

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

Citation: *Chedrawe v. McLaughlin*, 2023 NSSM 19

Claim No: SCCH 23-520415

**Between:**

Assad Chedrawe

Appellant  
**Landlord**

v

Wesley McLaughlin

Respondent  
**Tenant**

Mr. Joseph Jaukhadar appeared for the Landlord

Mr. Wesley McLaughlin appeared on his own behalf

## DECISION

This is an appeal of a Decision and Order of the Director of Residential Tenancies rendered by Residential Tenancies Officer, Jason Wareham, dated January 4, 2023.

This appeal is of the second of two decisions issued by this Officer. The first dated May 30, 2022 denied the Landlord's application to terminate Mr. McLaughlin's tenancy. The application was based, the Officer found, upon a one time incident of refusal of entry by the tenant. The decision reproduced section 7 of the Residential Tenancies Act for the parties, so that the rules regarding the Landlord's entry of the premises would be understood. That decision was not appealed.

The Officer then adjudicated a second application, this time filed by the Tenant Mr. McLaughlin, for payment of monies by the Landlord as compensation for property damaged or lost by the Landlord. The allegation in that case, was that the Landlord unilaterally changed the locks on the unit June 30, 2022. The tenancy effectively ended July 17, 2022, when Mr. McLaughlin was able to retrieve his belongings.

In his January 4<sup>th</sup>, 2023 decision, Officer Wareham found the following:

1. That the Landlord had violated Statutory condition 8 by unilaterally changing the locks, and "unilaterally attempted to end the tenancy without proper authority";
2. That after changing the locks the Landlord immediately started minor repairs on the unit, packing up the tenant's items.

As a result, the Officer ordered the following:

Return of the security deposit (\$340.00)

Moving Expenses (\$500)

Furniture damage and loss (\$500)

Mr. McLaughlin also claimed for a total of \$15,000 to \$20,000 for damage to "collectables" which he says he had in his apartment. The Officer found that with

no professional appraisal being entered into evidence by Mr. McLaughlin, there was insufficient evidence to prove that loss, and that part of the claim was denied.

He issued a total award of \$1,371.15 to the Tenant, which included the above amounts and the \$31.15 application fee.

The Landlord appealed this decision, claiming that the Officer “failed to follow the requirements of natural justice”. He claims that the amount awarded should be “offset by the sums owed by the Tenant for nonpayment of rents, or, if not, it should be revised to reflect a sum of \$0 for lack of evidence of the Tenant’s part”.

### **Decision:**

An appeal from a decision of the Director of Residential Tenancies is, at the Small Claims Court, a hearing *de novo*, which means it is a “new” hearing in which I am not bound by the decision of the Director, can consider any new evidence tendered, as well as the record before the Officer, which was also provided to me. I can affirm, reverse or vary the decision of the Officer, depending on what I find to be confirmed by the evidence before me.

I am denying the Landlord’s appeal, and varying the decision of the Officer by awarding Mr. McLaughlin a total of \$16,216.99. My reasons follow.

### **Background:**

In the hearing before me, on February 27, 2023 by telephone conference call, the Landlord’s Property Manager, Mr. Jaukhadar, testified that in April of 2022, Mr. McLaughlin had been “tearing apart a car” in his unit. That allegation had been part of the first complaint to the Board detailed above. In June of 2022 he says he had “no way to contact” Mr. McLaughlin, and “put a notice” on the door. The notice is in evidence, and it has the name of Tony Hannan, the superintendent of the building. The notice reads as follows:

To Wesley McLaughlin

June 30, 2022

The locks on your door will be changed July 1. You can contact me for access to remove your items. The court order will be sent to 31 Albro Lake Rd and 396 Rocky lake Drive via mail. Key must be returned upon vacancy.

## Tony Brennan

An affidavit was filed in evidence from Mr. Brennan. That document dealt with the events leading up to the order issued by residential tenancies on May 30, 2022. He deposed that “By the end of June 2022, Mr. McLaughlin had not been seen on the property since approximately early April, 2022. He had also disconnected his phone and was not reachable.”

Mr. Brennan describes changing the locks July 1, 2022 and “conducting an inspection” July 8, 2022, in which he says he discovered “motor vehicle parts” and “chemical agents”, and “random objects stacked in front of the door in an attempt to prevent entry”.

