

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Joyce v. Henderson*, 2023 NSSM 91

ON APPEAL FROM AN ORDER OF THE DIRECTOR OF RESIDENTIAL
TENANCIES

Date: 20231211

Claim: No. SCT522481

Registry: Truro

Between:

Roberta Joyce

Appellant

and

Dawn Henderson

Respondent

Adjudicator: Julien S. Matte

Heard: December 6, 2023

Appearance: Roberta Joyce, self-represented
Dawn Henderson, self-represented

By the Court:

[1] This is an Appeal of an Order of the Director of Residential Tenancies dated September 2, 2023, dismissing the Appellant's request for vacant possession of the property ("Highland Village") currently occupied by the Respondent and her son. In a six-page decision, the tenancy officer rejected the Appellant's claims for vacant possession on the basis of the need for renovation, damage to the property by the Respondent, breaches of the lease due to unauthorized animals or the Appellant's claim that she required the property for personal use. At the hearing before this Court, the Appellant only advanced an argument for vacant possession pursuant to s. 10(8)(f)(i) of the *Residential Tenancies Act* which allows a landlord who in requires vacant possession for their own personal use or use by a family member.

[2] As noted by the tenancy officer, the Appellant owns three properties in Colchester County including the property at issue in Highland Village. In addition, the Appellant owns a property in Fall River, Halifax County where she currently lives. The Appellant testifies that she needs to move into the Highland Village property to set up her medicinal herbs business. In support of her argument, the Appellant gave the Court seven pictures depicting her Facebook page screenshots showing the name of her business and statements of her general intentions and wish to live in the country. Another picture depicts a stack of books relating to medical herbalism and one shows a flyer for a one-day training on "people making medicine" which the Appellant testified that she had attended. The Appellant also provided a picture of the Highland Village property and a picture of the Fall River backyard.

[3] The Appellant testified that the plant beds depicted in the Fall River backyard had to be covered up to protect them from her dog, citing this as reason for having to move to Highland Village to pursue her chosen path in herbal medicine. The Appellant argued that given her intentions to start a herbal medicine business, she is entitled to vacant possession of the Highland Village property as she has provided proper notice to the Respondent by serving her with a Form F, Notice to Quit on June 9, 2023.

[4] The Respondent signed a year-to-year lease for the rental of the Highland Village property starting on September 1, 2019, for her and her son to live in. Both the Respondent and her son have limitations related to disabilities arising from motor vehicle accidents. The Respondent's son is assisted by a service dog and the company of other animals such as ducks and geese. The Respondent testified that despite her limitations she was able to qualify as a Medical First Responder which enables her and her son to volunteer at the local fire department together. The Highland Village property has allowed the Respondent to keep animals for the benefit of her son, all the while helping her rebuild her credit after she was left without the ability to work following her car accidents. She receives disability benefits to support her and her son.

[5] While the Respondent acknowledges that the Highland Village property is owned by the Appellant, she questions her true motives for wanting vacant possession. As noted in the text evidence submitted, the parties discussed in June 2023 the possibility of the Respondent purchasing the house. The Respondent noted that "[w]hen we moved in you'd said we could stay indefinitely or as long as wanted/needed". In what might be described as an

“invitation to treat”, the Appellant asked the Respondent on June 20 “Can you get a mortgage for \$120,000”. By July 4, 2023, the Appellant indicated she would take \$150,000 for the house. On June 19, 2023, the Appellant filed the application for vacant possession.

The Law

[6] Given that the Appellant abandoned all other arguments supporting a request for vacant possession, the only remaining provision of the *Act* that applies to landlord notice is 10(8)(f)(i) which reads:

A landlord may give to the tenant notice to quit residential premises where

(f) the Director is satisfied that it is appropriate to make an order under Section 17A directing the landlord to be given possession at a time specified in the order, but not more than twelve months from the date of the order, where

(i) the landlord in good faith requires possession of the residential premises for the purpose of residence by himself or a member of his family.

Findings

[7] Unlike a commercial tenancy, the rights and responsibilities of the parties are defined by legislation. The Appellant’s assertion that simply meeting notice requirements under the *Act* assures her application for vacant possession may have been true under a commercial lease but not here. The *Act* and all that flows from it recognizes that exchange of money for possession of a residence is much more than just a commercial transaction. The comfort and safety that a

residence provides is a necessity that the law aims to protect by striking the appropriate balance between the rights of tenants and landlords. In exchange for a statutory regime of dispute resolution, tenants are afforded rights flowing from their tenure.

[8] While tenants can give notice to end a tenancy in accordance with the applicable notice provisions (s. 10(1)), landlords are limited to specific circumstances as per s.10(3A) which states that “A landlord shall not give to the tenant a notice to quit residential premises except in accordance with this Section.” Exceptions include: breaches of statutory conditions by the tenant (10(8)(e)), because the property is not habitable (10(8)(c)), the landlord requires significant renovations (s.10AB) or, as is the case here, for personal use of the residence (s. 10(8)(f)(i)).

[9] As the landlord’s application to end a tenant’s tenure is an exception to the rule that the tenant enjoys tenure under s.10 of the *Act*, the provision relied on must be interpreted strictly. The burden rests on the Appellant to show through evidence that she requires the Highland Village property to use as a personal residence.

[10] The Appellant currently lives in a property in Fall River but claims it is not suited for her medicinal herb business which she is in the process of building. The evidence provided to show she is actively intending to start her business, were a picture of books and a picture of a one-day course she took in September 2023 on the topic. While both the Fall River property and the Highland Village property have the backyards needed to grow herbs, the Appellant says that the raised beds in Fall River are inadequate as her dog tends to damage anything

grown. However, it is apparent from the pictures that both properties will require some accommodation for growing herbs to account for the dog's propensity to damage them. Neither property appears any better suited to the stated purpose of growing herbs.

[11] The Appellant notes that the previous owner of the Highland Village property was a master gardener, and she intends to use some of the plants on that property. The Court notes that evidence from the Respondent suggests that, until recently, the Appellant had not been on the Highland Village property for years. In fact, fallen trees from September 2022 were not cleared by the Appellant until June 2023 making it impossible for the Respondent's ducks to access their watering hole and suggesting the Appellant has not shown any interest in Highland Village until very recently. Regardless, with proper notice, the Appellant can remove any plants she desires from Highland Village and their presence does not ground an application for vacant possession.

[12] The Court notes that the present application was filed before negotiations for the sale of the property in June 2023 suggesting that the Appellant intended to sell the property before, she applied for vacant possession. The Appellant's reasons for requesting vacant possession appeared to shift before this Court to one requiring possession for personal use on the basis that Highland Village was the only property suited for her planned medicinal herb business.

[13] The Court finds that there is no evidence to support the position that Highland Village property is the only property suitable for the Appellant's planned business. Given her two other residential properties, one of which she currently occupies, the Appellant has failed to demonstrate that she requires possession of the Highland Village property for her personal use.

Order

[14] The Appeal is dismissed, and the Order of the Director dated September 2, 2023, is affirmed.

Julien S. Matte, Small Claims Court Adjudicator