

Citation: *Khaliyah Este-Shehu v Cedar Camp Projects Inc.*, 2025 NBKB 039

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF NEW BRUNSWICK

**Court File No.: MM-255-2024**

BETWEEN:

**KHALIAH ESTE-SHEHU,**

Applicant,

- and -

**CEDAR CAMP PROJECTS INC.,**

Respondent

**DECISION**

BEFORE: Justice Jean-Paul Ouellette

DATE OF HEARING: February 6, 2025

DATE OF DECISION: February 14, 2025

APPEARANCES: **Philippe Ricard**, counsel for the Respondent

Applicant not present

**PREFACE**

This application was to be heard on February 5, 2025, at 1:30 pm. On February 5, 2025, Khalilah Este-Shehu sent an email as follows:

Good morning,

Due to illness I am requesting the matter listed below can be adjourned to a later date.

My sincere apologies  
Khalilah

MM-255-2024 – Khalilhah Este-Shehu v. Cedar Camp Projects Ltd.  
February 5<sup>th</sup>, 2025 @ 1:30 pm

This email was not delivered to the Court as it contained an error in the email address. However, counsel for the Respondent provided a copy to the Court. Evidently, Ms. Este-Shehu was not present in court on February 5, 2025, and the Court adjourned to February 6, 2025, at 9:30 am and she was sent an email advising that the matter had been rescheduled to the next day.

On February 6, 2025, the Court, after opening the court in the absence of M. Este-Shehu, called her, she did not answer, and the Court waited until 10 o'clock. It asked counsel for Cedar Camp what his thoughts were about the matter. He reported that his client had spent considerable time and money to have this application heard, prepared the affidavit opposing the application, prepared a brief and filed a record and appeared now twice in court. He also wanted his costs.

Under the circumstances, the Court proceeded without further delay and the following decision was rendered.

Later that day, the Applicant called the Clerk's Office saying she had failed to review her emails and consequently did not appear.

**OUELLETTE, J.****INTRODUCTION**

1. This application by Khalihah Este-Shehu is a judicial review of a decision rendered by a Residential Tenancies Officer under the **Residential Tenancies Act**. All relevant sections of the **Residential Tenancies Act** are attached as Schedule A.
2. For the reasons that follow, the application is dismissed with costs.

**FACTUAL BACKGROUND**

3. On December 1, 2022, Ms. Este-Shehu entered into a lease of unit 301 of the Rental Property.
4. A \$1,250.00 security deposit was provided by the Applicant upon the commencement of her lease, held by the New Brunswick Tenant and Landlord Relations Office, pursuant to the requirements of the New Brunswick **Residential Tenancies Act**.
5. On November 24, 2023, Ms. Este-Shehu drove her vehicle into the garage door entrance of the underground parking garage at the Rental Property, causing damage to the door. Ms. Este-Shehu did not report this incident.
6. On November 25, 2023, R. Robinson, the Operations Manager for Cedar Camp, wrote an email to Ms. Este-Shehu advising of the damage she caused to the garage door, and that she would be responsible for the cost of the repair.
7. On November 26, 2023, Ms. Este-Shehu admitted having driven her car into the garage door, stating that she “should have informed management right away”.
8. On May 31, 2024, Ms. Este-Shehu’s lease ended, and she vacated the Rental Property.
9. On June 7, 2024, Cedar Camp filed a claim with the New Brunswick Tenant and Landlord Relations Office, pursuant to section 8(12) of the New Brunswick **Residential Tenancies Act**, claiming the full balance of Ms. Este-Shehu’s \$1,250.00 security deposit in compensation for damages caused by Ms. Este-Shehu to the garage door of the Rental

Property during her tenancy. The invoice for the repair of the garage door totals \$1,574.86.

