

**SMALL CLAIMS COURT OF NOVA SCOTIA**

**Citation:** *Bruce v Pollard*, 2024 NSSM 31

**Date:** 20240425  
**Docket:** 531186  
**Registry:** Halifax

Andrew Bruce

v.

Robyn Pollard

**ON APPEAL FROM AN ORDER OF THE DIRECTOR OF RESIDENTIAL  
TENANCIES**

**Adjudicator:** Darrel Pink  
**Heard:** April 23, 2024, in Halifax, Nova Scotia  
**Decision:** April 25, 2024  
**Counsel:** Perry Yung for the Appellant  
Respondent – Robyn Pollard – Self-represented

**By the Court:**

**Introduction**

[1] This is an appeal from an Order of the Director of Residential Tenancies, dated February 20, 2024, in which the Director set aside the Landlord/Appellant's Notice to Quit; ordered a rent abatement by the Appellant; reduced the rent until the Appellant's lease breaches were addressed and gave the Respondent/Tenant time to address remaining rental arrears. For the reasons that follow, I allow the appeal.

[2] There were three parts to this appeal and the Landlord's original application to the Director:

1. A request for an Order under s. 10(8)(f)(i) of the Residential Tenancies Act as the landlord claims he in good faith requires possession of the residential premises for himself.
2. An Order the Tenant has breached Statutory Condition No. 4 relating to cleanliness.
3. An Order for vacant possession because of rental amounts unpaid of \$2643.85 up to this Hearing.

[3] The Appellant is self-employed. Until June 2023 he was employed by NS Power. He owns six rental units. He lives with his parents in Saint John, New Brunswick and wishes to return to Halifax. He seeks to dislocate the Respondent by moving into her three-bedroom unit.

[4] The Respondent has occupied her duplex at 178 Roleika Drive in Dartmouth since late September 2020. She lives there with her three young children. She once had a partner, but he no longer lives with her. She has some health issues and is no longer working. Her income is from social assistance, a rental subsidy from the Department of Community Services and the Child Tax Credit. She acknowledges she has fallen behind in rent. One reason is that she supported a teenage daughter to go to an athletic competition in the USA, and she chose to divert funds for that purpose.

### **Section 10(8)(f)(i) – landlord Occupying Unit**

[5] If the only issue before the Court was the Appellant’s application to take possession of the unit for his own purposes, I would dismiss the appeal. In my decision in [Hassan v Kirby, 2023 NSSM 76](#) I dealt with my views on how the law is evolving regarding the use of s. 10(8)(f)(i) of the Act and the requirement for the Director to reflect on certain ‘justice ’ issues in exercising discretion when determining if it is ‘appropriate to make an order’. Though no order was made,

given the Appellant's reiteration of his position, I briefly comment on the merits of his application.

[6] There is a housing crisis in Nova Scotia, particularly for those living in affordable housing. It goes without question that one living on social assistance requires affordable housing. The Respondent receives a rental supplement to enable her family to live in appropriate accommodations. With her children a three-bedroom unit is appropriate.

[7] Letting a single man occupy that same unit would result in a 'over housing' situation. Even though the Appellant owns the unit, he presented no evidence he requires that much space. He seeks to occupy this unit because he alleges there are alleged breaches of the Act by the Respondent and his taking the unit would be convenient. However, his convenience is not the test the Act specifies. There must be more, and it must be appropriate for an order. Dislocating a tenant, even if she has only been in possession for three and a half years, should not be undertaken lightly.

[8] The Appellant's evidence and his stated circumstances do not meet the requirements for a Director's Order under s. 10(8)(f)(i).

**Cleanliness – Stat. Condition No. 4**

[9] The Appellant argues the Tenant is in breach of statutory condition No. 4 relating to cleanliness. To support this position he introduced several photos which he took when undertaking an inspection. Though there is no doubt the photos [Ex. Book, Tab 3] show an unkempt and messy home, they do not demonstrate a breach of the statutory condition.

