

**SMALL CLAIMS COURT OF NOVA SCOTIA**

Citation: *Bluenose Inn and Suites v. McGuire*, 2023 NSSM 4

ON APPEAL FROM AN ORDER OF THE  
DIRECTOR OF RESIDENTIAL TENANCIES

**Date:** 20230116

**Docket:** SCCH 517369

**Registry:** Halifax

Between:

Bluenose Inn and Suites

*Appellant (landlord)*

- and -

Brandy McGuire

*Respondent (tenant)*

**REASONS FOR DECISION AND ORDER**

**Adjudicator:** Eric K. Slone

**Heard:** via zoom in Halifax, Nova Scotia on January 10, 2023

**Appearances:** For the Appellant,  
John Boyle, counsel

For the Respondent,  
Katelyn Viner, counsel  
Katie Brousseau, Community Legal Worker  
Dalhousie Legal Aid

## **BY THE COURT:**

[1] This is an appeal by the landlord from a decision of the Director of Residential Tenancies dated August 22, 2022, which awarded the tenant compensation in the total amount of \$13,662.15 under ss. 10AC and 10AD of the *Residential Tenancies Act*. These sections are recent additions to the Act, having only (effectively) come into force in early 2022. Those provisions may nominally be understood as the government's answer to the so-called renoviction crisis, though they do not use that specific term in the legislation.

[2] This appeal perforce considers the question of what is a renoviction. More narrowly, the landlord argues that what occurred in the situation here ought not to attract any application of these legislative provisions.

### **The facts**

[3] The landlord owns and operates a motel and suites at 636 Bedford Highway, in Bedford, Nova Scotia. The property is a little past its prime. The landlord's witness, John Ghosn, is a 25% partner in the operation through his company Enqore Developments Ltd. His partner was actively managing it both as a motel and long-term rental operation. Mr. Ghosn was a silent partner until early 2022. He was forced to step in and actively run the operation because his partner had health issues.

[4] The long-term plan for the property was to demolish the existing buildings and redevelop the site into a modern mixed-use project. The project is showcased prominently on the website for Enqore, which states:

**This development will include 105 residential units with a commercial main level and waterfront views. Located on the corner [of] Larry Uteck and the Bedford Highway this property will [be] highly desirable.**

[5] In 2017 a development agreement was signed with the City of Halifax allowing the owners to proceed. Obtaining the development agreement was an expensive process, costing something in the area of \$200,000.00. The owners had five years to proceed with demolition and construction or they risked losing their right to proceed and having to start over.

[6] For various reasons, the project was stalled until 2020 when the pandemic added an additional set of barriers.

[7] The property was still offering long term rental units when the tenant applied to rent unit 47 in July 2020. The tenant is a student at the North End Halifax campus of the NSCC. The occupants were to be her partner “Henry” and two young children. She also anticipated having her other two children part of the time.

[8] Rent for the unit was \$1,400.00 per month. The unit is basically a one-bedroom with a kitchenette, bathroom and living room. The bedroom contains two queen-sized beds. The tenancy included heat, electricity, phone and internet. A deposit of \$300.00 was required.

[9] There was no written lease, but the terms are not in any dispute. It was a month-to-month tenancy.

[10] The tenant described some deficiencies that she experienced. Water pressure was chronically low. Internet service was spotty, and occasionally absent completely. This was a significant problem because the pandemic required the tenant and others in her household to be more dependent on remote learning. At some point in early 2022 she got fed up with the poor internet service and arranged for her own internet service through a company called Purple Cow. By the time she moved out of the rental premises, she had spent \$731.00 on internet, which amount was included in the compensation ordered by the Residential Tenancies Officer.

[11] On March 31, 2022, the tenant was handed a notice which told her that she had to vacate within 60 days, i.e., by May 1, 2022, stating that management was planning to “retire” the property. The tenant did eventually leave by this date, although not before filing the application to Residential Tenancies seeking compensation.

[12] On April 27, 2022, the landlord sent out another notice extending the date to July 31, 2022. By then it was too late to assist this tenant as she had already found another place to live. That replacement home is a 3-bedroom flat in Lower Sackville, which is located quite inconveniently for the family but which the tenant says was the best she could find under very difficult time constraints in a very tight market. The rent for that flat is \$2,100.00 plus utilities.

[13] More will be said about that later.

[14] John Ghosn testified that he became a part owner of this property in 2010, and that it was always seen as a site for development. A development permit was applied for and granted in 2017. In 2022 he applied for an extension of the development agreement and now has until 2027 to utilize the opportunity. He said

that there is no timetable for the project. No demolition permit has yet been applied for. Although any such project would necessarily involve demolition of the existing buildings, he described the current plan as seeking to “retire the property.”

[15] To this day there are still a few tenants residing there.

### **The legislative framework**

[16] The term renoviction can be traced in a legislative sense to the decision by the Nova Scotia government early in the Covid pandemic to use its emergency powers to impose an outright moratorium on renovictions.

