Claim No: 287832

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
ON APPEAL FROM AN ORDER OF THE DIRECTOR OF RESIDENTIAL TENANCIES

Cite as: Quon v. Johnson, 2007 NSSM 80

BETWEEN:

CHARLES QUON

Landlord

- and -

DAVID JOHNSON

Tenant

APPEAL DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on November 27, 2007

Decision rendered on November 29, 2007

APPEARANCES

For the Landlord self-represented

For the Tenant self-represented

BY THE COURT:

[1] This is an appeal by the Landlord from an Order of the Director dated October 30, 2007, ordering the Landlord to return to the Tenant the balance of a security deposit which had been withheld, in the amount of $892.38, in respect of premises located at 1470 Summer Street, Unit 1904 in Halifax. The Landlord was not able to attend the hearing before the Director, for health reasons, so this was his first opportunity to put forward his position on the merits.

[2] The Tenant David Johnson signed the lease on behalf of his daughter, Jeanette Johnson ("Jeanette"), who lived in the unit with a roommate while attending university. While David Johnson is technically the Tenant, Jeanette had most of the first-hand knowledge and she will be referred to as "the Tenant" for purposes of the narrative.

[3] The unit in question is technically a 1-bedroom condominium unit in a very desirable area of Halifax. The study was converted into a second bedroom to allow for double occupancy. The two year lease expired August 15, 2007. Rent was $1,800 per month. A security deposit of $900 was taken at the outset.

[4] The Landlord sought to retain almost the entire security deposit to pay for a clean up and repairs at the conclusion of the lease. The position of the Tenant is that the unit was left in reasonable condition, and that moreover the Landlord forfeited the right to retain the security deposit by failing to observe time limits set out in the *Residential Tenancies Act*.

[5] The undisputed facts are that upon the expiry of the lease, Jeanette and her roommate met with the Landlord to turn back possession. The Tenant had discontinued the electrical service, so not all areas of the unit were well lit enough for the Landlord to inspect on that date. Even so, there did not appear to be any major problem noted.

[6] Jeanette testified that she advised the Landlord that there were a few holes in the wall where pictures and some speakers had been attached, but she was reassured that this was not a big deal as the Landlord was intending to paint the unit and would patch the holes.

[7] The Tenant heard nothing further for several weeks, by which time she was actively seeking the return of the security deposit. She was aware of the requirement in the *Residential Tenancies Act* that a Landlord is obliged to return same to a tenant within ten days of the expiration of the lease, unless the Landlord makes an application to the Director. The applicable provisions of the Act are:

> 12(5) Subject to subsection (6), the security deposit, together with interest, shall be returned to the tenant within ten days of the date of the termination of the lease.
> (6) Where the landlord seeks to apply all or part of the security deposit and interest to outstanding rent or to expense incurred in respect of any damage for which the tenant is responsible and the tenant does not consent in writing, the landlord may make an application under Section 13.
> (7) An application or a complaint pursuant to subsection (6) shall be made within ten days of the date of termination of the lease and, if no application or no complaint is made, the security deposit shall be returned in accordance with subsection (5). (Emphasis added)

[8] Behind the scenes, the Landlord had inspected the premises more closely and was not satisfied with its cleanliness or state of repair. He was concerned about getting it ready for a new tenant. He contracted with a cleaning and repair service (with whom he had an ongoing business relationship) to do extensive cleaning and repair and to repaint the premises in advance of the new tenant moving in. He had the bill broken down into items that he felt he could pass on to the Tenant, and items that he could not. The total of items that he sought to recover from the security deposit was $843.60.

[9] The contractor's bill includes the following items:

A.	Repairs to holes in wall	$75.00
B.	19 hours of cleaning at $25.00 per hour	$475.00
C.	Carpet cleaning (steam cleaning sub-contracted out to a cleaning service)	$130.00
D.	Materials cleaning and materials for repair	$60.00
E.	HST	$103.60
		$843.60

[10] The Tenant takes exception to the notion that she is being charged, in effect, for a total "detailing" of the apartment. Jeanette testified that she had steam cleaned the carpets several months earlier, and did what she regarded as a thorough cleaning of the apartment before vacating. One of the items to which she took particular exception was the several hours

spent and charged by the Landlord's cleaner to clean the oven. Jeanette testified that this was only necessary because the self-cleaning function had been broken for some time and the Landlord had not attended to having it repaired. She stated that she did not want to use chemical cleaners on a self-clean oven because it can harm the special surface coating.

[11] As for the rest of the cleaning and repair, the Tenant says that the apartment was left in reasonable condition, and that she is not responsible for reasonable wear and tear.

[12] In my view, if the Landlord wanted to employ 19 hours of cleaning by professional cleaners, that is his undoubted right, and it might even be good business practice, but in the absence of a specific provision in the lease requiring the tenant to return the premises in pristine condition, the *Residential Tenancies Act* standard applies. I find that the alleged "damage" done by the Tenant fell within the definition of reasonable wear and tear and that the tenant did not breach the term of the lease that requires the premises to be returned in good condition and in a state of "ordinary cleanliness".

[13] Even if I am wrong in this, I also find that the Landlord failed to give proper notice that he intended to look to the security deposit to fund his repairs and cleaning. His reason for not acting sooner was that he did not know the full cost, and his cleaning contractor was busy and did not get around to it immediately. I note that the contractor's bill was dated September 6, 2007, which was fully three weeks after the lease expired.

[14] The Landlord could have given notice and made his application to the Director long before he did, even if he did not know the final cost.

[15] It is my view that the time limits set out in the *Residential Tenancies Act* are mandatory. If no application to retain the security deposit is made within ten days, the obligation to return the deposit is mandatory. The Tenant should not have to make an application, as she did, to the Director to obtain the return of the deposit. Accordingly, upon this second, procedural ground, it is my finding that the Director's order was correct and the Landlord must return that portion of the security deposit that he retained without legal right.

[16] In the result, the appeal is dismissed and the Order of the Director is confirmed.

Eric K. Slone, Adjudicator