

DECISION AND ORDER

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: R & S Realty Ltd. v. Harlow, 2004 NSSM 27

BETWEEN:

Name: R & S REALTY LIMITED

- APPELLANT

Name: AMANDA HARLOW

- RESPONDENT

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on August 8, 2007.

DATE OF HEARING: March 8, 2004

DECISION

Appearances: Amanda Harlow in person
Jason D. McIvor on behalf of R & S Realty Ltd.

- [1] R & S Realty Limited appeals a decision of the Director of Residential Tenancies which ordered R & S to pay to its former tenant, Amanda Harlow, the sum of \$966.62. R & S seeks to have the order for payment set aside and an order requiring Ms. Harlow to pay R & S money due for rent and for damages done the premises.
- [2] Ms. Harlow had been chronically late with her rent. R & S gave her notice to vacate at the end of September, 2003. In August, however, agents of R & S entered Ms. Harlow's premises early one morning when she was yet in bed, turned off the power to the apartment and at the end of the month, changed the lock on the door. The *Residential Tenancies Act* provides:

5A A landlord shall not bar a tenant from free access to the residential premises during the term of the tenancy. R.S., c. 401, s. 5; 1993, c. 40, s. 3.

Statutory Conditions

7. Entry of Premises - Except in the case of an emergency, the landlord shall not enter the premises without the consent of the tenant unless

(a) notice of termination of the tenancy has been given and the entry is at a reasonable hour for the purpose of exhibiting the premises to prospective tenants or purchasers; or

(b) the entry is made during daylight hours and written notice of the time of the entry has been given to the tenant at least twenty-four hours in advance of the entry.

8. Entry Doors - Except by mutual consent, the landlord or the tenant shall not during occupancy by the tenant under the tenancy alter or cause to be altered the lock or locking system on any door that gives entry to the premises.

[3] Mr. McIvor, who to all appearances is an intelligent, knowledgeable landlord, has violated the most important provisions of the *Residential Tenancies Act*. He acknowledged his actions. He acknowledges changing the locks in his correspondence to Ms. Harlow. His rationalizations for his actions are not persuasive. He says he entered the apartment because Ms. Harlow had not been seen for a few days, was not responding and so he concluded she had abandoned the premises. He says he cut off the power "to get her attention". He says he changed the locks on the door because her rent was in arrears and she had refused to respond to the notice given her to quit.

[4] Ms. Harlow acknowledged that the rent for August in the amount of \$440.00 had not been paid. She explained that she had broken the door to the apartment in order regain entry after R & S had changed the locks. She said that she had been unable to thoroughly clean the apartment because of the circumstances of her effectively being rushed out of possession at the end of August. She said the carpets had been stained and damaged before she moved in. She testified to the inconvenience of being forced out of the

apartment during August.

- [5] I dismiss the landlord's claim for rent for August. The premises, by the landlord's actions, became uninhabitable during that month and of no value to Ms. Harlow.
- [6] Ms. Harlow is, I find, not responsible for the final cleaning of the apartment, nor for breaking the door. The costs associated with repairing the door and cleaning the apartment were caused by the landlord's own actions in changing the locks. I accept her evidence as to the condition of the premises when she moved in. I dismiss the landlord's claim for damages.
- [7] I expressed my dismay to Mr. McIvor at the hearing. There is a process to be followed to regain possession of premises when a tenant is in default. I am not even sure that Ms. Harlow was in such default as to entitle R & S to possession, but even if she was, the proper procedure is to make application under the Act and obtain an order. Landlords cannot simply "help themselves" and force tenants out of their premises. Nor can landlords disconnect a vital service or enter a tenant's premises except as permitted by the Act. Mr. McIvor had at least the virtue of being honest with the Court, but I cannot be seen to condone his actions and must by my Order deter him, and other landlords who may be similarly inclined, from such high-handed and arbitrary actions.
- [8] I assess general damages for trespass to Ms. Harlow's premises and for violating the statutory conditions of the lease in the amount of \$500.00. I assess exemplary damages in the amount of \$1,500.00.

ORDER

- [9] I order R & S Realty Limited to pay to Amanda Harlow the sum of \$2,000.00.

Dated at Halifax, Nova Scotia
this 12th day of March, 2004.

J. WALTER THOMPSON, Q.C.
ADJUDICATOR

Original
Copy
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Court File
Claimants(s)
Defendant(s)