

**SMALL CLAIMS COURT OF NOVA SCOTIA**

Citation: *Goree v. Daye*, 2022 NSSM 61

**Date:** 20221107

**Docket:** SCCH 516840

**Registry:** Halifax

Between:

Dayton Goree

*Claimant*

- and -

Melinda (Lynn) Daye and Delmore (Buddy) Daye Jr.

*Defendants*

**DECISION ON JURISDICTION AND ORDER**

**Adjudicator:** Eric K. Slone

**Heard:** November 1, 2022, in Halifax, Nova Scotia

**Appearances:** For the Claimant, self-represented

For the Defendants, self-represented

**BY THE COURT:**

[1] The Claimant has sued the Defendants for damages, including general damages, for incidents that allegedly happened while he was a tenant renting a room in a home owned by the Defendants, who are brother and sister.

[2] The claim cites alleged violations of the *Residential Tenancies Act*, specifically s.5(1) disposing of property, s.7(1) neglecting to give him a lease, s.9(1) statutory conditions (several) including alleged bad behaviour including alleged assaults and constant harassment.

[3] The total amount of money that he seeks is \$6,400.00 broken down into:

\$80.00	May rent overpayment
\$60.00	August rent overpayment
\$480.00	Cost of footwear
\$1,800.00	June July August rent returned
\$4,000.00	punitive damages for the assault and “malicious behaviour”

[4] The Claimant’s tenancy with the Defendants began in 2019 and ended in late August 2020.

[5] The Defendants have raised a preliminary objection to this case proceeding, because they say it offends s.10(d) of the *Small Claims Court Act*, which provides:

10 Notwithstanding Section 9, no claim may be made under this Act

(d) which involves a dispute between a landlord and a tenant to which the *Residential Tenancies Act* applies, other than an appeal of an order of the Director of Residential Tenancies made pursuant to Section 17C of that Act

....

[6] Back in August of 2020 the parties launched claims and counterclaim at Residential Tenancies. The Defendants were seeking to terminate the tenancy. The Claimant was seeking to be reimbursed for overpayments of rent that he said were in excess of allowable rental increases. Because the Claimant had already moved out by the time of the hearing, the Defendants abandoned their claim for vacant possession and did not participate in the hearing where, in the result, the Claimant was awarded a total of \$271.15 which, incidentally, he has

never collected.

[7] All of the Claimant's allegations appear to have happened during 2020 when he was still a tenant and the Defendants were actively trying to get him to move out. It does not appear that he raised any of these issues before the Residential Tenancies Officer on October 1, 2020 during his hearing. So it is correct to say that these claims have not been dealt with at Residential Tenancies, but that is not the question I have to answer. The question is whether the claims fall within the jurisdiction of Residential Tenancies and could be determined there.

[8] The Claimant's main argument is that, he says, the Defendants have attorned to the jurisdiction of the court, in that they filed a defence and counterclaim. It is a bit unclear whether they actually filed a counterclaim, since the filed copy appears to have the counterclaim scratched out and initialed. Nevertheless, there is a question as to whether filing a defence can amount to attornment in Small Claims Court.

[9] The short answer to that is "no." The Small Claims Court is a creature of statute. In the case of *City Centre Property Management v. Al-khalifah*, 2015 NSSM 3, which was cited and relied on by the Claimant, Adjudicator Barnet of this court wrote:

[35] It is no answer to suggest that, by participating in the hearing of this Claim before me, the Defendants attorned to (i.e. agreed to) this Court's jurisdiction. I observe here that (a) no Defence was filed (the Defendants verbally stated a summary of their position at the outset of the hearing before me – at my request – so that the Claimant would be aware of the nature of the defence), and (b) the Defendants have no background or training in legal matters. It would be unfair to find that the Defendants have necessarily agreed to the Court's jurisdiction by participating in the hearing in this case.

[36] Most importantly, parties cannot confer jurisdiction on a court unless a potential jurisdiction exists independently of any such agreement as to jurisdiction: *Leighton v. Stewiacke Home Hardware Building Center*, 2012 NSSC 184 at para. 66. If this Court does not have jurisdiction to address what is, in effect, a landlord-tenant dispute in a residential tenancies context, then the parties cannot legally agree to have this matter heard as a Small Claims Court Claim in any event.

