Claim No: SCCH No. 427424

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Cook v. Classic Property Management Ltd., 2014 NSSM 67

BETWEEN:

Name	Lora Cook and Kim Thomas	Appellants/ Tenants
Name	Classic Property Management Ltd.	Respondent/ Landlord

Editorial Notice: Addresses and phone numbers have been removed from this electronic version of the decision.

Lora Cook and Kim Thomas – Self Represented.

Nora Landry and Joan Bowser for the Landlord, Classic Property Management Ltd.

DECISION

This is an appeal of the Decision and Order of Residential Tenancies Officer, Gerard W. Neal dated May 8, 2014.

The parties entered into a year to year lease dated October 15, 2012 for the premises known as 53 Celtic Drive, Dartmouth, Nova Scotia. The lease was to commence on November 1, 2012, however, the tenancy ended on June 30, 2013 following the service of Notice to Quit for Health Reasons by the Tenant. The premises have been re-rented and this matter concerns the financial obligations outstanding under the lease.

The Tenants are Lora Cook and her mother, Kim Thomas. Ms. Thomas did not reside in the premises, and apparently, her role has been merely as "co-signer" for any financial obligations.

The parties signed a Standard Form of Lease with the Statutory Conditions prescribed in s. 9 of the *Residential Tenancies Act* appended as Schedule A and the Landlord's Rules and Regulations appended as Schedule B. Ms. Landry seeks compensation for several items pursuant to the latter schedule.

I allowed little evidence concerning the relationship between Ms. Cook and Ms. Landry as the tenancy was at an end and the matter concerned financial issues. Nevertheless, from the oral testimony and documentary evidence of both parties, it is clear the relationship was acrimonious for much of the tenancy. I have no difficulty finding that this animosity contributed to the hardened positions taken by both parties. While their positions became more reasonable during the hearing, there was still considerable distance between them. However, this cannot all be attributed to their acrimony.

The Tenants seek return of her security deposit. The Landlord seeks reimbursement for water bills, alleged damages and cleaning costs. At the end of the hearing, it was clear certain items were properly the responsibility of the tenants. For example, paragraph 9 of the lease required the Tenants to pay for water. This was not done and the bills were sent to the Landlord who paid them or risked facing collection from the Halifax Regional Water Commission. Ms. Landry submitted the water bills which total $422.00. These ought to have been paid by the Tenants - a fact which was not seriously disputed by either Ms. Cook or Ms. Thomas. Similarly, Ms. Cook testified to putting large holes in two doors to allow her pets' access. This was done without the Landlord's consent and in my view justified their repair or replacement. For reasons noted below, I find the amount claimed to be excessive and not supported by evidence.

The repairs for the remaining damages and cleaning are not so straightforward and indeed, I have found many of them to be contrary to the *Residential Tenancies Act*. I shall address those charges following a review of the applicable legal principles.

The Law

An appeal to Small Claims Court is a *de novo* hearing, meaning that a new hearing is conducted with the same or new evidence originally adduced before the Residential Tenancies Officer. The parties may, and often do introduce new evidence. The documentary evidence adduced was identical in that it was contained in a tabbed and logically organized bound volume. This is a practice which I encourage all parties before Small Claims Court to adopt.

Reference is made to the following provisions of the *Residential Tenancies Act* which apply to this matter:

Application of Act

3(1) Notwithstanding any agreement, declaration, waiver or statement to the contrary, this Act applies when the relation of landlord and tenant exists between a person and an individual in respect of residential premises.

Standard form of lease

8(1) In addition to the statutory conditions, a landlord and tenant may provide in a standard form of lease for other benefits and obligations which do not conflict with this Act.
(2) An additional benefit or obligation under subsection (1) is void unless it appears on both the landlord's and tenant's copies of the standard form of lease.
(3) Any alteration of or deletion from provisions that a standard form of lease is required by regulation to contain is void....(underlining mine)

Statutory conditions

9(1) Notwithstanding any lease, agreement, waiver, declaration or other statement to the contrary, where the relationship of landlord and tenant exists in respect of residential premises by virtue of this Act or otherwise, there is and is deemed to be an agreement between the landlord and tenant that the following conditions will apply as between the landlord and tenant as statutory conditions governing the residential premises:...

