
Citation: *Financial and Consumer Services Commission v. McKellar et al.*, 2022 NBFCST 2

PROVINCE OF NEW BRUNSWICK
FINANCIAL AND CONSUMER SERVICES TRIBUNAL
IN THE MATTER OF THE *REAL ESTATE AGENTS ACT*, S.N.B. 2011, c 215, THE *MORTGAGE BROKERS ACT*,
S.N.B. 2014, c 41, AND THE *SECURITIES ACT*, S.N.B. 2004, c S-5.5

Date: February 10, 2022
Docket: MS-001-2021

BETWEEN:

Financial and Consumer Services Commission,

Applicant,

– and –

John Albert McKellar and 668054 N.B. LTD.,

Respondent.

ORDER

WHEREAS:

1. On February 10, 2022, the Applicant requested, by email to the Registrar of the Tribunal, that the hearing format be changed from an oral hearing to a hearing in writing. The Applicant provided two reasons: (1) John McKellar's February 9, 2022 email indicating that he would not attend the hearing on the merits; and (2) the complainant, Helen Rae Patterson's recent surgery and resulting inability to testify in person at the hearing on the merits;
2. The Applicant also requested that the hearing on the merits be adjourned to the end of February 2022 to allow the Applicant the time to obtain *Affidavits* from its witnesses;

3. The hearing on the merits is scheduled for February 15 to 17, 2022;
4. The Applicant had previously requested a change in the hearing format to a hearing in writing. In a Decision dated June 14, 2021, the Tribunal rejected this request;
5. The respondents consent to the Applicant's requests;

THEREFORE, IT IS HEREBY ORDERED THAT:

1. Given the time constraints associated with this motion, and pursuant to rule 1.5 of the *Rules of Procedure*, the requirement under the *Rules of Procedure* to use Form 7 to file a motion is waived and the Applicant's February 10, 2022 email to the Registrar of the Tribunal is accepted as a motion;
2. The hearing on the merits is adjourned *sine die*;
3. The request to change the hearing format to a hearing in writing is denied as it will not afford the hearing panel the opportunity to ask clarification questions of the witnesses nor to assess their credibility. The hearing will proceed as an oral hearing unless otherwise directed or ordered by the Tribunal pursuant to rule 11.3 of the *Rules of Procedure*; and
4. Given the adjournment of the hearing, it is not necessary to deal with the Applicant's motion filed on February 8, 2022 seeking that the hearing format be changed to a combination of an oral hearing and an electronic hearing to allow investigator Mike Guitar to testify via video link.

DATED this 10th day of February, 2022.

Lucie LaBoissonnière, Q.C.

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Tribunal Member