

## SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: McIssac v. McNeil, 2019 NSSM 15

Date: 20190507  
Docket: SCCS 485281  
Registry: Sydney

### Between:

Ann G. MacIsaac

*Appellant*

-and-

Shelly McNeil & Luke Lafantaisie

*Respondents*

**Adjudicator:** Tuma T. W. Young  
**Heard:** April 24, 2019 at Sydney, Nova Scotia  
**Final Written:** May 7, 2019  
**Counsel:** For the Appellant, Self-represented  
For the Respondents (no show)

### By the Court

#### Background:

1. The Appellant property owner appeals from an Order of the Director of Residential Tenancies dated February 12, 2019.
2. The Order dismisses the application of the Appellant to the Director of Residential Tenancies on the basis that neither party participated in the hearing.
3. The Appellant now appeals this decision of the Director of Residential Tenancies to the Small Claim Court.
4. The *Small Claims Court Act of Nova Scotia, R.S., c.430, s.9* establishes the authority and jurisdiction for particular type of claims that may be adjudicated in the Small Claims Court. Section 10 of the *Small Claims Court Act* stipulates exclusions from the jurisdiction of the Court in particular matters but does provide authority for an appeal of a decision of the Director: Section 10 (d) states:

Notwithstanding Section 9, no claim may be made under this Act...

(d) which involves a dispute between a landlord and a tenant to which the Residential Tenancies Act applies, other than an appeal of an order of the Director of Residential Tenancies made pursuant to Section 17C of that Act;...

5. In addition, the *Residential Tenancies Act*, R.S., c. 401 also provides authority to appeal an order from the Director to the Small Claims Court. Section 17C (1) states:

Except as otherwise provided in this Act, any party to an order of the Director may appeal to the Small Claims Court.

6. One well-established principle of an appeal is the ground(s) for an appeal have to be either an error of law, an error in fact or a jurisdictional error. Significant deference is often given to the original trier as that person would be in the best situation to fully assess the evidence presented and to apply the law to the case.

### **Hearing/Evidence Presented**

7. This did not happen in this case. The Director did not have an opportunity to hear the evidence as presented by the Appellant nor any rebuttal or defence by the Respondents. Neither participated in the tenancy hearing. The Appellant informed me that she was not aware of the process of needing to call in to the hearing at the scheduled time.
8. However, in reviewing the court file, I noted a document and a note attached to it by the Court staff stating that the Appellant left this document at the courthouse. It was a standard form from the Residential Tenancies office clearly showing what the process is for participating in the hearing. I handed this document back to the Appellant and noted that this document was in her possession with the relevant information at the time of filing the appeal.
9. The Appellant acknowledged that the fault for not participating in the hearing was hers and that she should have read all the material.
10. I note that the *Small Claims Court Act* or the *Small Claims Court Regulations* do not provide any basis or direction to the adjudicators as to what should be the basis for appealing a decision. However section 32(1) states that:

A party to proceedings before the Court may appeal to the Supreme Court from an order or determination of an adjudicator on the ground of

- (a) jurisdictional error;
- (b) error of law; or
- (c) failure to follow the requirements of natural justice,

11. Given that this is the basis for an appeal of the decision of the adjudicator, it seems logical that I, as the adjudicator, should follow this section when considering a Residential Tenancies appeal. A Small Claims Court appeal hearing may be conducted as if the lower hearing never happened and the evidence presented and listened to, as if new.
12. The Director made their order on the basis that neither party had participated in the Residential tenancy hearing, dismissing the Appellant's application.

**Conclusion:**

13. In my opinion, in order for me to either deny or to rescind the Director's order, I would need to be satisfied that the Director made an error in jurisdiction, an error of law or a failure to follow the natural process of justice.
14. The Director did not make any determination of fact, did not apply any law and had the requisite jurisdiction at the Residential Tenancies hearing. The Director was correct in dismissing the application, as both parties did not participate in the hearing.
15. The appeal is dismissed and the Order of the Director is confirmed.



Tuma T. W. Young  
Adjudicator