SUPREME COURT OF NOVA SCOTIA
Citation: *Bluenose Inn and Suites v. McGuire*, 2024 NSSC 101

Date: 20240411
Docket: 521878
Registry: Halifax

Between:

Bluenose Inn and Suites

Appellant

v.

Brandy McGuire

Respondent

DECISION SMALL CLAIMS COURT APPEAL

Judge: The Honourable Justice Glen G. McDougall

Heard: November 27, 2023, in Halifax, Nova Scotia

Counsel: John T. Boyle, Cox & Palmer, for the Appellant
Katelyn Viner, Dalhousie Legal Aid Service and Lan Keenan and Megan Praught (Law Students) for the Respondent

BY THE COURT:

Introduction

[1] This is an appeal from a Nova Scotia Small Claims Court decision which upheld a decision of the Director of Residential Tenancies ordering Bluenose Inn and Suites (the "Landlord"), to pay $13,662.15 to Brandy McGuire (the "Tenant"). The Landlord appeals on the ground that the adjudicator's interpretation of ss. 10AB – 10AD of the *Residential Tenancies Act*, R.S.N.S. 1989 c. 401, constitutes an error of law.

Background

[2] There is no dispute as to the facts, which were reviewed by Adjudicator Eric K. Slone in his decision issued on January 23, 2023.

[3] The Landlord owns a former motel and suites at 636 Bedford Highway. While the property used to operate primarily as a motel, it also rented suites on a longer-term basis.

[4] As the adjudicator noted, the property "is a little past its prime" (para. 3). The Landlord's long-term plan is to demolish the existing buildings and redevelop the site into a modern mixed-use project. The development "will include 105 residential units with a commercial main level and waterfront views" (para. 4).

[5] In 2017, the Landlord obtained a development permit allowing it to carry out the planned redevelopment. The permit process was expensive, costing the Landlord around $200,000. The permit gave the owners five years to proceed with demolition and construction. For various reasons, the development stalled until 2020, when the pandemic created additional obstacles.

[6] The property was still offering long term rental units when the Tenant applied to rent unit 47 in July 2020. The Tenant was a student attending the North End campus of the NSCC. The occupants of the unit were to be her partner and two young children. She also expected to have her other two children part of the time. As there was no written lease, a standard form of lease applied (s. 8(5) of the RTA). It was a month-to-month tenancy.

[7] Rent was $1,400 per month. The unit was a one-bedroom with a kitchenette, bathroom and a living area. The bedroom contained two queen-sized beds. The

tenancy included heat, electricity, phone and internet. The Tenant was required to pay a deposit of $300.

[8] The Tenant experienced some problems with the unit, including chronic low water pressure, and spotty internet service. Reliable internet access was important to the Tenant because she and her family needed it for remote learning purposes during the pandemic. At some point in early 2022, the Tenant arranged for her own internet service. By the time she moved out of her unit, she had spent $731 on internet, which was included in the compensation ordered by the Director of Residential Tenancies.

[9] On March 1, 2022, the Tenant received a notice from the Landlord indicating that she was required to vacate her unit within 60 days (May 1) because management planned to "retire" the property. The Tenant vacated the property before May 1, 2022, after filing an application with Residential Tenancies for compensation.

[10] On April 27, 2022, the landlord sent out another notice to tenants, extending the eviction date to July 31, 2022, but the Tenant had already found another place to live. The new residence was a three bedroom flat in Lower Sackville. Although the replacement home was larger, the location was quite inconvenient for the family, and the rent was significantly higher – $2,100 plus utilities. The Tenant said it was the best place she could find under such short notice in a difficult housing market.

[11] The Landlord's witness at the Small Claims Court hearing, John Ghosn, is a 25% partner in Bluenose Inn and Suites. Mr. Ghosn's partner was actively managing the property until early 2022, when he developed health issues, and Mr. Ghosn was forced to take over the operations.

[12] Mr. Ghosn testified that he became a part owner of the property in 2010, and that it was always seen as a site for development. In 2022, he applied for an extension of the development permit and now has until 2027 to proceed. He said there is no timetable for the project and there has been no application for a demolition permit. Mr. Ghosn acknowledged that redevelopment would necessarily involve demolition of the existing buildings, but he described the current plan as seeking to "retire the property." He said the water and septic systems are outdated and not worth repairing. There were still a few tenants residing at the motel at the time of the Small Claims Court hearing on January 10, 2023.

