties and which is binding on the parties and is not subject to appeal. *[my emphasis]*

(3) Where a matter is settled by mediation, the Director may, if a party fails to comply with the terms on which the matter was settled, make an order pursuant to Section 17A. 1997, c. 7, s. 7.

[7] My interpretation is that the Residential Tenancies Act is clear that mediated settlements are not appealable and I have no jurisdiction to intervene. There can be no appeal of a settlement.

[8] Unlike a Superior Court Justice I have no discretion to intervene on an equitable basis no matter how unfair the result may be.

[9] I have examined both the Residential Tenancies Act and the Small Claims Court Act and the regulations under both statutes and can find nothing that would give me any jurisdiction in this matter. I note that in the Form J Application to the Director set out in the Regulations there is a note drawing the parties to the following:

If you come to an agreement, the Residential Tenancy Officer will prepare a written settlement for both parties to sign. There can be no appeal of the settlement. *[my emphasis]*

[10] I have no choice but to dismiss the appeal, which I do.

Dated at Yarmouth, Nova Scotia, on September 19, 2017

Andrew S Nickerson Q.C. Adjudicator