

**SMALL CLAIMS COURT OF NOVA SCOTIA**

**Citation:** *McKay v. 4375421 Nova Scotia Limited*, 2024 NSSM 26

ON APPEAL FROM AN ORDER OF THE  
DIRECTOR OF RESIDENTIAL TENANCIES

**Date:** 20240402

**Docket:** 528821

**Registry:** Halifax

Between:

Norma McKay and Curtis Aitkins

*Claimant*

-and-

4375421 Nova Scotia Limited

*Defendant*

**Adjudicator:** Eric K. Slone

**Heard:** March 25, 2024, via teleconference

**Counsel:** Jessica Simm, for the Appellants  
Sandra Nageb and Liam Fraser, senior law students for the  
Respondent – Janelle Poushay and Ian Armour

**By the Court:**

[1] This is an appeal by the tenants from an order of the Director of Residential Tenancies dated November 20, 2023. The effect of that order was to allow the landlord to terminate the tenancy on the basis that the landlord required vacant possession for the purpose of making substantial renovations to the unit.

[2] The unit in question is one of eight units in this two-story building in Dartmouth, Nova Scotia, namely 6 Catherine Street, Unit 2.

[3] This decision revisits the issue of what is required to be proved by a landlord seeking to perform a so-called renoviction.

[4] There's nothing remarkable about the tenants' situation. They are a couple with a fairly limited fixed income, who are in an apartment that suits their needs at an affordable price by today's standards. Their current rent is approximately \$742 for a one-bedroom apartment.

[5] There have been some issues with the apartment, most seriously the heat has been inadequate for the last year. This is one of the issues that the landlord proposes to rectify on a permanent basis. Throughout the last winter, the tenants have had to use a space heater to make the apartment even marginally tolerable. The landlord has been subsidizing the extra electrical expense, but wants to upgrade the electric in order to accommodate new, proper baseboard heaters.

[6] The numbered company which owns the building has three partners who collectively own other apartments and buildings in HRM. Two of those owners testified, Janelle Poushay and Ian Armour. As they described, they bought this building in January 2022 with no specific intention at that time to do major renovations. As they got more familiar with the building's systems, they detected a number of maintenance and repair items, mostly to do with electrical and plumbing.

[7] At some point, they made the decision to try to empty out the building of tenants and perform significant renovations. All eight units received notices to vacate for this purpose. At the moment, the tenants of this unit, unit 2, are the sole holdouts. All of the others have left either voluntarily or, at least in one case of which I am aware, as a result of a Residential Tenancies decision, about which more will be said below.

[8] The renovations that are contemplated for Unit 2 are precisely the same as has already been done on five of the units. This involves removing all of the drywall, rewiring the unit to allow for a 100 amp service, re-plumbing the

bathroom at least if not also the kitchen, and then putting new drywall in, with all that that involves. The current electrical service for Unit 2 is only 50 amps, which is said to be inadequate to allow for proper baseboard heating.

[9] While the walls are down to the studs, the intention is also to add additional insulation to reduce heating costs and make the unit more comfortable.

[10] The landlord does not deny that when the renovations are complete, the unit will command a much greater rent, approaching almost double what the tenants are currently paying. This would price it out of the tenants' ability to pay.

[11] There is no question that all of the necessary construction and electrical permits are in place.

[12] I do not think it can be reasonably argued that the tenants could safely stay in place while these renovations are going on. They would be without running water or toilet facilities for a period of time, and they would generally be living in a construction zone. The contemplated renovation would take weeks or longer, depending on the availability of trades and building and electrical inspections. So the issue comes down to whether, using the words of the *Residential Tenancies Act*, the landlord "... in good faith **requires** possession of the residential premises for the purpose of... making repairs or renovations so extensive as to require a building permit and vacant possession of the residential premises." (Emphasis added)

### **The statutory scheme**

[13] The following are the relevant sections of the *Residential Tenancies Act*, passed in 2021:

#### **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. 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.
- (3) When making a decision on an application under subsection (2), the Director shall consider any vacant possession guidelines prescribed by regulation.
- (4) 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.
- (5) 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.

[14] I had occasion to consider this legislation in *336580 Nova Scotia Limited v. Spelman*, 2023 NSSM 40 (CanLII). Given the state of the law, and the particular arguments made to me at that time, I stated:

[21] The renoviction provisions of the *Residential Tenancies Act* were passed to address particular mischiefs, as is the case with most legislation. The context included the pandemic, but I believe the primary mischief was the increasing shortage of affordable housing. While evictions for so-called “lipstick renovations,” or superficial facelifts, may have been the most egregious abuse requiring a response, the legislation appears to go beyond that.