The Adjudicator's Decision

[13] After reciting the facts, Adjudicator Slone explained the background to ss. 10AB-10AD of the *Residential Tenancies Act*:

> [16] The term renoviction can be traced in a legislative sense to the decision by the Nova Scotia government early in the Covid pandemic to use its emergency powers to impose an outright moratorium on renovictions.
>
> [17] As recited helpfully by adjudicator Richardson in *Certain Tenants of Victoria Road v. Central East Development Inc*, 2020 NSSM 28 (CanLII) at paragraph 16:
>
> > [16] On November 25th, 2020 the Government of Nova Scotia issued a Direction of the Minister under a Declared State of Emergency (section 14 of the *Emergency Management Act*), 20-014R, "regarding tenant protections" (the "NS Direction"). Part 1 (Renoviction of Tenants) of the NS Direction provides as follows:
> >
> > > 1 For the purpose of this Direction, a "renoviction" means a renovation undertaken by a residential landlord to residential premises, or a building containing residential premises, that will require the tenant to vacate the premises,
> > >
> > > (a) effective on and after September 1, 2020, a residential landlord is prohibited from giving a notice to quit under the Residential Tenancies Act to a tenant for a renoviction,
> > >
> > > (b) effective on and after September 1, 2020, any notice to quit given by a residential landlord to a tenant for a renoviction is void,
> > >
> > > (c) effective on and after November 25, 2020, a residential tenancy officer, or on appeal the Small Claims Court, must not make an order terminating a tenancy or order the tenant to vacate the residential premises for a renoviction.
>
> [18] The particular mischief that the government was responding to is obvious. Landlords in Nova Scotia, and in particular in the Halifax region, were undertaking often quick and sometimes minor renovations, evicting the tenants, and then jacking up the rent significantly for new tenants moving in. This contributed to the affordable housing shortage, and the government was concerned that most people would be unable to find another residence while in a state of complete or partial lockdown.
>
> [19] Toward the end of 2021, the government passed new amendments to the *Residential Tenancies Act* which were in effect but had no practical implications until the lifting of the moratorium in March 2022. At that point, renovictions again became possible, but certain procedures (and disincentives) were introduced.

[14] The adjudicator proceeded to set out the legislative provisions, which state as follows:

> **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.
>
> (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
>
> (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.
>
> (4) When making a decision on an application under subsection (2), the Director shall consider any vacant possession guidelines prescribed by regulation.
>
> (5) 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.
>
> (6) 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.
>
> **Compensation**
>
> 10AC(1) In this Section, "residential complex" means a building in which one or more residential premises are located.
>
> (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; or
>
> (b) the last month, if the residential complex contains four or fewer residential premises.

(3) Where a tenant continues to reside in the residential premises until the date specified in the agreement or order, the tenant is not required to pay rent to the landlord for the applicable compensation period set out in subsection (2).

(4) Where a tenant exercises the right to terminate a tenancy early under subsection 10AB(5), the landlord shall pay the tenant, on or before the effective date of the termination, any remaining compensation owing pursuant to subsection (2).

(5) Where the landlord provides other residential premises that are acceptable to the tenant, and the tenant agrees to enter into a lease with the same benefits and obligations as the current lease for those other residential premises, the tenant is not entitled to the compensation set out in subsection (2).

Order by Director

10AD Where a landlord fails to comply with the requirements of Section 10AB or 10AC, on application by the tenant under Section 13, the Director may make an order requiring the landlord to pay to the tenant the compensation required under subsection 10AC(2) and any one or more of the following:

(a) reasonable moving expenses incurred by the tenant, up to such maximum amount as may be prescribed by regulation;

(b) reasonable additional expenses incurred by the tenant, up to a maximum amount that is equal to one month's rent payable under the lease; and

(c) all or a portion of the amount of increased rent that the tenant was obliged to pay under the tenant's new lease for up to twelve months.

[15] Adjudicator Slone noted that the legislative scheme is not limited to renovictions:

> [21] One of the first things that should be obvious is that this scheme is not limited to renovictions. There is a huge difference between a landlord seeking to spruce up a unit in order to increase the rent, and a building owner seeking to demolish the building for whatever purpose they may have in mind.
>
> [22] Landlords who are prepared to demolish their buildings cannot be accused of anything shady or opportunistic. They are embarking on something quite different from a renovation. There is very little similarity between a minor sprucing up of a unit, and demolition of the entire structure. Arguably the public mischief was renovictions. Yet the government very deliberately chose to treat demolitions as equivalent to a renovation.