A police complaint was filed by Mr. McLaughlin July 18, 2022, in which it appears the officer advised the parties to go to residential tenancies. According to the redacted report produced in evidence, he told the landlord that “arbitrary eviction” was not a good response to unhappiness with a residential tenancy decision.

Ms. Megan Shafi testified on behalf of Mr. McLaughlin. While he was away in April to June, Ms. Shafi says she was in the apartment at least once a week. During the time there had been complaints about engine parts, Ms. Shafi says that the motor was transferred to her home.

What happened in early July in Mr. McLaughlin’s unit after the locks were changed, remains a major dispute between the parties. Both parties provided a significant body of photographic evidence, but in fact, both party’s evidence leads to the same conclusion.

The landlord’s evidence shows a small apartment, not pristine, but not in a state of untidiness which would justify an unauthorized entry. There are paintings on the wall, and modest furniture and fittings.

What is most notable about the Landlord’s pictures is that they depict on the walls and shelves in the apartment, a very, very large collection of what are commonly known as “collectables”, primarily automobiles, and figures from movies and television. They are shown neatly hanging on the walls of the apartment by the dozens. They present as being in their plastic cases as they would have been when sold.

In Mr. McLaughlin's photos, I can see a garbage bag that has been stuffed full of these collectables, and that some of them are simply gone. Mr. McLaughlin produced pictures of torn packaging on these collectables. He says it appears some painting was done while his belongings were still in the unit. His photos show paint on stained glass hangings and paintings. He says that clothing and other belongings were missing.

Of the greatest concern to Mr. McLaughlin was his collectables, which he describes as an investment. Having the Residential Tenancies Officer refuse his claim for compensation as he could not quantify the loss, in the hearing before me Mr. McLaughlin produced a report provided to him by Mr. Jimmy Romaine, dated February 23, 2023.

Mr. Romaine did not testify before me. In his report, he states that he has been appraising "antique toys including Hot Wheels" since 1998. He reviewed the collection which Mr. McLaughlin gave to him of the damaged collectables. He stated:

"After reviewing this collection, my assessed price reflects the cars being in mint condition at a total of \$21,462.19. However, due to their being damages present on all the cars such as broken blisters, and damaged cards, they would be significantly less in value, approximately \$4359."

Mr. McLaughlin claims for this loss. He also provided receipts for moving expenses (\$249.50), and repairs to remove paint from a picture frame (\$115.00). He claims \$125 for the months of July, August and September, which was the increase in rent that he paid upon moving.

In addition, he produced a list of items, lost or damaged, including:

Cleaning and laundry supplies: \$25.00

Carpet: \$70

Food from his cupboards and fridge: \$150

American coins: \$45

Grey sweat pants: \$67.99

Grey sweat pants: \$30

Black t-shirt - \$40

Mr. McLaughlin wants compensation for all of these things. The Landlord wants the decision of the Officer reversed, arguing that their actions were justified either on the ground of non-payment of rent, or abandonment of the unit.

### **Legislation:**

Section 13 of the Residential Tenancies Act R.S.N.S. 1989, c. 401 stipulates that disputes regarding the lease between the parties, (which would include allegations of rental arrears), requires application to the Director for resolution.

Section 9 of the Residential Tenancies Act outlines Statutory Conditions governing the relationship between the parties. In this case, the applicable conditions are 6,7 and 8:

### **STATUTORY CONDITIONS**

#### **Statutory conditions**

9 (1) Notwithstanding any lease, agreement, waiver, declaration or other statement to the contrary, where the relation of landlord and tenant exists in respect of residential premises by virtue of this Act or otherwise, there is and is deemed to be an agreement between the landlord and tenant that the following conditions will apply as between the landlord and tenant as statutory conditions governing the residential premises:

#### **Statutory Conditions**

6. Abandonment and Termination - If the tenant abandons the premises or terminates the tenancy otherwise than in the manner permitted, the landlord shall mitigate any damages that may be caused by the abandonment or termination to the extent that a party to a contract is required by law to mitigate damages.