[22] To repeat, the relevant language is: 10 AB (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 [demolition or] (b) making repairs or renovations so extensive as to require a building permit and vacant possession of the residential premises.

[23] So there are two conditions or prerequisites that apply. One: the required repairs must be so extensive as to require vacant possession, and Two: they are significant enough to require a building permit.

[24] Dealing with the second prerequisite first, I believe that the Nova Scotia Legislature required landlords to have all their permits available for two reasons,

namely to serve as some measure of the significance of the planned work and also to demonstrate that they are serious about having the work done. So permits are necessary, but not in themselves sufficient to satisfy the requirements where eviction is sought.

[25] The more important prerequisite, in my opinion, is that the work is “required” in good faith to justify the displacement and loss of an affordable tenancy that it would cause to the affected tenants. The planned work may be desirable, and on some level may also be adjudged prudent, but that does not mean it is truly required.

[26] I find that the landlord has not satisfied me that the work on the units involved with this application is required, within the meaning of s.10AB(3). I believe that the landlord’s primary purpose here is to increase the rents applicable to the units. Absent convincing evidence that the units are in need of substantial renovation, this is precisely the type of renovation that the Residential Tenancies Act seeks to preclude.

[15] Since then, there have been other cases including one in the Supreme Court of Nova Scotia, interpreting the word “requires” in the context of renovations. In *Fife Holdings Limited v. Van den Eynden*, 2023 NSSC 302 (CanLII), Norton J. was critical of an adjudicator who had interpreted the section much as I had done. He stated:

[12] In restating the requirements of the section in a summary fashion, the Adjudicator fell into error by imposing the additional burden on Fife of demonstrating that extensive renovations to the building were “required”. This requirement is not contained in the Act. Throughout his reasons, the Adjudicator focused on the nature of the building and the necessity of the renovations rather than on the nature of the contemplated renovations. The adjudicator did not conclude that Fife’s proposed renovations did not require vacant possession, nor did he conclude that Fife was not acting in good faith. Indeed, he failed to make any finding on that requirement of the legislation.

[13] Rather, his decision to allow the appeal turns entirely on his conclusion that Fife had not proven that the building “required” renovations so extensive as to necessitate vacant possession. The question is properly whether vacant possession is required in order to undertake the contemplated renovations. Evidence about whether the contemplated renovations are necessary may be admitted, to inform the decision as to whether the landlord is acting in good faith.

[16] The *Fife* decision is binding upon me, and upon full consideration I believe it is the correct interpretation of the legislation. A landlord who is determined to perform renovations may not be second-guessed by the Director or by the court. It is not our function to say that the renovations are not “required” on the basis that the current conditions may still be livable. The questions are:

- a. Whether the landlord is acting in good faith, and
- b. Whether vacant possession is required in order to carry out the renovations.

[17] On the question of good faith, I believe it is appropriate to refer to the decision of Adjudicator Barnett of this court in the case of *4375421 Nova Scotia Ltd. v. Clements*, 2023 NSSM 38 (CanLII), which considered this landlord's application for vacant possession of another unit in this same building:

[17] The scope of the aforementioned work is listed in the HRM Residential Building Permit which identifies All Seasons Roofing & Exterior as the "Responsible Contractor" and which permit provides the following description of work:

The units that will be renovated are units 2, 3, 5, 7, 8  
Bare stud demolition of units 2, 3, 5, 7, 8

Re-wiring electrical in units 2, 3, 5, 7, and 8. Switching off all hot water heating to electric, oil heating to baseboard electric, install heat pumps in each unit, install brand new electrical panels for each unit

All new plumbing as per code All

new insulation as per code

All new drywall fire rated to code 1 hour fire separately provided

Water will be shut down to units for duration of construction.

[18] Mr. Clements' apartment is clearly one of the "units" referred to in the HRM Residential Building Permit.

[19] Finally, the Wiring Permit is not itself specific in terms of the scope of work to be done but it does clearly apply to the building where Mr. Clements lives.

[28] In short, before any consideration of compensation is made, the landlord must prove the following before being entitled to termination of tenancy and vacant possession in advance of contemplated renovations:

1. the landlord, in good faith, must require possession of the residential premises in question for the purpose of making renovations;
2. the repairs must be so extensive as to require a building permit and vacant possession of the residential premises in question; and

3. the landlord must have all necessary permits and approvals required by law for the renovations to be carried out.