[16] The adjudicator was satisfied that the circumstances before him fell within the scope of s. 10AB:

> [23] If the landlord is to be believed, and there is little evidence to the contrary, the plan was to empty out the buildings of tenants as part of a long-term plan to

redevelop the site. The landlord concedes that this will involve demolition of the existing buildings. But such demolition may not happen for a few years.

[24] Mr. Ghosn speaks of "retiring" the buildings. He says that the water and septic systems are outdated and not worth repairing. It is not hard to imagine that the buildings might sit idle and derelict for some time before anything else happens.

[25] Clearly there is no "renoviction" occurring, in the colloquial sense. But the question is whether this situation is captured by the broader language, and the tenancy was being terminated "for the purpose of demolition or making repairs or renovations to the residential premises."

[26] Assuming for a minute that the landlord had a demolition permit in hand, and was bringing in the wrecking ball as soon as the tenant vacated, there could be no question that the terms of s.10AB applied. The legislature clearly intended to treat demolitions in the same way as more obvious renovictions.

[27] So does it make any difference that this landlord may choose to leave the building empty for a period of time before demolishing it? I am of the view that this does not change anything.

[28] If a delay between eviction and demolition is enough to prevent the regime from applying, how much of a delay would count? And who would decide that?

[29] In my opinion, the ordinary meaning of the words used is that if the landlord evicts a tenant in order to be able to demolish the structure, then the terms of these new provisions apply, regardless of how long it might take for the demolition to occur.

[30] The term "retiring" the building is a euphemism. A retired building is one that is slated for either renovation or demolition.

[31] I believe the Residential Tenancies Officer was correct in his application of the new provisions in the *Residential Tenancies Act* to the situation here.

[Emphasis added]

[17] Adjudicator Slone affirmed the award of $13,662.15 made to the Tenant by the Director of Residential Tenancies, which was broken down as follows:

- Three months' rent – $4,200 (s. 10AC(1));
- Reasonable additional expenses – $1,400 (s. 10AD(3)(b));
- Portion of the Tenant's increased rent under her new lease – $7,000 (s. 10AD(3)(c));
- Return of security deposit – $300; and,

- Filing fee for the Residential Tenancies application – $31.15.

Standard of Review

[18] The parties agree that the standard of review for errors of law is correctness. The leading decision on what amounts to an error of law in the context of a Small Claims Court appeal is *Brett Motors Leasing Ltd. v. Welsford*, [1999] N.S.J. No. 466 (S.C.), where Saunders J. (as he then was) stated:

> 14 One should bear in mind that the jurisdiction of this Court is confined to questions of law which must rest upon findings of fact as found by the adjudicator. I do not have the authority to go outside the facts as found by the adjudicator and determine from the evidence my own findings of fact. "Error of law" is not defined but precedent offers useful guidance as to where a superior court will intervene to redress reversible error. Examples would include where a statute has been misinterpreted; or when a party has been denied the benefit of statutory provisions under legislation pertaining to the case; or where there has been a clear error on the part of the adjudicator in the interpretation of documents or other evidence; or where the adjudicator has failed to appreciate a valid legal defence; or where there is no evidence to support the conclusions reached; or where the adjudicator has clearly misapplied the evidence in material respects thereby producing an unjust result; or where the adjudicator has failed to apply the appropriate legal principles to the proven facts. In such instances this Court has intervened either to overturn the decision or to impose some other remedy, such as remitting the case for further consideration.
>
> [Emphasis added]

Positions of the Parties

[19] The Landlord submits that termination of a tenancy for the purpose of retiring the building, even if demolition is contemplated at some future time, is not termination "for the purpose of demolition." The Landlord says s. 10AB should be interpreted as applying only where an eviction is for the primary purpose of renovations or demolition. The provision should not apply where there is a different primary purpose for eviction, even if renovations or demolition are planned sometime in the future.