In the interests of space, I have not listed all of the provisions. In this matter, Statutory Condition 4 applies:

"Obligation of the Tenant - The tenant is responsible for the ordinary cleanliness of the interior of the premises and for the repair of damage caused by wilful or negligent act of the tenant or of any person whom the tenant permits on the premises."

Landlord's rules

9A (1) A copy of reasonable rules established by a landlord that apply to the residential premises shall be given to a tenant prior to executing a lease.
(2) Rules may be changed or repealed upon four months notice to the tenant prior to the anniversary date in any year.
(3) A rule is reasonable if
(a) it is intended to
(i) promote a fair distribution of services and facilities to the occupants of the residential premises,
(ii) promote the safety, comfort or welfare of persons working or residing in the residential premises, or
(iii) protect the landlord's property from abuse;
(b) it is reasonably related to the purpose for which it is intended;
(c) it applies to all tenants in a fair manner; and
(d) it is clearly expressed so as to inform the tenant of what the tenant must or must not do to comply with the rule.

Legislation in Summary

In summary, a landlord may require its tenants to comply with any additional rules, so long as they meet the requirements of the *Act*, specifically:

- They are given to the tenant prior to executing the lease (s. 9A(1)) and any changes or repeals are made on notice at least four months prior to the anniversary date (s. 9A(2));

- The rules meet the four part standard of reasonableness prescribed in s. 9A(3)(a-d);

- The rules are consistent with the provisions of:

- The *Residential Tenancies Act* and regulations as a whole (s. 8(1) and s. 3(1));

- The provisions of the Standard Form of Lease (s. 8(3));

- The Statutory Conditions (s.9(1)).

Any rules which offend these conditions are void. In all respects, the obligations under the Act and its regulations including the Statutory Conditions and the Standard Form of Lease prevail.

Further, any claim for damage against the security deposit is governed by s.12. The relevant provision pertaining to damage is found in subs. (15):

"A claim for damages from a security deposit shall not include any costs associated with ordinary wear and tear of the residential premises."

Application to the Lease

Schedule B- Rules and Regulations

I have considered each claim for damage against the applicable section of the lease. As noted previously, "Schedule B – Rules and Regulations" contains 39 items, two of which are comprised of several subsections. In reviewing them, I note that a number are inconsistent with s. 9 and other sections of the Act and the Standard Form of Lease. Some of the sections are mere restatements of similar parts of s. 9. Where there is a discrepancy, the Act will prevail.

When Ms. Cook provided notice, a letter dated May 16, 2013 was sent to her from Ms. Bowser. In her letter, Ms. Bowser discussed the possibility of an "Out Inspection" and distribution of the security deposit. Her letter also states:

"Please be mindful of Clause 22(A) of Schedule "B" – Rules & Regulations (copy attached)."

Clause 22 provides the following:

"**CLEANING OF THE PROPERTY**
The Tenant by signing this lease accepts the unit in its present condition and further agrees that the following items must be cleaned at the end of the lease term, vacating or subletting of property:

(A) **KITCHEN**

Stove: Must be thoroughly cleaned inside and outside. Wall and floor behind must be washed.

Refrigerator: Completely cleaned inside and outside. Floor and wall area behind to be washed.

Plumbing & Fixtures: All fixtures must be washed and left with properly working lights in the fixtures.

Cupboards & Closets: Cleaned and washed outside, inside and on top.

Countertops: Complete cleaning. Nothing to be left on top.

(B) **BATHROOM**

Plumbing & Fixtures: All fixtures, floors, walls, tiles and vanity to be washed thoroughly.

