

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
ON APPEAL FROM AN ORDER OF THE
DIRECTOR OF RESIDENTIAL TENANCIES
Citation: *Medeiros v Elliott*, 2018 NSSM 4**

BETWEEN:

JANINE MEDEIROS

Tenant (Appellant)

- and -

ARTHUR ELLIOTT and DONNA ELLIOTT

Landlords (Respondents)

REASONS FOR DECISION AND ORDER

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on January 9, 2018

Decision rendered on January 11, 2018

APPEARANCES

For the Tenant Janine Medeiros and Patrick Seguin

For the Landlords Arthur Elliott

REASONS FOR DECISION

[1] This is an appeal by the Tenant from a decision of the Director of Residential Tenancies dated December 12, 2017, which denied the application by the Tenant for a return of a \$500 security deposit paid by her and her spouse, Mr. Seguin. I refer to Ms. Medeiros and Mr. Seguin collectively as “the Tenants.”

[2] The order under appeal was actually decided on a technicality, since the Residential Tenancy Officer concluded that an earlier application concerning the security deposit had already been disposed of unfavourably from the Tenants’ point of view. The Residential Tenancy Officer regarded the matter as *res judicata*.

[3] The Tenants believe that their file at Service Nova Scotia was mishandled, and that they had no idea that there had been a previous order concerning the security deposit. In fact, there had been a mediation of a related claim for a return of an irregularly charged last month of rent, and the supposed date when the security deposit claim was decided actually came and went without either the Landlords or the Tenants attending, or even being aware that such a hearing was to happen.

[4] I propose to deal with this claim on the merits, as I believe the Tenants have been subjected to enough complexity not of their own making, and there are many good reasons why this matter should be brought to a conclusion. The level of acrimony between the parties is astonishing, and utterly out of proportion to the \$500 that is at stake. The hearing before me was one step short of a free-for-all, as the parties (mostly the Tenants) sniped at each other constantly.

[5] This was a relatively short-lived tenancy, lasting only several months. The Tenants had moved to Nova Scotia from Ontario, and were in transition toward eventually buying a house of their own. They are a couple with a small child.

[6] The Landlords claim that the Tenants left behind a certain amount of damage. Specifically, the Landlords claim that the Tenants left a significant burn on the kitchen counter-top which required the counter-top to be replaced. The cost for that repair was \$360.50. The second item sought to be charged back to the Tenants is for labour performed by a student hired by the Landlords, to remove garbage left behind and also to clean some oil leaks off the driveway. The total for that bill was \$145.

[7] The two bills together are just over \$500, and if approved in full would mean that the Tenants do not get back any of their damage deposit.

[8] Dealing first with the burn to the counter-top, the photograph placed in evidence by the Landlords does show a significant and disfiguring burn to the counter-top. The Tenants are adamant that they did not cause this burn, although it was not clear to me from their evidence whether they thought it was there before they took possession of the apartment or whether it must have happened after they left.

[9] The Tenants also deny having left behind any garbage and also claimed that the driveway did not contain these oil stains when they left.

[10] The case requires me to make findings of credibility. Overall, I found the Landlord, Mr. Elliott, to be relatively straightforward and believable. He appears not to be a very experienced landlord, which in part explains why he charged the

Tenants a last month's rent which is contrary to the law in Nova Scotia. That money has been refunded.

[11] I found it very difficult listening to the evidence of the Tenants. They appeared to be angered disproportionately and fixated on issues that do not figure into this application. They are, or appear to be, convinced that the Landlords are taking terrible advantage of them. Even so, their evidence was argumentative and evasive, and on balance I prefer the evidence of the Landlords.

[12] The Landlords called as a witness Mr. Sean O'Neill, who performed the work to remove the old counter-top and replace it with a new counter-top purchased from Kent Building Supplies. He testified that he paid \$194.50 for the counter-top, and has charged four hours of his own labour totalling \$166 for the work. Although the Tenants appeared contemptuous of this amount of time spent, I do not find it to be unrealistic, particularly if Mr. O'Neill had to remove the counter-top, take measurements, attend at Kent to order a new one, pick it up and install it, and perform other tasks such as adjusting the plumbing so that the new counter-top would fit. The total amount claimed for replacing the counter-top of \$360.50 seems eminently reasonable.

[13] I accept that Mr. O'Neill is not a terribly sophisticated individual, and that the Mr. Elliott himself actually created the supporting invoice. This was admitted, and does not detract from the fact that the work was done and the moneypaid.

[14] The work done by the student of \$145, however, does not impress me as reasonable. The photographs show some very minor oil stains on the driveway, and the driveway itself appears to be old and far from pristine in other respects.

The amount charged to remove the small amount of garbage left behind also seems excessive. I am allowing only \$45 of the \$145 charged.

[15] As such, the amount that the Landlords are permitted to deduct from the \$500 damage deposit totals \$405.50. I am accordingly ordering that the Landlords return to the Tenants the amount of \$94.50. There will be no costs to either party of this appeal.

ORDER

[16] In the result, the order of the Director of Residential Tenancies is set aside and in its place an order is made ordering the Landlords to return \$94.50 of the damage deposit to the Tenants, with the balance being retained by the Landlords to compensate them for damages.

Eric K. Slone, Adjudicator