

Claim No: 289962

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
ON APPEAL FROM AN ORDER OF THE
DIRECTOR OF RESIDENTIAL TENANCIES
Cite as: Lal v. Willis, 2008 NSSM 4

BETWEEN:

SAROJ LAL

Landlord (Appellant)

- and -

KAYLEENA R. WILLIS

Tenant (Respondent)

DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on January 29, 2008

Decision rendered on January 30, 2008

APPEARANCES

For the Landlord - self-represented

For the Tenant - self-represented

- [1] This is an appeal from an order of the Director dated December 13, 2007. That order allowed the Tenant the sum of \$787.50 against the Landlord as compensation arising from what the Director found to be a breach of the statutory condition to provide a premises suitable for habitation. In particular the Director found that the Landlord allowed mouldy conditions in the premises to develop and failed to rectify same, with the result that some of the Tenant's belongings were ruined.
- [2] The Landlord did not attend the hearing before the Director. It appears that she missed it inadvertently, and she appeals to this Court against the findings.
- [3] The Tenant produced considerable evidence to substantiate that the basement in her unit was damp and riddled with mould, with the result that a number of items of furniture, an area rug, various boots and articles of clothing were ruined. She also produced evidence in the form of medical letters to the effect that her children suffer from asthma and ought not to be exposed to mouldy conditions. She further testified that her own breathing was affected by the mould, despite never having had breathing problems.
- [4] When the mould first began to develop the Tenant called the relevant Halifax Regional Municipality office which sent a bylaw enforcement officer to investigate. That inspector wrote a letter after his visit, which was placed in evidence, stating that he had observed mouldy conditions which he attributed to lack of proper ventilation in the basement. He recommended a dehumidifier be placed in the basement.

- [5] The Tenant testified that the Landlord was totally unresponsive to her complaints throughout. The Landlord's eventual response was a notice to vacate, with the result that the Tenant moved out and brought this application for compensation.
- [6] Photographs of the mouldy conditions were placed in evidence. The condition is very clearly depicted in those photos.
- [7] The Landlord testified that there simply was no mould. Her position was that the Tenant used grey spray paint to resemble mould. The Landlord spoke at length about what she regarded as the poor condition of the premises left by the Tenant, none of which had any bearing on the alleged mould issue. She wondered aloud why if there was mould that it only affected the Tenant's furniture and area rug and was not obvious on the other carpeting. This is a legitimate question which, while relevant, is not really answerable at this time.
- [8] The two versions of the facts were as far apart as they could be. My task of choosing between these two would have been a little more challenging, had I not been able and inclined to rely on the bylaw inspector's findings. He detected mould and the conditions that allowed mould to develop. I find it impossible to believe that he could have been fooled by something as amateurish as spray paint. I also find it impossible to believe that the Tenant, had she actually resorted to such a tactic, would have called in a building inspector and hoped to get away it. Having heard and assessed her as credible, I also find it hard to believe that she would have engaged in such a tactic.

- [9] In short, I reject the Landlord's evidence entirely. She was not credible and her explanation is not probable. I find on a strong balance of probabilities that there was mould, that it was the Landlord's responsibility to rectify same, and that she did not. I further find that the mould damaged the Tenant's belongings and posed a health hazard to her and her children, giving rise to a legitimate claim.
- [10] The Tenant put into evidence receipts of the original cost of the furniture, which was \$1,138.86, including HST. The furniture was less than four years old. The rug originally cost \$150.00. The Tenant could only estimate the value of the ruined clothing, which she placed at \$500.00. She had also advanced a general damages claim for inconvenience and suffering in the amount of \$200.00.
- [11] The Director rejected the general damages claim on jurisdictional grounds, and I agree with that finding. It is simply not a claim that can be made under the *Residential Tenancies Act*.
- [12] The Director also discounted the property damage claims on the basis that the furniture's value should be discounted, and because of the lack of evidence of the other items. She allowed \$712.50 for the furniture and \$75.00 for the rug and clothing.
- [13] I have concluded that the Director was essentially correct, although her discounting of the value of the rug and clothing went a little too far, in my opinion. Because the matter is before me on a *de novo* basis I assess the damages a little higher. I would allow \$712.50 for the furniture, \$50.00 for the area rug and \$100.00 for the clothing, for a total of \$862.50. The

Tenant will accordingly be entitled to a judgment against the Landlord for that revised amount.

Eric K. Slone, Adjudicator