[17] As recited helpfully by adjudicator Richardson in *Certain Tenants of Victoria Road v. Central East Development Inc*, 2020 NSSM 28 (CanLII) at paragraph 16:

[16] On November 25th, 2020 the Government of Nova Scotia issued a Direction of the Minister under a Declared State of Emergency (section 14 of the Emergency Management Act), 20-014R, “regarding tenant protections” (the “NS Direction”). Part 1 (Renoviction of Tenants) of the NS Direction provides as follows:

1 For the purpose of this Direction, a “renoviction” means a renovation undertaken by a residential landlord to residential premises, or a building containing residential premises, that will require the tenant to vacate the premises,

(a) effective on and after September 1, 2020, a residential landlord is prohibited from giving a notice to quit under the Residential Tenancies Act to a tenant for a renoviction,

(b) effective on and after September 1, 2020, any notice to quit given by a residential landlord to a tenant for a renoviction is void,

(c) effective on and after November 25, 2020, a residential tenancy officer, or on appeal the Small Claims Court, must not make an order terminating a tenancy or order the tenant to vacate the residential premises for a renoviction.

[18] The particular mischief that the government was responding to is obvious. Landlords in Nova Scotia, and in particular in the Halifax region, were undertaking often quick and sometimes minor renovations, evicting the tenants, and then jacking up the rent significantly for new tenants moving in. This

contributed to the affordable housing shortage, and the government was concerned that most people would be unable to find another residence while in a state of complete or partial lockdown.

[19] Toward the end of 2021, the government passed new amendments to the *Residential Tenancies Act* which were in effect but had no practical implications until the lifting of the moratorium in March 2022. At that point, renovictions again became possible, but certain procedures (and disincentives) were introduced.

[20] I will recite the new sections in full, as they set out an important scheme.

### **Early termination for demolition, repairs or renovations**

10AB (1) Where the landlord and tenant mutually agree to terminate a tenancy for the purpose of demolition or making repairs or renovations to the residential premises, the agreement must be in writing and in the form required by the Director.

(2) Where the landlord and tenant do not mutually agree to terminate a tenancy under subsection (1), the landlord may make an application to the Director for an order under Section 17A directing the landlord to be given vacant possession of the residential premises on the date specified in the order, but not less than three months and not greater than twelve months from the date of the order.

(3) In an application under subsection (2), the landlord shall satisfy the Director that the landlord has all the necessary permits and approvals required by law and that the landlord in good faith requires possession of the residential premises for the purpose of

- (a) demolition of the residential premises; or
- (b) making repairs or renovations so extensive as to require a building permit and vacant possession of the residential premises.

(4) When making a decision on an application under subsection (2), the Director shall consider any vacant possession guidelines prescribed by regulation.

(5) A tenant whose tenancy is terminated by mutual agreement or by an order of the Director under this Section may, at any time before the date specified in the agreement or order, terminate the tenancy effective on a date earlier than the date specified in the agreement or order but at least ten days after the tenant gives notice to the landlord to terminate the tenancy.

(6) For greater certainty, a landlord shall not terminate a tenancy for the

purpose of demolition or making repairs or renovations to the residential premises except by mutual agreement or by an order of the Director under this Section. 2021, c. 36, s. 7.

### **Compensation**

10AC (1) In this Section, "residential complex" means a building in which one or more residential premises are located.

(2) A tenant whose tenancy is terminated by mutual agreement or by order of the Director under Section 10AB is entitled to compensation equal to the rent payable for

(a) the last three months, if the residential complex contains more than four residential premises; or

(b) the last month, if the residential complex contains four or fewer residential premises.

(3) Where a tenant continues to reside in the residential premises until the date specified in the agreement or order, the tenant is not required to pay rent to the landlord for the applicable compensation period set out in subsection (2).

(4) Where a tenant exercises the right to terminate a tenancy early under subsection 10AB(5), the landlord shall pay the tenant, on or before the effective date of the termination, any remaining compensation owing pursuant to subsection (2).

(5) Where the landlord provides other residential premises that are acceptable to the tenant, and the tenant agrees to enter into a lease with the same benefits and obligations as the current lease for those other residential premises, the tenant is not entitled to the compensation set out in subsection (2). 2021, c. 36, s. 7.

### **Order by Director**

10AD Where a landlord fails to comply with the requirements of Section 10AB or 10AC, on application by the tenant under Section 13, the Director may make an order requiring the landlord to pay to the tenant the compensation required under subsection 10AC(2) and any one or more of the following:

(a) reasonable moving expenses incurred by the tenant, up to such maximum amount as may be prescribed by regulation;

(b) reasonable additional expenses incurred by the tenant, up to a maximum amount that is equal to one month's rent payable under the lease; and

(c) all or a portion of the amount of increased rent that the tenant was obliged to pay under the tenant's new lease for up to twelve months. 2021, c. 36, s. 7.

[21] One of the first things that should be obvious is that this scheme is not limited to renovictions. There is a huge difference between a landlord seeking to spruce up a unit in order to increase the rent, and a building owner seeking to demolish the building for whatever purpose they may have in mind.