(C) **GENERAL**

Windows & Screens: All windows to be cleaned inside and outside. Balcony and screen doors to be

cleaned. No articles to be left on balcony.

Ceilings, Walls & Closets: To be thoroughly cleaned. Tenant also will be responsible for the cost of touch up paint, which will be determined by the Landlord during the moving out inspection, cost will be deducted from the damage deposit.

Floors & Carpets: Floors to swept and washed thoroughly. Carpets to be steam cleaned professionally and receipt supplied to Landlord.

Rad, Valves & Heaters: Must be vacuumed and washed on the outside cover.

(D) **OUTSIDE**

Yard: Grass has to be cut and yard tidied prior to vacating, cost will be deducted from the damage deposit.

Driveway (Paved): Tenant will be responsible to blacktop driveway for stains from leaking vehicles.

Driveway (Gravel): Tenant will be responsible for new gravel in the case that the gravel has been stained from vehicles.

Green Bins: Are to be professionally cleaned and receipt supplied to Landlord.

In order to determine if the rules are enforceable, they must pass the scrutiny imposed by the Act. To begin, it is necessary to consider the provisions of s. 9A. There is no evidence to suggest the rules were not provided prior to the execution of the lease. Consequently, I find subsection (1) has been met. Further, subsection (2) does not apply. In addition, I find the rule is designed to protect the property from abuse, and thus fulfills the requirements of s.9A(3)(a)(iii). I find subs.(3)(c) and (d) have also been met. The remaining issue is if the provision complies with s. 9A(3)(b), that it is "reasonably related to the purpose for which it is intended". If so, does it comply with the remaining provisions of the *Act* including s.12(15) and Statutory Condition Number 4? This can be determined by considering the provisions of the lease and the facts of the case.

I find the tenancy lasted a period of 8 months. The house and its fixtures were not new. Aside from the damage to the doors previously noted, there has been little evidence of abuse. Incidentally, I do not accept that the damage was caused to provide access to pets. I note in my findings considerable animosity and, more significantly exaggerated claims based on unreasonable rules.

In rendering a judgment in this matter, I feel it appropriate that I address only those matters at issue in this case. However, I cannot help but observe that many items, particularly those considered in this appeal, not only seek to impose obligations on the Tenants which exceed that required by the Act, but also purport to make the Tenants liable to pay for any alleged default. The net effect in enforcing these provisions is the Landlord is indirectly asking the Director and on appeal, the Small Claims Court, to require the Tenants to pay for many items which can be

fairly classed as "overhead" for a typical landlord. Such a result cannot be enforced and must be discouraged.

In adding to this excessive burden on the tenants is clause 39 which states in bold font:

On the day of vacancy it is agreed the unit will be vacant, clean and ready for inspection by 4:00p.m.

As the final month was the result of a Notice to Quit for Health Reasons, s. 10(C) applies. Specifically, subs. (1) requires at least one month notice to quit. A month is defined as a "calendar month" by the *Time Definition Act*. S.10(4) of the *Residential Tenancies Act* requires the tenant to state the day in which the tenancy will be terminated. I find the day given was June 30, 2013.

The term "day" is not defined in the *Act* or any other statute. Therefore it is necessary to consider the case law.

In the case of *Grant v. Stewart* (1966) 57 D.L.R. (2d) 275, Coffin J. (as he then was), referred to a number of cases with approval:

"…in *ReNorth, Ex p. Hasluck*, [1895] 2 Q.B. 264 at pp. 269-70: "…To say that by the common law a part of a day is the whole of a day is to say something which is contrary to the truth…"

Re Town of Thornbury and County of Grey (1893) 15 P.R. (Ont.) 192…Armour, C.J., said at p. 194: "The day, according to our law, commences at midnight and ends the following midnight: Co. Litt. 135*a*; *Williams v Nash*, 28 Beav. 93.