7. Entry of Premises - Except in the case of an emergency, the landlord shall not enter the premises without the consent of the tenant unless (a) the entry is at a reasonable hour for the purpose of exhibiting the premises to

prospective tenants or purchasers and (i) notice of termination of the tenancy has been given, (ii) the lease is a fixed-term lease with a term of less than six months and one month or less remains in the term of the lease, or (iii) the lease is a fixed-term lease with a term of six months or more and three months or less remain in the term of the lease; or (b) the entry is during daylight hours and written notice of the time of the entry has been given to the tenant at least twenty-four hours in advance of the entry.

8. Entry Doors - Except by mutual consent, the landlord or the tenant shall not during occupancy by the tenant under the tenancy alter or cause to be altered the lock or locking system on any door that gives entry to the premises

Sections 23 and 24 of the Residential Tenancies Regulations made under subsection 12(4) and Section 26 of the *Residential Tenancies Act* stipulates a process by which the landlord can dispose of a tenant's personal property.

### **Inventory of abandoned personal property**

- 23** (1) Where a tenant leaves personal property in the residential premises after the tenancy has ended or the tenant has abandoned the residential premises pursuant to subsection 5(3) of the Act, the landlord shall prepare an inventory in Form A and file it with the Director, and send a copy of Form A to the tenant as follows:
- (a) by registered mail, express post or courier to the tenant's new address, if known;
  - (b) by e-mail, if an e-mail address for the tenant is indicated on the lease; or
  - (c) if the tenant's new address is not known and no e-mail address for the tenant is indicated on the lease, by registered mail, express post or courier to the address for contact of next of kin, if indicated on the lease.
- (2) Subsection (1) does not apply to abandoned personal property that may be disposed of under subsection 24(4).

## **Disposing of abandoned personal property**

- 24** (1) The Director may, in writing, authorize a landlord to dispose of abandoned personal property that has an estimated value of \$500 or less by any method convenient to the landlord, if 30 days have elapsed since Form A was filed with the Director and mailed to the tenant or the tenant's next of kin.
- (2) The Director may, in writing, authorize a landlord to sell abandoned personal property that has an estimated value over \$500, except manufactured homes, through a public sale if 30 days have elapsed since Form A was filed with the Director and mailed to the tenant or the tenant's next of kin.
- (3) A landlord may immediately dispose of abandoned personal property that the landlord considers to be unsanitary or unsafe to store, and within 10 days of the date that the property is disposed of, must file Form A with the Director and mail a copy of Form A to the tenant or the tenant's next of kin.
- (4) A landlord may immediately dispose of abandoned personal property if the landlord is satisfied on reasonable grounds that 1 of the following applies:
- (a) the abandoned personal property has no monetary value;
  - (b) the cost of inventorying, removing, storing and selling the abandoned personal property would be more than the proceeds of the sale.
- (5) Subsection (4) does not apply to abandoned personal property that is an item such as a personal document or photograph that by its nature is impossible or difficult to replace and is of little or no monetary value.
- (6) A landlord must prepare an inventory of abandoned personal property disposed of under subsection (4), and must retain a copy of the inventory for 1 year after the termination of the tenancy.

## **Conclusion:**



As a preliminary observation, I find that what is not before me, is Mr. McLaughlin's payment, or non-payment, of rent, or behaviour issues. If the landlord intended to rely upon these grounds, an application to the Director of Residential Tenancies was available, and required, under the legislation.

Non-payment of rent does not entitle the Landlord to effect an illegal eviction. What is before me, as was before the Officer, is what if any damages were sustained by Mr. McLaughlin, as a result of his eviction.

The evidence makes clear that the Landlord through Mr. Hannem, unilaterally and illegally changed the locks, referencing in the note left on the door on June 30, 2022, an "Order" which did not exist. By doing so, the Landlord violated at least sections 13 and 9 (1) 8 of the Residential Tenancies Act.

Nor do I accept the Landlord's argument that Mr. McLaughlin had "abandoned" the unit. I do not think that is what the Landlord believed. Mr. Hannem in his affidavit says that Mr. McLaughlin had "not been seen" since April of 2022 (Ms. Sharrif testified that she was visiting the apartment in Mr. McLaughlin's absence).