[22] Landlords who are prepared to demolish their buildings cannot be accused of anything shady or opportunistic. They are embarking on something quite different from a renovation. There is very little similarity between a minor sprucing up of a unit, and demolition of the entire structure. Arguably the public mischief was renovictions. Yet the government very deliberately chose to treat demolitions as equivalent to a renovation.

[23] If the landlord is to be believed, and there is little evidence to the contrary, the plan was to empty out the buildings of tenants as part of a long-term plan to redevelop the site. The landlord concedes that this will involve demolition of the existing buildings. But such demolition may not happen for a few years.

[24] Mr. Ghosn speaks of “retiring” the buildings. He says that the water and septic systems are outdated and not worth repairing. It is not hard to imagine that the buildings might sit idle and derelict for some time before anything else happens.

[25] Clearly there is no “renoviction” occurring, in the colloquial sense. But the question is whether this situation is captured by the broader language, and the tenancy was being terminated “*for the purpose of demolition or making repairs or renovations to the residential premises.*”

[26] Assuming for a minute that the landlord had a demolition permit in hand, and was bringing in the wrecking ball as soon as the tenant vacated, there could be no question that the terms of s.10AB applied. The legislature clearly intended to treat demolitions in the same way as more obvious renovictions.

[27] So does it make any difference that this landlord may choose to leave the building empty for a period of time before demolishing it? I am of the view that this does not change anything.

[28] If a delay between eviction and demolition is enough to prevent the regime from applying, how much of a delay would count? And who would decide that?

[29] In my opinion, the ordinary meaning of the words used is that if the landlord evicts a tenant in order to be able to demolish the structure, then the terms of these new provisions apply, regardless of how long it might take for the demolition to occur.

[30] The term “retiring” the building is a euphemism. A retired building is one that is slated for either renovation or demolition.

[31] I believe the Residential Tenancies Officer was correct in his application of the new provisions in the *Residential Tenancies Act* to the situation here.

[32] It is also clear that the landlord failed entirely to follow the procedure of obtaining the tenant’s written agreement to the termination or seeking an order of the Director. It follows that I must therefore consider, as did the Residential Tenancies Officer, what relief is available to the tenant.

[33] Under 10AC (1), the tenant is entitled to compensation equal to the rent payable for the last three months. This amounts to \$4,200.00.

[34] Under 10AD there are additional entitlements:

**(a) reasonable moving expenses incurred by the tenant, up to such maximum amount as may be prescribed by regulation**

[35] The tenant made no claim under this heading, and none was awarded by the Residential Tenancies Officer.

**(b) reasonable additional expenses incurred by the tenant, up to a maximum amount that is equal to one month's rent payable under the lease**

[36] The Residential Tenancies Officer awarded the tenant \$1,400.00 under this head, on the basis that the provision is “penal” in nature. I take no issue with such an award, given all of the stress and inconvenience to the tenant, though I see it as compensatory and not necessarily penal.

**(c) all or a portion of the amount of increased rent that the tenant was obliged to pay under the tenant's new lease for up to twelve months.**



[37] The tenant had originally sought the full differential of \$16,387.42 for the year after she was evicted. She included estimated utility costs as well as the additional rent. The Residential Tenancies Officer noted that there was no policy guidance for how to determine rent differential apportionment, and he awarded \$7,000.00, without any explicit justification.

[38] Counsel for the landlord argued that the tenant has achieved a significant “betterment” to her situation. She now has four children living with her and has three bedrooms to be able to accommodate that, whereas she would have been unable to do so in the one-bedroom suite on the Bedford Highway, and likely would have had to leave on her own accord. The concept of betterment would reduce any compensation. It may be seen as a related concept to unjust enrichment; i.e. the tenant should not achieve a windfall at the landlord’s expense.

[39] The tenant does not deny that she is in a physically larger and better space, but the location is far from ideal. She says that she has to spend extra hours on the bus to get to and from her classes at the NSCC.

[40] I am satisfied that the tenant would gladly have paid less for a new place to live, but nothing was available in that price range.

[41] Still, I believe that the landlord should not have to bear all of that additional expense. The section allows the Residential Tenancies Officer to award “all or a portion” of the rent differential, which suggests that not every situation would justify awarding the entire amount.

[42] Although I am free to exercise my own discretion, I believe the \$7,000.00 awarded is a reasonable compromise and I agree with it.

### **Rent abatement and miscellaneous items**

[43] The last item was the rent abatement that the tenant sought for her Purple Cow internet hookup from January 25 to April 25, 2022. This amounted to \$731.00.

[44] Counsel for the landlord argued that the internet did not fail completely until after the tenant obtained this alternative supply. He says she should only recover part of this expense. Nevertheless, I accept that the tenant acted responsibly and could not continue with the very spotty service that she was receiving, given how important it was to her and her family. I believe it is reasonable to award the entire abatement sought.

[45] The tenant was also awarded the return of her security deposit of \$300.00, as well as her \$31.15 filing fee for the Residential Tenancies application.

[46] There is no controversy surrounding these items.

### **ORDER**

[47] This court orders that the Order of the Director of Residential Tenancies dated August 22, 2022 is confirmed, and the landlord shall pay the tenant the total amount of \$13,662.15.

**Eric K. Slone, Adjudicator**