[20] According to the Landlord, ss. 10AB-10AD "were implemented to prevent landlords from using the guise of renovations or demolitions to conduct evictions for the actual purpose of increasing rents" (Appellant's brief, para. 29). The "mischief" was that landlords were evicting tenants in order to make quick and sometimes minor renovations, then increasing the rent significantly for the new

tenant. The Landlord submits that the new provisions are intended to ensure that landlords only "renovict" when they are proceeding with renovations or demolition imminently and in good faith, and not merely to profit from the consequential turnover of tenants. The provisions were not meant to apply in cases like this one, where the tenant is being evicted because the former manager is too ill to care for the property, the building is in poor condition, and the necessary repairs are too expensive to be worthwhile. According to the Landlord, the fact that it eventually plans to demolish the property does not mean that demolition was the primary purpose for the Tenant's eviction.

[21] The Tenant submits that the adjudicator's interpretation of s. 10AB is consistent with the legislature's intention to protect tenants from bad faith renovictions during an affordable housing crisis. The Landlord's interpretation, on the other hand, would seriously erode these protective measures by creating a loophole in any case where demolition or renovation is planned, but not imminent. In other words, by simply delaying renovations or demolition, landlords could displace tenants under the pretence of "retiring" the property and avoid paying compensation under ss. 10AC-10AD. The Tenant submits that the concept of "retiring" a building has no basis in residential tenancies law and is merely a pretext for an unlawful eviction. The Tenant further notes that the words "primary" purpose or "predominant" purpose do not appear in s. 10AB.

Law and Analysis

[22] In *Sparks v. Holland*, 2019 NSCA 3, Farrar J.A. restated the modern approach to statutory interpretation:

> [27] The Supreme Court of Canada and this Court have affirmed the modern principle of statutory interpretation in many cases that "[t]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at ¶21).
>
> [28] This Court typically asks three questions when applying the modern principle. These questions derive from Professor Ruth Sullivan's text, *Sullivan on the Construction of Statutes*, 6th ed (Markham, On: LexisNexis Canada, 2014) at pp. 9-10.
>
> [29] Ms. Sullivan's questions have been applied in several cases, including *Keizer v. Slauenwhite*, 2012 NSCA 20, and more recently, in *Tibbetts*. In summary, the Sullivan questions are:
>
> 1. What is the meaning of the legislative text?

2. What did the Legislature intend?
3. What are the consequences of adopting a proposed interpretation?

[23] The modern approach to statutory interpretation is consistent with s. 9(5) of the *Interpretation Act*, R.S.N.S. 1989, c. 235, which provides:

> 9(5) Every enactment shall be deemed remedial and interpreted to insure the attainment of its objects by considering among other matters
>
> (a) the occasion and necessity for the enactment;
>
> (b) the circumstances existing at the time it was passed;
>
> (c) the mischief to be remedied;
>
> (d) the object to be attained;
>
> (e) the former law, including other enactments upon the same or similar subjects;
>
> (f) the consequences of a particular interpretation; and
>
> (g) the history of legislation on the subject.

[24] The words of s. 10AB must be interpreted in the context of the Act as a whole. The purpose of the RTA is set out at s. 1A:

> 1A The purpose of this Act is to provide landlords and tenants with an efficient and cost-effective means for settling disputes.

[25] The Act deals with a variety of matters, including lease requirements, guarantee agreements, statutory conditions, landlord's rules, subletting, notice to quit, rental increases, security deposits, applications to the Director of Residential Tenancies, appeals to the Small Claims Court, enforcement, and penalties. Sections 10, 10A, 10AA, 10AB, 10AC, 10AD, 10AE, 10B, 10C, 10D, 10E, and 10F fall under the heading "Notice to Quit." Section 10(3A) states:

> 10(3A) A landlord shall not give to the tenant a notice to quit residential premises except in accordance with this Section.

[26] The provisions under this heading outline the circumstances where a tenant or a landlord may give notice to quit. A landlord may give notice to quit where the tenant fails to pay rent (s. 10(6)), the tenant poses a risk to the safety or security of the landlord or other tenants on account of the contravention or breach by that tenant of any enactment (s. 10(7A)), or the tenant breaches specific statutory conditions (s.