[10] The Appellant called Dave Backman as a witness. Mr. Backman, who runs a transport service, was delivering an appliance to the rental unit and was called to speak about the conditions he saw in the home. He stated he and his helper were concerned about the state of cleanliness. He described there was food and dishes on the stove and a foul odour in the kitchen. He and his helper would not remove their gloves because of the state of the kitchen. Mr. Backman said his helper was reluctant to complete the delivery because of the state of hygiene.

[11] It is noteworthy the photos taken by the Appellant include none from the kitchen. In his testimony, he addressed issues with rodents and feces, yet he took no pictures of the kitchen to evidence what he or others observed. The witness from Orkin Pest Control spoke about the state of cleanliness and the fact no remediation for rats was practical until food and garbage were removed from the living accommodations.

[12] The pictures also document damages allegedly caused by the Respondent. In her testimony, she agreed that damage to a door was caused by a former partner and is her responsibility. She says a broken window was caused by kids in the neighbourhood. She denies most of the other issues are more than wear and tear from living in a home with three young children.

[13] The Appellant claims no compensation in this process for ‘damages’. An application to deal with the security deposit will be necessary.

[14] It is difficult to evaluate if there is a breach of this statutory condition and if there is what the proper remedy is. An initial breach of this condition should be addressed by a landlord’s warning and an admonition to clean the premises. A single mother, especially if there is a present health situation, may have difficulty coping with all domestic requirements. A lapse in maintaining good cleanliness, which seems to be the situation here, may require a response from the Landlord, but a single incident is not a breach of the Statutory Condition that would warrant more than an order requiring the Tenant to remedy the uncleanliness with a deadline for that. The state of uncleanliness does not merit an order for vacant possession.

### **Rental Arrears**

[15] The Respondent’s arrears amount to \$2643.85.

[16] This Court often states the most important duty of a tenant is to pay rent – the requirement that founds the landlord-tenant relationship and on which the respective responsibilities of the parties rests. Here the tenant has breached her obligations. On her admission, even after she committed to addressing her rental arrears, she diverted funds to help her daughter, a worthy cause, but which jeopardized her housing situation. She made promises to her landlord that she did not keep.

[17] The Court recognizes the difficulty of finding alternate housing. The Respondent stated she has been looking. Because she has breached her obligation and, though the sums may not be large, they have lasted for several months. She has been consistently late in her payments for almost a year [Tab 13].

[18] A landlord should not be expected to support the financial decisions of a tenant that will result in an inability to meet her rent obligations. The Respondent made choices that resulted in her failure to pay her rent or to address her arrears. Had she done so she likely would have avoided this process.

[19] In the circumstances of the Respondent's breach of the requirement to pay rent and her amounts unpaid, this breach merits an order that the Landlord receive possession of 187 Roleika Drive in Dartmouth.

[20] Given the lack of success in finding a new rental unit and given the time of year with young/school-age children, the Respondent will need time to find a new place to live. She will have until the end of June to do so.

### **Rent Abatement**

[21] The Director's Order required a rent abatement. The evidence before me did not satisfy the evidentiary threshold to merit this conclusion. The requirement for a rental abatement and a subsequent rent reduction is set aside.

### **Dog Incident**

[22] There was evidence about the Respondent's dog and a chase and bite of the Appellant. The Respondent was not present when this occurred. Though this was potentially serious, the Appellant pursued no remedy associated with this and none is provided.

### **Conclusion**

[23] The Appeal is allowed.

[24] The Order of the Director of Residential Tenancies is varied to:



1. The Respondent is ordered to pay rental arrears of \$2643.85 to the Appellant plus the Appellant's filing fee of \$31.31.
2. The lease will remain in place until June 30, 2024, and by noon of that day the Respondent shall provide vacant possession to the Appellant. The Appellant's obligation to pay rent for May and June 2024 remains in effect.
3. At the termination of the lease, the Appellant may retain the Respondent's security deposit under the Act. If there is no Order by the Director relating to the Security Deposit it must be returned to the Respondent.

Darrel Pink, Small Claims Court Adjudicator