…I am, however, impressed with the argument that in calculating the 90 days – full days must be considered."

The facts before the late Justice Coffin, differed significantly from those in the instant case. However, it is clear that is widely held that any reference to a "day" in law, refers to the twenty-four hour period from "midnight to midnight". Given that time can be measured more precisely, I find the term "day" to mean from 12:01 am to midnight.

Clause 39 of Schedule B requires the premises to be vacant by 4:00 pm on the final day of the lease. This is a sixteen hour period, rather than a twenty-four hour period. A tenant who pays rent in full is entitled to a full twenty-four hours for each day of their tenancy unless they leave on their own accord or are removed in accordance with the *Act*. But for a few exceptions which are not relevant to this matter, a tenant would be required to pay a landlord full rent. In addition to placing an unnecessary and onerous burden on the tenant, in my view, Clause 39 reduces the period of the tenancy in a manner that is contrary to the *Act*. I find Clause 39 to be void.

In addition, I find the requirements of Clause 22 cited above to be either excessive or otherwise they otherwise vary the conditions required under the Act, the Statutory Conditions or the Standard Form of Lease. While some individual provisions appear consistent, taken as a whole in

the context of the Schedule, they cannot be enforced. For the purposes of this hearing, I find Clause 22 to be void in its entirety. Therefore, I do not consider it in making an order for compensation for damages.

I shall consider each claim in order:

Water Bills – As noted at the outset of the decision, these were the responsibility of the tenants and properly proven in evidence. I allow $422.00.

Carpet Cleaning – I find the requirement for carpet cleaning to be reasonable and supported in evidence. I find the Tenants made an effort to clean the property. I find the sum of $126.50 to be reasonable but I give the Tenants credit for 50% of the cost due to their effort. Ms. Landry testified that this also included sweeping of the floors and cleaning them. I find no evidence to suggest any of the dirt on the floor is anything beyond "ordinary cleanliness". I allow $50.00.

Cleaning – Under this heading, the Landlord is seeking $220 for which the description reads:

"Cleaned fridge and stove, in & out and behind, cleaned light fixtures, bathroom and laundry room, vacuumed, windows & track doors, walls and baseboards and washed floors."

The description appears on a standard stationary form for an inter-office memo. The signature appears to state "Delores Stevens".

In support of this item, Ms. Landry provided photographs of the affected areas before cleaning. There is no evidence of any cleaning performed on the premises. The photographs revealed crumbs in the cupboards and refrigerator, and an oven which required cleaning. There was dirt near the doorway and window obviously blown or tracked in from outside.

I find this dirt to be the result of most anything and its cleaning to be minor. Indeed, I consider its cleaning to be "overhead" for the care and maintenance of property. In my view, the requirement to impose this cleaning obligation on the tenant is unreasonable and goes far beyond helping to protect the property from abuse. Further, I find these requirements exceed that which is expected as "ordinary cleanliness" required by Statutory Condition 4. Much of this can be described as "ordinary wear and tear". It is also based upon a section of the lease which I have found to be void. Furthermore, even if I were to allow it, the cleaning required does not come close to the amount of time purportedly expended by the cleaner. It is impossible to find such an excessive claim to be credible. I disallow this item in its entirety.

Repairs – These are addressed in Tabs 7 and 8 of the Landlords book of exhibits. Tab 7 is an invoice prepared by Evan Vigneau for $255.00. Tab 8 is an invoice for $310.00 prepared by Paul Foster. Neither gave evidence, nor was their work corroborated with photographs once completed. Thus, I am unable to find the work was performed to the extent indicated. I do not allow either invoice in its entirety.

Tab 7 – I disallow the charges for cleaning the bathroom fan and caulking the bathtub. These items while perhaps advisable are ordinary wear and tear and typically part of a landlord's overhead. Ms. Landry provided photographs to show a damaged lock and a light fixture which was not the original or a reasonable replacement. I allow for both of those items, a total of $25.00. Ms. Landry withdrew the claim for the damaged smoke detector.