10(7B)). Other situations where a landlord may give notice to quit are set out at s. 10(8):

> 10(8) A landlord may give to the tenant notice to quit the residential premises where
>
> (a) the residential premises are leased to a student by an institution of learning and the tenant ceases to be a student;
>
> (b) the tenant was an employee of an employer who provided the tenant with residential premises during his employment and the employment has terminated;
>
> (c) the residential premises have been made uninhabitable by fire, flood or other occurrence;
>
> (d) repealed 1994, c. 32, s. 1.
>
> (e) the Director is satisfied that the tenant is in default of any of his obligations under this Act, the regulations or the lease;
>
> (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, or
>
> (ii) repealed 2021, c. 36, s. 3(3).
>
> (iii) the Director deems it appropriate in the circumstances.

[27] Prior to the 2021 amendments, s. 10(8)(f)(ii) stated:

> (ii) the landlord in good faith requires possession of the residential premises for the purpose of demolition, removal or making repairs or renovations so extensive as to require a building permit and vacant possession of the residential premises, and all necessary permits have been obtained, or …

[28] With the amendments, evictions made for the purpose of demolition or extensive repairs or renovations are now governed by ss. 10AB-10AD. To understand the legislative intention behind this change, it is helpful to consider evidence from Hansard.

[29] On October 20, 2021, the government tabled Bill No. 30 – *Residential Tenancies Act* for first reading. At second reading, the Hon. Colton LeBlanc, Minister of Service Nova Scotia and Internal Services, explained the rationale for the bill as follows:

Mr. Speaker, the *Residential Tenancies Act* plays an integral role in protecting the rights of both tenants and landlords. Many of the amendments we are proposing are in direct response to the Nova Scotia Affordable Housing Commission report's Recommendation No. 3, which is to modernize provincial legislation to enhance renter protections. The amendments will enhance protections for tenants against evictions due to renovations and provide other tenant protections and create internal and administrative efficiencies.

In November 2020, the Nova Scotia Affordable Housing Commission was established to examine the current state of affordable housing and to recommend actions to ensure better affordable housing options. In May 2021, the commission released 17 recommendations, one of which called on government to modernize provincial legislation to enhance tenant protection and to specifically address evictions due to renovations.

Many of today's proposed amendments increase protection for renters in situations where landlords require an eviction to do major renovations, which is also known as renoviction. Additional amendments are being proposed based on previous stakeholder consultations from 2018 to 2021. They address stakeholder concerns including tenant protections and improved administration and efficiency of the Residential Tenancies Program.

We hear a lot about renovictions specifically in the news, renovictions that are unfair to tenants. It's safe to say that we appreciate the need for landlords to do renovations. Every building, throughout its lifespan, requires significant upgrades. The upgrades are important for tenants to live in a safe and healthy environment.

The issue is that not all landlords treat their tenants fairly. The majority, though, are fair, reasonable, and respectful - but not all. The amendments we're introducing will clarify the rules for both tenants and landlords and provide greater protections for tenants overall. Specifically, the proposed amendments that strengthen protections for tenants against renovation evictions include requiring landlords to make an application under the province's Residential Tenancies Program for an eviction order if a tenant does not agree to terminate the tenancy, giving tenants a minimum of three months' notice before they can be evicted due to renovations, requiring that mutual agreements that terminate a lease between tenants and landlords be in writing, and finally, requiring landlords to give the tenant between one and three months' rent as compensation for the eviction.

Mr. Speaker, landlord violations of the new protections can lead to additional compensation for tenants, such as covering moving expenses and paying the difference between the tenant's new unit and the rent paid for their former unit for up to one year.

Further amendments are being proposed based on previous stakeholder consultations. These amendments include clarifying that rental increase notices can only contain one amount, regardless of whether the tenant decides to renew their tenancy as a month-to-month or yearly lease; not allowing landlords to charge

different rental rates for different lease terms; making the process easier for tenants to get their security deposit; and finally, giving landlords and tenants clear rules regarding what must be done before the landlord enters a unit, including requiring landlords to give 24 hours' written notice unless the tenant gives permission or there is an emergency.

Mr. Speaker, we are also introducing a number of amendments to increase program efficiencies and administrative changes, which include more flexibility for giving an annual rental increase, with the requirement that such notices are limited to once a year, and allowing for an eviction order to be issued when a tenant's dispute of an unpaid rent eviction notice is dismissed at a Residential Tenancies hearing. Some amendments to the *Residential Tenancies Act*, such as protections against renovation evictions and some administrative and efficiency amendments, will come into force upon Royal Assent. The others will come into force upon proclamation to allow time to amend the Residential Tenancies regulations.