[29] I note that I respectfully disagree with the proposition set out in *Burgess v. Fifield*, 2023 NSSM 11 at para. 13 that a landlord must also prove that there exists a need for renovations that require vacant possession. That is not part of the requirements set out in Section 10AB(3) other than perhaps indirectly via the good faith requirement. For example, if an apartment was recently renovated and yet the landlord is saying that it wants to do extensive renovations, that might be cause to question whether the landlord really intends to carry out renovations. In any event, when Section 10AB(3) speaks of the landlord needing to satisfy the Director that the landlord “requires” possession of the residential premises for the purpose of renovations, the word “requires” simply means “wants”: see *D. Jockel Holdings Ltd. v. Vardigans*, 2023 NSSM 16 at paras. 46 and 47.

(b) Possession for the Purpose of Renovations Required in Good Faith

[30] I previously discussed the concept of “good faith” in the context of Section 10(8)(f)(i) of the Residential Tenancies Act: *D. Jockel Holdings*, supra. In that case, the question was whether the landlord required, in good faith, the termination of a tenant’s tenancy for the purpose of occupying the tenant’s apartment. The requirement of good faith was simply described as a genuine intention on the part of the landlord to occupy the apartment.

[31] I believe that the same interpretation of the term “good faith” should be brought to Section 10AB(3). The factual question to be determined is whether the landlord has a genuine intention to reclaim residential premises for the purpose of carrying out renovations. In other words, does the landlord actually intend to carry out the renovations and, further, is vacant possession being sought because of the intended renovation work?

[18] The result was that Mr. Clements was required to vacate.

[19] In my view, it would require extraordinary evidence of bad faith for me to rule differently than was done in *Clements*, where essentially the same evidence was considered and no bad faith was found.

[20] If anything, the absence of bad faith is even more apparent as the landlord has carried through on its plans for all of the other units, with Unit 2 being the sole holdout.

[21] The tenant also relies on the case of *Hassan v Kirby*, 2023 NSSM 76 (CanLII) as support for the proposition that the word “requires” imports a more stringent inquiry into the landlord’s motives. The following passages illustrate what was at stake and found in that case:

**“Requires”**

[96] The second part of the s. 10(8)(f)(i) test for the Director is to determine if the landlord ‘requires’ the specific apartment. In using the word ‘requires’ the Act is clear that more than a desire, a wish or a preference is involved. “Requires’ suggests necessity. This is consistent with the dictionary meaning of ‘requires”, which is ‘cause to be necessary’ or ‘specify as compulsory’.[8]

[97] If an owner wishes or desires to move into a rental unit because it would be convenient, that does not meet the threshold of ‘requires’ set in the Act. That is a logical conclusion because the legislation is authorizing the termination of a contractual relationship and doing so cannot be done on a whim or frivolity. Significantly more is required. By setting the standard as ‘requires’ the Act is saying it is essential or mandatory that the landlord dislocate the tenant in the present circumstances – there are almost no other options.

[22] The *Hassan* case concerned a landlord’s application to obtain vacant possession for the purpose of occupation by a family member. That is different from the renoviction scenario in many ways, not the least of which is the requirement that the renovation work is extensive enough to require a building permit. I believe the result in *Hassan* was correct, but I would not extrapolate it to the renoviction scenario. It is all too easy for a landlord to say that they need to accommodate a family member, which may just be a pretext, and it is right to hold that landlord to a strict standard of good faith.

[23] It follows that the appeal by these tenants has not shown that the landlord is acting in bad faith. Within the meaning of the *Residential Tenancies Act* provisions, this landlord requires vacant possession in order to carry out the contemplated renovations, which I have no doubt that the landlord intends to carry out. It has already done so to the rest of the building, and it appears determined to finish the job.

[24] It gives me no pleasure to tell these tenants that they must vacate. They are victims of an economic reality not of their making or choosing. There is an affordable housing crisis in Halifax, much as there is in many parts of the country. Government efforts to control renovictions have only gone so far. It is not our job as adjudicators to torture the meaning of the language in order to provide a greater level of protection than there is.

[25] I do have some discretion in setting a new vacant possession date. I propose to allow the tenants until July 31, 2024 to vacate the premises. Under the terms of s.10AC(2) the tenants are relieved from paying rent for the months of May, June and July:



10AC (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.

**ORDER**

[26] THIS COURT ORDERS that the Order of the Director of Residential Tenancies dated November 20, 2023 is confirmed, with the variation that the landlord is entitled to vacant possession of 6 Catherine Street, Unit 2, Dartmouth, Nova Scotia as of the end of day on July 31, 2024.

[27] THIS COURT ORDERS that the tenants are excused from paying rent for the months of May, June and July, 2024, in accordance with s.10AC (2) of the *Residential Tenancies Act*.

Eric K. Slone, Small Claims Court Adjudicator