[37] In short, I find that this Court does not have jurisdiction to

adjudicate the within Claim. If the Claimant wishes to pursue the matter, it must be brought as an Application to the Director of Residential Tenancies.

[10] The only distinction between that case and this, is the fact that the Defendant there did not file a defence. That is not enough to change the thrust of the case. I agree with it and rely on its reasoning. If this court would not have jurisdiction under its enabling statute, it cannot acquire jurisdiction simply by consent. That would make the matter, in effect, a form of arbitration, which is not possible under the Act.

[11] Other cases concerning attornment relied upon are not helpful to the Claimant. Superior courts have recognized attornment because they have inherent jurisdiction and are presumed to have jurisdiction in almost all instances.

[12] The Claimant contends that he cannot expect relief for his claims from Residential Tenancies because they have no ability to grant general and punitive damages. That may or may not be true, but the ability of the Small Claims Court to award general damages is limited by s.10(e) to \$100.00, and in my view, it has no jurisdiction to award punitive damages in any amount,

[13] So, what would be the fate of each of the listed claims:

[14] \$80.00 for alleged May rent overpayment: this is clearly a matter between landlord and tenant to which the *Residential Tenancies Act* applies.

[15] \$60.00 for alleged August rent overpayment: this is clearly a matter between landlord and tenant to which the *Residential Tenancies Act* applies.

[16] \$480.00 for alleged cost of footwear: although there was not much evidence about this claim, I understand that it relates to personal items of the Claimant's that he says were discarded or lost when he moved out. This is not an unfamiliar claim in Residential Tenancies, and Residential Tenancies Officers have the authority to award compensation if the landlord has caused personal items to be destroyed or lost.

[17] \$1,800.00 for alleged June July August rent returned: This is essentially a claim for a rent abatement, though I am unclear on what basis the Claimant would be entitled to an abatement. The claim refers to breaches of contract. This also is clearly a matter between landlord and tenant to which the *Residential Tenancies Act* applies.

[18] \$4,000.00 for punitive damages for the assault and “malicious behaviour” causing emotional distress: the Claim recites a number of events that the Claimant says amount to breach of contract and malicious behaviour. Many of the complaints relate to the behaviour of Troy Daye or Terris Daye, the adult sons of the Defendant Melinda Daye. This includes alleged assaults by these individuals, as well as bad behaviour of various types on their part. The Claimant has not sued Troy Daye or Terris Daye. I note that he does allege that Melinda did strike him in the face on one occasion in August 2020.

[19] The vast majority of these allegations concern Troy and Terris. There is no allegation that Buddy Daye Jr. participated in any assault.

[20] Apart from the alleged physical assault by Melinda, there is nothing that I can see that would be actionable in this court. There is no such thing as a civil tort of “harassment” recognized in law. Most of what the Claimant complains about relates to how he was made to feel uncomfortable in the home where he was a tenant. Residential Tenancies Officers do have authority to recognize by way of an abatement the fact that a tenant has been denied reasonable enjoyment of his tenancy.

[21] The only claim that arguably survives in a s.10(d) analysis is the claim for general damages for a physical assault by Melinda Daye on August 20, 2020.

[22] The maximum damages that the Claimant could be awarded for this assault would be \$100.00.

[23] There are no allegations against Buddy Daye Jr., that would attract damages for any known tort, such as assault.

[24] It is clear to me that there is tremendous bad blood between these parties. There are allegations of nasty racial epithets being used, which is ironic since all of the parties are black.

[25] Should this matter be allowed to continue, when at best the Claimant could establish an assault by Melinda Daye and collect up to \$100.00 in general damages? In my opinion, since the majority of the Claimant’s claims belong in Residential Tenancies, it would be an abuse of the process to allow this minor remnant to be tried in Small Claims Court, with all of the resources that such a trial would consume. The Residential Tenancies claim would go over all of the same ground, and more, and would amount to an unconscionable duplication of

effort.

[26] If the Claimant can establish any merit to his claims, the Residential Tenancies Officer would have ample jurisdiction to compensate him.

[27] As such, I am dismissing the claim without prejudice to any proceeding that the Claimant may wish to commence in Residential Tenancies.

**ORDER**

[28] This court orders that the within claim be dismissed.

**Eric K. Slone, Adjudicator**