10. On November 1, 2024, a hearing was held with a Residential Tenancies Officer with both parties and on November 26, 2024, a decision issued from the Residential Tenancies Officer assigned to the Claim (the “Decision”), in which he concluded the validity of Cedar Camp’s Claim to have been “substantiated”. The Decision awarded Cedar Camp “the full amount claimed of \$950.00 (sic) as compensation for repairs”.
11. On December 4, 2024, Ms. Este-Shehu filed the present Notice of Application seeking a judicial review of the Decision.

### **ISSUE**

12. The sole issue to be decided is whether the Residential Tenancies Officer made its decision without jurisdiction or on the basis of an error of law.

### **ANALYSIS AND CONCLUSION**

13. In her application Ms. Este-Shehu wrote this as her reason for review:

“Repairs were not communicated to the tenant and not completed in a reasonable time. Withholding such information caused financial hardship”.

14. The tenant’s obligations are defined in section 4 of the **Residential Tenancies Act**. More specifically, subparagraph 4(1)(b) provides that a tenant:

(b) shall repair within a reasonable time after its occurrence any damage to the premises or to any chattels provided therein by the landlord caused by the wilful or negligent conduct of the tenant or by such conduct of persons who are permitted on the premises by the tenant.

15. Paragraph 8(2) of the **Residential Tenancies Act** details the purpose of a security deposit. In particular, paragraph 8(2)(d) specifies that the purpose of a security deposit is to provide security against the tenant’s failure to comply with his or her obligations under paragraph 4(1)(b) of the **Residential Tenancies Act**.

16. Section 8(12) of the **Residential Tenancies Act** provides that when a tenancy has terminated and the tenant has failed to comply with his or her obligations under subparagraph 4(1)(b) of the **Residential Tenancies Act**, “the residential tenancies officer, upon a claim being made by the landlord within seven days after the termination of the tenancy and upon conducting a proper investigation, may use all or a portion of the security deposit or of the unused balance of the security deposit toward the discharge of the obligation”.
17. Furthermore, section 8(12.01) of the **Residential Tenancies Act** stipulates that a decision made by the residential tenancies officer under section 8(12) regarding the security deposit of a tenant is “final and binding on the landlord and the tenant”, subject only to judicial review under section 27 of the **Residential Tenancies Act**.
18. Section 27(1) of the **Residential Tenancies Act** states that any landlord or tenant affected by a decision of a residential tenancies officer may apply by Notice of Application to a judge of the Court of King’s Bench of New Brunswick to review and set aside the decision on two specific grounds, namely, that the decision was made:
  - a) Without jurisdiction; or
  - b) On the basis of an error of law.
19. In the leading decision of *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (“*Vavilov*”), the Supreme Court of Canada confirmed that there is a “presumption that reasonableness is the applicable standard whenever a court reviews administrative decisions.”
20. The presumption of reasonableness can be rebutted in two types of situations: (1) when the legislature indicates it intends for a different standard to apply; and (2) for certain categories of questions like constitutional questions, general questions of law of central importance to the legal system as a whole and questions related to the jurisdictional boundaries between two or more administrative bodies.

21. Provincial legislatures are constitutionally empowered to create administrative bodies and to provide them with broad statutory powers. When a provincial legislature has created that type of administrative scheme, “it must be presumed that the legislature also intended that decision maker to be able to fulfill its mandate and interpret the law as applicable to all issues that come before it.
22. As it was pointed out in *Vavilov*, “the central rationale for applying a deferential standard of review in administrative law has been a respect for the legislature’s institutional design choice to delegate certain matters to non-judicial decision makers through statute”.
23. Nonetheless, when a judicial review of an administrative decision must be done, the Supreme Court of Canada prescribed that the focus of the said review should be on the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome:

The role of courts in these circumstances is to *review*, and they are, at least as a general rule, to refrain from deciding the issue themselves. Accordingly, a court applying the reasonableness standard does not ask what decision maker, attempt to ascertain the “range” of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the “correct” solution to the problem.
24. A reasonable decision is one based on an analysis that is coherent and rational and that can be justified in relation to the facts and law that constrain the decision maker. “The reasonableness standard requires that a reviewing court defer to such a decision”.
25. In the present matter, the Decision of the Residential Tenancies Officer concluded, based on the facts presented to him by both parties at the November 1, 2024, hearing that Cedar Camp’s claim was “substantiated” because Ms. Este-Shehu had caused damage to the Rental Property for which she was responsible when she drove her vehicle into the garage door.

