

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

**Citation:** *Buchanan v. Edwards*, 2023 NSSM 12

ON APPEAL FROM AN ORDER OF THE DIRECTOR OF RESIDENTIAL TENANCIES

**Date:** 20230315

**Claim:** No. SCT519773

**Registry:** Truro

**Between:**

Glen Buchanan

APPELLANT

and

Maria-Laina and Dean Edwards

RESPONDENTS

**Adjudicator:** Julien S. Matte, Adjudicator

**Heard:** January 30, 2023 (via teleconference)

**Appearance:** Glen Buchanan, self-represented, for the Appellant  
Maria-Laina and Dean Edwards, self-represented, for the Respondents

**Matte, Adjudicator,**

1. This is an Appeal of an Order of the Director of Residential Tenancies awarding the Respondent tenants \$1,281.15 with respect to the return of a damage deposit, pursuant to s.12 of the *Residential Tenancies Act*, on the grounds that the Respondents have not provided any evidence to support their claim. The Respondents are asking the Court to dismiss the appeal and confirm the Order of the Director.
2. Although termed an appeal, a hearing before this Court with respect to an Order of the Director of Residential Tenancies is a new hearing. At the start of the proceedings the Court offered the parties the opportunity to re-schedule on short order to ensure the Court had a full evidentiary record. Neither party filed any evidence beyond the Order of the Director and a two page handwritten narrative by the Respondent that had been before the Director. Both parties declined and the hearing went ahead.
3. The Appellant testified that he resides in Colchester County but the property at issue is located in Cleveland N.S. The Appellant says he met the Respondents on more than one occasion with both parties agreeing that the Appellant showed them the property in and around the end of June 2022. The Appellant agrees that the Respondent began to move in on or about July 15, 2022. The Appellant testified that he was unable to get to the property on that day and made arrangements for the Respondents to pick up a key at the hardware store. The Appellant says that he was in the area on another occasion with a lease for the Respondents to sign but given the late hour accepted that the Respondent Maria-Laina was not able to meet with him. The Appellant acknowledges that as a result no lease was ever signed. The Appellant also notes that no notice to quit was ever given and stressed throughout the hearing that there is no evidence before the Court of the amounts claimed by the Respondent.
4. The Respondents testified that they moved into the property between July 15 and 18 2022 under the verbal agreement of a month-to-month lease at the rate of \$1,100.00 per month. The Respondent testified that they paid \$550.00 for one half month for July 2022. The Respondents

also testified that they paid \$550.00 as a damage deposit plus \$325.00 for a pet deposit and \$325.00 for a cleaning deposit.

5. The Respondent's testified that soon after moving into the property they found that the house was infested with fleas, smelled of pet urine and the water had a smell of rotten eggs. The Respondents testified that they spent two days treating the house for fleas and cleaning. The Respondent indicated that the Appellant did not address the water issue as he reported to them that he had grown up in the house and saw no problem with the hard water. The Respondents testified that their son has asthma and as a result of the urine smell, they decided to move out at the end of July 2022. The Respondents testified that they believed the house was rented shortly after they left.

## **Analysis**

6. Every claim has to be supported by facts as proven on a balance of probabilities by evidence. Evidence comes in many forms but the most common are testimony and documents. The Appellant took the strong position that in the absence of documents, the claim by the Respondents for the return of a damage deposit could not be allowed. As a result, the Appellant elected not to provide any testimony that might clarify amounts he received for the claimed deposits. The Appellant was careful not to deny having received the deposits but seemed to resist providing any evidence at the risk of proving the Respondent's claim. While such an approach may be the norm in a criminal court, Small Claims Court relies on the civil standards and burdens.

7. The Court's task is to consider all the evidence, including testimony of the parties to determine, on a balance of probabilities, (a standard often referred to as 50+1 ) whether the appeal should be allowed. The Appellant appeals a decision of the Director of Residential Tenancies ordering him to return a damage deposit to the Respondent while dismissing claims for other expenses and stress. Before this Court, the Respondents only seek the return of the damage deposit plus fees in accordance with s.17A(k) of the *Act*.

8. The Court finds that the parties agreed to a month to month tenancy at the rate of \$1,100.00 per month. The Court accepts the Appellant's evidence that the original rate of rental of \$1,250.00 per month was reduced by the Appellant. The Court accepts that the term of the rental agreement began on July 15, 2022 and was terminated by the Respondents on or before July 31, 2022. No notice to quit was provided to the Appellant but the Respondents had frequent contact with the Appellant's wife about the ongoing issues. The Respondents claim that the property was rented by the Appellant no later than August 15, 2022. The Appellant did not deny or confirm the new tenancy but argued that any new tenancy was proof that the Respondents reasons for leaving were unfounded. The Court finds that the Respondent's did have to disinfect the property for fleas. The Court accepts that the Respondents had issues with the smell of urine and the hard water.

9. The Court finds that pursuant to s.10(1)(b) of the *Act* the Appellant was entitled to receive one month's notice. However as per Statutory Condition 6, the Appellant had an obligation to mitigate any losses stemming from the Respondent's departure. As a result of the Appellant's refusal to testify or lead any evidence on mitigation, the Court is left with only the Respondent's evidence that the house was rented soon after their departure. The Court finds that the Appellant mitigated his losses.

10. With respect to the claimed damage deposit, the Appellant questioned the Respondent on ever having provided a lump sum amount of \$1,750.00. However, the Appellant refused to give evidence, going as far as saying that he did not comment on the amounts because the Respondents did not prove them through documents and that it was "not up to him to prove his innocence". Guilt or innocence is not in the purview of this Court. While the Court can accept that one lump sum payment may not have been made, the Court is left with only the Respondent's unchallenged evidence of the deposit amounts.

11. The Court finds that the Respondent gave the Appellant \$550.00 representing half a month's rent damage deposit plus \$325.00 representing a pet deposit and \$325.00 representing a cleaning deposit for a total of \$1,200.00, \$50.00 less than awarded by the Director of Residential Tenancies. As per s.12 of the *Act* all of the amounts are deemed to be damage

deposits and must be returned to the Respondent absent a claim by the Appellant. No claim has been made other than for the Respondent's failure to give notice which is dealt with above.

**Order**

12. The Appeal is allowed in part and the Order of the Director dated December 5, 2022 is varied.

13. The Appellant is ordered to pay \$1,231.15 to the Respondents.

Julien S. Matte, Adjudicator