Mr. Speaker, I've been asked in recent days why we have not introduced penalties for landlords who don't follow the rules outlined in the *Residential Tenancies Act*. This question is an excellent example of why we are continuing our work to modernize this Act, an excellent example as to why we will continue to consult, and an excellent example as to why we will continue to listen to both tenants and landlords. I could go on probably for the hour, Mr. Speaker.

The changes we have proposed are part of our government's larger efforts to address the housing challenges in the province. Our work is just beginning. I look forward to bringing more changes to the floor of the Legislature. With those few short words, I look forward to hearing comments from my colleagues opposite.

[Emphasis added]

Nova Scotia, House of Assembly, Hansard, Bill 30 Debates and Proceedings, 2nd Reading, 64-1 (21 October 2021) at 526 (Hon. Colton LeBlanc).

[30] At third reading, the Hon. Colton LeBlanc stated:

Mr. Speaker, the *Residential Tenancies Act* has a very important role in protecting the rights of tenants and landlords. The amendments we have proposed will strengthen tenant protections and provide clarity to landlords. Many of the changes are in direct response to the Nova Scotia Affordable Housing Commission Report's Recommendation No. 3 to modernize provincial legislation, to enhance renter protections, and to specifically address evictions due to renovations.

Mr. Speaker, these amendments will do just that. They will create stronger protections for renters in situations where landlords require an eviction to do major renovations, also known as renovictions. The amendments set out a clear process and will provide tenants with compensation for being evicted from their homes. The amendments also provide tenants an opportunity for compensation if a landlord violates the new provisions. Other amendments are being proposed based on

> stakeholder consultations that will address concerns, including tenant protections, and improve the administration and efficiency of the residential tenancies program.
>
> There are many stories of landlords who are taking advantage of tenants, but we know that this is a small group. Again, as I said earlier in debate on another bill, it's a small group. Most landlords have been respectful and supportive of their tenants during these very difficult times. They have been flexible as people's lives have been turned upside down during this pandemic, and I would like to acknowledge and thank them.
>
> Mr. Speaker, some amendments we have brought forward to the *Residential Tenancies Act*, such as protections against renovation evictions and some administrative and efficiency amendments, will come into force upon Royal Assent. The others will come into force upon proclamation to allow time to amend the residential tenancies regulations.
>
> [Emphasis added]
>
> Nova Scotia, House of Assembly, Hansard, Bill 30 Debates and Proceedings, 3rd Reading, 64-1 (29 October 2021) at 900 (Hon. Colton LeBlanc).

[31] The legislature's intention was clearly to strengthen protections for tenants against renovation evictions, while respecting the need for landlords to do renovations. The amendments do not prevent landlords from upgrading their properties, even where those upgrades are for the purpose of commanding higher rents for the renovated units. However, where a tenant’s eviction is necessary for renovations – which benefit the landlord – the tenant is given sufficient notice to find a new place to live and receives compensation for being evicted in the middle of an affordable housing crisis. These new tenant protections are intended to discourage landlords from undertaking unnecessary renovations, while also ensuring that evicted tenants have three months to find a new home, and that they receive compensation which will cover some of the associated costs. Where landlords fail to follow the process set out under ss. 10AB and 10AC, the Director of Residential Tenancies may order the landlord to pay additional compensation to the tenant under s. 10AD.

[32] Although renovation evictions were the legislature’s primary concern, the scope of the new protections is not limited to the renovation context. As the adjudicator noted in his decision:

> [21] One of the first things that should be obvious is that this scheme is not limited to renovictions. <u>There is a huge difference between a landlord seeking to spruce up a unit in order to increase the rent, and a building owner seeking to demolish the building for whatever purpose they may have in mind.</u>

> [22] Landlords who are prepared to demolish their buildings cannot be accused of anything shady or opportunistic. They are embarking on something quite different from a renovation. There is very little similarity between a minor sprucing up of a unit, and demolition of the entire structure. Arguably the public mischief was renovictions. Yet the government very deliberately chose to treat demolitions as equivalent to a renovation.
>
> [Emphasis added]

[33] This begs the question: what do these two "quite different" situations have in common that justifies their identical treatment under the RTA? In both cases, the landlord makes a business decision which reduces (at least temporarily) the number of units available in an already challenging rental market, and forces existing tenants to find a new place to live during an affordable housing crisis. In both cases, the tenant's life is upended to enable the landlord to maximize their property's potential. For this reason, the legislature introduced amendments which offer some protection to tenants in both situations, while still allowing landlords to make whatever use of their property they deem most advantageous.