26. While stating that the claim was “substantiated”, the Officer awarded Cedar Camp “the full amount claimed of \$950.00 as compensation for repairs” “notwithstanding that the full amount claimed by Cedar Camp was \$1,250.00”. Cedar Camp opted not to pursue the matter further. As Cedar Camp has accepted the decision of the Officer, the Court will not be considering this error in favor of Ms. Este-Shehu. Nor did she bring it up.
27. Moreover, Ms. Este-Shehu has not alleged any grounds or offered any evidence to support a finding of unreasonableness in regard to the Decision of the Residential Tenancies Officer.
28. The Court acknowledges that the Decision of the Residential Tenancies Officer correctly applied the relevant law and made specific references to it in his Decision and reasonably determined Ms. Este-Shehu’s liability for the damage she caused. This Court must show deference to such a decision.
29. The Court concludes that the Decision of the Residential Tenancies Officer is coherent and rational and can be justified in relation to the facts that were outlined at the November 1, 2024, hearing, and with regard to the interpretation of the law. The Decision ought to, therefore, be upheld and the Application dismissed with costs.
30. The cost is set at \$1,000.00 to be paid forthwith by Khalihah Este-Shehu to Cedar Camp Projects Ltd.

**DATED** this 14<sup>th</sup> day of February 2025

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**Justice Jean-Paul Ouellette**

Justice of the Court of King’s Bench of New Brunswick

**SCHEDULE A LEGISLATION**

<b>Tenant's obligations</b> <b>4(1) A tenant</b>	<b>Obligations du locataire</b> <b>4(1) Le locataire</b>
<p>[...]</p> <p>(b) shall repair within a reasonable time after its occurrence any damage to the premises or to any chattels provided therein by the landlord caused by the wilful or negligent conduct of the tenant or by such conduct of persons who are permitted on the premises by the tenant;</p>	<p>[...]</p> <p>b) doit, dans un délai raisonnable après sa survenance, réparer tout dommage causé aux locaux ou aux biens personnels qui y sont fournis par le propriétaire, que le dommage soit causé par la conduite délibérée ou négligente du locataire ou par une telle conduite de personnes dont il autorise la présence dans les locaux;</p>
<p><b>8(2) A security deposit is to provide security against</b></p> <p>[...]</p> <p>(d) the tenant's failure to comply with the tenant's obligation under paragraph 4(1)(a) or (b) respecting cleanliness or repair of the premises or any chattels provided in the premises by the landlord.</p>	<p><b>8(2) Un dépôt de garantie est destiné à fournir une garantie contre</b></p> <p>[...]</p> <p>d) la non-exécution des obligations du locataire, visées à l'alinéa (4)(1) a) ou b), en matière de propreté ou de réparation des locaux ou des biens personnels qui y sont fournis par le propriétaire.</p>
<p><b>8(12) Where a tenancy has terminated and the tenant has failed to comply with the obligation of the tenant to pay rent, the obligation of the tenant respecting the reimbursement of the landlord's expenses in the</b></p>	<p><b>8(12) Lorsqu'une location prend fin et que le locataire ne s'est pas acquitté de son obligation de payer le loyer ou de rembourser les dépenses engagées par le propriétaire dans les circonstances mentionnées à l'alinéa (2)b), de</b></p>