Regardless of the last time Mr. McLaughlin was in the unit, on May 12, 2022 Officer Warham held a telephone conference call pursuant to his decision of May 30, 2022. Both Mr. Hannem and Mr. Warham were present at that hearing, with Mr. McLaughlin successfully defending against the Landlord's attempt to evict him. Over a month after the Landlord claims he has not been seen, Mr. McLaughlin is fighting the Landlord's application to evict him. There is no evidence Mr. McLaughlin had abandoned the unit, and I find that the Landlord did not actually think he had done so.

Even if the Landlord had believed that abandonment had occurred (which they did not), once again the requirements of residential tenancies were ignored. No inventory was prepared, and no application was made to the Director to allow disposal of property allegedly abandoned.

All of the evidence points to the Landlord changing the locks, and apparently doing some painting while Mr. McLaughlin's belongings were still in the unit. Worse still, the Landlord did not recognize the value of the collectables that were in the apartment, and destroyed approximately 75% of their value by failing to treat them like the valuables that they were.

## **Amounts Awarded:**

As stated above, this is a hearing de novo, and as such I may confirm, reverse or vary the decision of the Director.

I confirm the decision of the Officer that Mr. McLaughlin was evicted by the Landlord. As the hearing before included new evidence of his loss from Mr. McLaughlin, I will address each head of claim individually:

a) Return of the security deposit (\$340.00)

The Officer's award of \$340.00 is confirmed;

b) Moving Expenses (\$249.00)

The Officer's award was \$500, but a U-haul receipt for \$249 was submitted by Mr. McLaughlin. I award \$249.00.

c) Change of residence:

Mr. McLaughlin testified that his rent has now increased by \$125.00 per month and seeks compensation for 3 months of the difference in the rent. I accept his evidence and award \$375.00.

d) Furniture damage and loss:

The Officer awarded \$500.00 under this head, which he allowed was "imprecise".

Based upon the evidence provided by Mr. McLaughlin, I award two amounts:

The Cost of repairs to remove paint from a picture frame (\$115.00), which was invoiced.

Payment for the two pairs of sweat pants and the T-shirt, for a total of \$137.99.

The other amounts claimed under this heading are not possible to quantify.

e) Loss of value of collectables:

The Officer refused an award in this area, as he did not have evidence to support the value of the collectables. In the hearing before me, Mr. McLaughlin produced the report of Mr. Romaine, described above. As stated above, I have seen the evidence provided which shows almost every wall in Mr. McLaughlin's apartment covered with carefully curated collectables. I have also seen pictures that I find are these same collectables, in a garbage bag, and in a box with heavy items such as shoes on top of them. I find that the evidence confirms that the Landlord's action all but destroyed the value of these belongings.

Mr. Romaine did not testify, but the valuation was not challenged. I accept his valuation based upon the materials provided in evidence, it is the best evidence I have of the damage done. Mr. Romaine assessed the collectable cars, matching the cars to Mr. McLaughlin's list, and approximated the value of the cars if in "mint condition" as \$21,462.19. Given the damage he observed, he now values the cars at approximately \$4359.00.

Mr. Romaine says that his numbers are approximate, and taking that into account I will award \$15,000 under this heading.

For that reason, and for the reasons above the appeal is dismissed and the decision varied. An Order will issue requiring the Landlord to pay to Mr. McLaughlin, the amount of \$16,216.99.

Dale Allane Darling KC  
Adjudicator

Dated at Halifax, Nova Scotia on April 30, 2023

**Form 7(c)**  
**in the Small Claims Court of Nova Scotia**  
Claim No: SCCH-520415

**BETWEEN:**

Assad Chedrawe  
Appellant/Landlord  
31 Albro Lake Road  
Dartmouth, NS  
B3A 3L9

-and-

Wesley McLaughlin  
Respondent/Tenant  
396 Rocky Lake Drive, Apt 1, Bedford, NS  
B4A 2TS

**ORDER**

On April 30, 2023 I issued a decision in this matter. By this Order, I dismiss the appeal of the Landlord Mr. Chedrawe, and vary the amount awarded by the Officer to the Tenant Mr. McLaughlin.

The Tenant Mr. McLaughlin is awarded a total of \$16,216.99.

Dated at Halifax, Nova Scotia

On April 30, 2023

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Dale Darling, KC  
Adjudicator

Original	Court File
Copy	Claimant(s)
Copy	Defendant(s)