I find the doors were damaged by the Tenants' actions. The basement and master bedroom doors are addressed by both the Vigneau invoice and the Foster invoice. Mr. Vigneau has charged for replacing the door handle and two doors, while Mr. Foster charged to paint the doors. It is also clear from the photographs that the Landlord chose to fill in the doors and paint over them rather than replace them. I find as a fact that the doors were not replaced but filled in and painted. I disallow the $160.00 charged by Mr. Vigneau. I allow $60.00 for all repairs to those doors.

Tab 8 – The remainder of Mr. Foster's bills relate to painting including the dining room ceiling and all walls. The photographs are inconclusive and, thus, I find all paint requirements to be the result of reasonable wear and tear.

The Landlord relies on the following provision in the Rules:

"5. No spikes, hooks, screws or nails shall be put into the walls or woodwork of the building or any partition erected or alteration made without the written consent of the Landlord."

As above, while this rule is designed to prevent the property from abuse, I find its reach and breadth to be excessive and unreasonable. In any event, I find the hanging of pictures and other reasonable decorations to be ordinary wear and tear for any property and not the result of negligent or wilful actions of the Tenants. I include in this description the small hook from the ceiling shown in the photographs. This section is void. The claim is disallowed.

Garbage – The Landlord seeks $175.00 for removing garbage left on the patio and crawl space. The Landlord provided photographs of garbage. The Tenants deny any responsibility for these items. Ms. Cook testified that she did not look in the crawl space. However, I find it unlikely that she did not notice the garbage at some point during the tenancy. Given their relationship, I have no doubt Ms. Cook would have brought it to the Landlord's attention. I find the excessive garbage was left behind by Ms. Cook and she ought to be responsible for the cost of paying for its removal. However, I am not prepared to allow $175.00 as claimed by the Landlord. I find the dumping fees are unnecessary as the garbage could have been brought to the curbside. I find two hours labour at $15 per hour to be sufficient. I allow $30.00.

Lawn Mowing – I find lawn maintenance generally to be ordinary wear and tear. As noted, Clause 22 has been declared void. I disallow this amount in its entirety. Even if I were to find the clause to be acceptable, it is not clear that it has been breached. I find the lawn had not been

mowed on June 30 but likewise, I find it had been mowed earlier that week. The clause only requires that mowing takes place before the vacancy; it does not specify a time.

Furnace Cleaning – The premises are heated through an oil furnace. Clause 33 requires the tenant to "pay for one annual cleaning and maintenance of the furnace in the property". In the circumstances, I find this to be excessive especially since the tenancy was a mere nine months duration. This is another example of overhead which is beyond ordinary cleanliness. I find the provision to be void and disallow this claim.

Summary

As a result of the above, I find the Landlord has established liability for the following:

Water Bills:	$622.00
Carpet Cleaning:	$ 50.00
Cleaning:	$ 0.00
Repairs (including doors)	$ 85.00
Painting	$ 0.00
Garbage:	$ 30.00
Mowing:	$ 0.00
Furnace Cleaning:	$ 0.00
Total	$787.00

The Tenant shall have credit for the security deposit in the amount of $463.00. The Tenants shall also receive their costs for the application before the Director and this appeal for $127.05. Therefore, the Landlord shall have judgment in the amount of $196.95.

Conclusion

As a result of the hearing, the appeal is allowed in part.

- With respect to Schedule B – Rules and Regulations, clauses 5, 22, 33 and 39 are declared void in their entirety for this tenancy.

- The Landlord, Classic Property Management Limited shall have judgment against the tenants, Lara Cook and Kim Thomas, jointly and severally in the amount of $196.95.

Order accordingly.

Dated at Halifax, NS,
on August 15, 2014;

Gregg W. Knudsen, Adjudicator

Original: Court File
Copy: Claimant(s)
Copy: Defendant(s)