<p>circumstances referred to in paragraph (2)(b), the obligation of the tenant respecting the payment of a late payment fee in the circumstances referred to in paragraph (2)(c) or the obligation of the tenant under paragraph 4(1)(a) or (b) respecting the cleanliness or repair of the premises or any chattels provided in the premises by the landlord, the residential tenancies officer, upon a claim being made by the landlord within seven days after the termination of the tenancy and upon conducting a proper investigation, may use all or a portion of the security deposit or of the unused balance of the security deposit toward the discharge of the obligation.</p>	<p>son obligation vis-à-vis le paiement de frais de paiement tardif dans les circonstances visées à l'alinéa (2)c) ou de son obligation, aux termes de l'alinéa 4(1)a) ou b), vis-à-vis la propreté ou les réparations des locaux ou des biens personnels qui y sont fournis par le propriétaire, le médiateur des loyers peut, à la suite d'une réclamation faite par le propriétaire dans les sept jours qui suivent la fin de la location et après avoir mené une enquête en bonne et due forme, affecter la totalité ou une partie du dépôt de garantie ou du solde résiduaire de celui-ci à l'accomplissement de cette obligation.</p>
<p><b>8(12.01)</b> Subject to section 27, any decision made by a residential tenancies officer under subsection (12) in respect of the security deposit of a tenant or of the unused balance of it is final and binding on the landlord and the tenant.</p>	<p><b>8(12.01)</b> Sous réserve de l'article 27, une décision rendue par un médiateur des loyers en vertu du paragraphe (12) relativement au dépôt de garantie d'un locataire ou au solde résiduaire de celui-ci est finale et obligatoire pour le propriétaire et le locataire</p>
<p><b>Review of residential tenancies officer's decision</b></p> <p><b>27(1)</b> Any landlord or tenant affected by any decision made by the Chief Residential</p>	<p><b>Révision de la décision du médiateur</b></p> <p><b>27(1)</b> Tout propriétaire ou locataire touché par une décision rendue par le médiateur en chef</p>

<p>Tenancies Officer under section 11.2 or section 25.41 or by any decision, order, notice of termination, notice to quit, notice to comply or order of eviction made or issued by a residential tenancies officer, except a decision made by a residential tenancies officer under section 11.2 or section 25.41, may, within seven days after being notified of the decision or order or being served with the notice of termination, notice to quit, notice to comply or order of eviction, apply by Notice of Application to a judge of The Court of King's Bench of New Brunswick to review and set aside the decision, order, notice of termination, notice to quit, notice to comply or order of eviction on the ground that it was made</p> <p>(a) without jurisdiction, or (b) on the basis of an error of law</p>	<p>des loyers en vertu de l'article 11.2 ou de l'article 25.41 ou par une décision, une ordonnance, un avis de résiliation, un avis de congé, un avis d'avoir à se conformer ou un ordre d'expulsion d'un médiateur des loyers, sauf une décision par un médiateur des loyers en vertu de l'article 11.2 ou de l'article 25.41, peut, dans les sept jours de la date à laquelle il a eu connaissance de la décision ou de l'ordonnance ou il a reçu signification de l'avis de résiliation, de l'avis de congé, de l'avis d'avoir à se conformer ou de l'ordre d'expulsion, demander à un juge de la Cour du Banc du Roi du Nouveau-Brunswick, par voie d'avis de requête, de réviser et d'annuler la décision, l'ordonnance, l'avis de résiliation, l'avis de congé, l'avis d'avoir à se conformer ou l'ordre d'expulsion au motif que</p> <p>a) le médiateur n'avait pas compétence, ou (b) la décision, l'ordonnance, l'avis ou l'ordre est entaché d'une erreur de droit.</p>
<p>27(2) The Notice of Application shall be served</p> <p>[...]</p> <p>(b) in the case of an application by the tenant, on the residential</p>	<p>27(2) L'avis de requête doit être signifié,</p> <p>[...]</p> <p>b) dans le cas d'une requête émanant du locataire, au</p>

tenancies officer or the Chief Residential Tenancies Officer, as the case may be, and the landlord in accordance with the Rules of Court.	médiateur des loyers ou au médiateur en chef des loyers, selon le cas, et au propriétaire, conformément aux Règles de procédure
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