[34] The Landlord's argument is not that evictions for the purpose of demolition should be treated differently than evictions for the purpose of renovations, but that the eviction of the Tenant in this case was not "for the purpose of demolition." According to the Landlord, the adjudicator misinterpreted s. 10AB as applying wherever an eviction is "in any way related to demolition", rather than only where demolition is *the* purpose of the eviction.

[35] The Landlord says the plain language of s. 10AB required the adjudicator to consider all the reasons for the eviction (the manager's illness, the building's poor condition, the unreasonable cost of repairs, and the eventual plan for demolition), then determine the primary purpose for the eviction. According to the Landlord, the delay between eviction and demolition is one factor that strongly supports a finding that demolition was not the purpose of the eviction. The Landlord submits that when the proper assessment is undertaken, it is clear that the eviction was for the primary purpose of "retiring" the building.

[36] In its brief, the Landlord explained the consequences of the adjudicator's interpretation as follows:

> 40. At paragraph 30, Adjudicator Slone equates retiring a building with "renovicting", stating "[a] retired building is one that is slated for either renovation of demolition." These two concepts, however, are distinct. Terminating a lease for the purpose of ceasing operations is not equivalent

> to terminating a lease for the purpose of demolition or renovations. Equating the two concepts too greatly stretches the meaning of a termination being for the purpose of demolition or renovations.
>
> 41. Put differently, if a retired building is deemed to be a building that is slated for renovation or demolition, and if the imminence of the renovation or demolition is irrelevant, then any landlord that simply choses [*sic*] to cease operations will automatically fall under the renoviction provisions. It will create a financial penalty for ceasing operations that never existed previously and was quite clearly not intended by the legislature.
>
> 42. An overly broad interpretation is also problematic when applied in other situations. Such an interpretation directly contradicts s. 10(8)(c) of the Act. If a retired building is one that is slated for demolition or renovations, then so too is a building that has been made uninhabited by fire, flood or other occurrence. According to Adjudicator Slone's broad interpretation, such evictions would automatically fall under the [*sic*] s. 10AB to AD; however, that is not the case. Section 10(8)(c) of the Act is a separate basis for termination of tenancy without recourse to the same compensatory or penal provisions.
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> 43. A final example of the interpretation being too broad is considering an eviction on the basis of s. 10(8)(f)(i) – the landlord in good faith requires possession of the residential premises for the purpose of residence by themselves or a member of their family. In such a case, a landlord may legitimately require the premises for their own occupation, but also intend to conduct renovations prior to moving into the premises. Accordingly, the true purpose in evicting the tenant would be the personal use of the premises; however, evicting the tenant would have the added benefit of enabling the desired renovations. Again, this is clearly not what the legislature intended to be captured by ss. 10AB to 10AD; however, it would be captured with the overly broad interpretation.

[37] In my view, the Landlord's assertion that the adjudicator interpreted s. 10AB as applying wherever an eviction is "in any way related to demolition" is inaccurate. The scope of the adjudicator's decision is much narrower. The evidence before Adjudicator Slone, which he accepted, was that the Landlord's plan for the property was to empty out the buildings of tenants as part of a long-term plan to redevelop the site. The adjudicator acknowledged that the building might sit empty for a period of time before the Landlord demolished it. Adjudicator Slone went on to conclude that an eviction is for the purpose of demolition "if the landlord evicts a tenant in order to be able to demolish the structure … regardless of how long it might take for the demolition to occur" (para. 29).

[38] In my view, the adjudicator did not err in his interpretation. There is no bright line between the Landlord's decision to "retire" the building and its intention to demolish it. Pursuant to s. 9 of the RTA, landlords have an obligation to keep the premises in a good state of repair and fit for habitation during the tenancy, and to comply with any statutory enactment or law respecting standards of health, safety or housing. Meeting this obligation would have required the Landlord to undertake expensive repairs to the septic and water systems. The Landlord decided, however, that these systems were "not worth repairing", and opted to evict the tenants instead. The Landlord's position on this appeal ignores the reality that the septic and water systems were "not worth repairing" *because the building was going to be demolished*.

[39] If the Landlord's proposed interpretation of s. 10AB is accepted, landlords planning to demolish or renovate older building can avoid giving proper notice or paying compensation to tenants by simply "retiring" the building or "ceasing operations" instead of complying with their statutory obligation to keep the premises in a good state of repair. They would then be free to pursue renovation or demolition permits whenever it would be most profitable to them. This would certainly be beneficial for landlords, who could avoid both the expense of the repairs and the cost of compensating tenants. While the landlord benefits from the eviction, the affected tenants are left scrambling to find new homes during an affordable housing crisis, on potentially short notice, and with no right to compensation – the very outcome the amendments were intended to prevent.

[40] The Landlord says the adjudicator's interpretation of s. 10AB directly contradicts s. 10(8)(c) of the Act. Section 10(8)(c) authorizes a landlord to give a tenant notice to quit "where the residential premises have been made uninhabitable by fire, flood or other occurrence." The Landlord suggests that if a "retired" building is one that is slated for demolition or renovation, then the same is true of a building that has been made uninhabitable by fire, flood or other occurrence. The Landlord says it follows from the adjudicator's decision that ss. 10AB-10AD would automatically apply in those cases, too. I disagree. Section 10(8)(c) contemplates the termination of a tenancy where the premises have been rendered uninhabitable due to unforeseen events beyond the landlord's control. Where those criteria are met, a landlord is not required to comply with the provisions governing evictions for the purpose of demolition or renovation. This is presumably because an eviction captured by s. 10(8)(c) is necessary due to an unexpected occurrence which severely damaged the landlord's property, not a conscious choice by the landlord to make

improvements to their property. The adjudicator's decision in this matter has no impact on evictions under s. 10(8)(c).

[41] Likewise, there is no merit to the Landlord's concern about the consequences of the adjudicator's decision on cases where a landlord requires possession of the residential premises for the purpose of residence by themselves or a member of their family, but who also wishes to renovate the property before moving in. The Landlord says that if the adjudicator's reasoning with respect to demolition is applied in the renovation context, a landlord in this situation would be caught by ss. 10AB-10AD. Again, I cannot agree. Where a landlord seeks to terminate a tenancy so that they, or their family member, can live in the premises, the landlord must satisfy the Director that they are acting in good faith. If there is evidence that leads the Director to conclude that the landlord's actual intention is to evict the tenant, renovate the premises, and rent it out to a new tenant at a higher price, the Director will refuse to grant the order. There is nothing about the adjudicator's decision in this case that would require the Director to find that a landlord who intends to perform renovations before they or their family member moves into the rental property must comply with the process under the new provisions.

[42] I would also add that there is no conflict between the adjudicator's interpretation and the requirement for a demolition permit under s. 10AB(3). A landlord can evict a tenant for the purpose of demolition or renovations in one of two ways: (1) the landlord and the tenant can mutually agree to terminate the tenancy (s. 10AB(1)), or, (2) if there is no agreement, the landlord can apply to the Director for an order under Section 17A directing that the landlord 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 12 months from the date of the order (s. 10AB(2)). Section 10AB(3) provides that a landlord who applies for an order under s. 10AB(2) 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 renovations. There is nothing to prevent a landlord and a tenant from agreeing to terminate the tenancy for the purpose of demolition or renovations prior to the landlord acquiring necessary permits. However, if the tenant is unwilling to agree, the landlord must obtain the permits before an order will be granted by the Director. This requirement assists the Director in determining whether the landlord is acting in good faith, while discouraging landlords from evicting tenants who do not wish to leave until the landlords are ready to proceed with demolition or renovations. In my view, the legislature could not have intended that landlords planning to demolish or renovate

properties could avoid the effect of the new provisions by simply evicting tenants before obtaining the necessary permits.

[43] I find that the adjudicator conducted the necessary assessment, considered the reasons offered for the Tenant's eviction by the Landlord, and properly concluded that the eviction was "for the purpose of demolition" as contemplated by s. 10AB.

Conclusion

[44] The appeal is dismissed. The Tenant is entitled to costs under s. 23 of the *Small Claims Court Forms and Procedures Regulations*, NS Reg 17/93. If the parties cannot agree on the amount of costs, I will receive submissions from them within two weeks of this decision.

McDougall, J.