Claim no. 295326

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Williamson v. MacDonald, 2008 NSSM 36

BETWEEN:

EVELYN WILLIAMSON

Claimants

- and -

ARTHUR DAVID MacDONALD

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on June 17, 2008

Decision rendered on June 23, 2008

APPEARANCES

For the Claimant self-represented

For the Defendants self-represented

BY THE COURT:

[1] The Claimant operated a hair salon between February 2003 and January 2008 in a building on Queen Street in Dartmouth, owned by the Defendant. There was no written lease. The Defendant stated that it was his practice in all of his buildings to operate on verbal, month to month leases.

[2] The tenancy came to an end when the Defendant gave notice of a rent increase that was more than the Claimant was willing to pay. She then proceeded to extricate herself and her equipment from the premises.

[3] This claim arose after the Defendant insisted on retaining the Claimant's damage deposit of $650.00, to cover what he claims was damage to the premises, or more accurately a failure to return it to its previous condition.

[4] The Claimant has attempted in this claim to recover for a number of expenses that she incurred when she first took over the space, including the cost of electricians to add additional lighting, plumbers to connect up a large hot water tank, the cost of primer and paint, and the cost of tiles to cover a bare plywood floor. The Defendant insists that the lease was a "net" lease, with the premises rented "as is", and that the tenant understood that she was responsible for what were essentially tenant improvements. The Claimant admitted that she had tried to get the Defendant to cover some of these expenses at the time, but he consistently told her that these things were her responsibility.

[5] I am not prepared to allow any recovery for money spent by the Claimant at the outset of the tenancy. I believe that the terms were understood,

even if the Claimant was not happy with them. If she needed to spend money setting the place up for her business, it was at her expense. Even if she did not entirely agree, she certainly acquiesced by absorbing the expense and has no legal basis to revisit these matters, especially after all this time.

[6] The Claimant also claims for the cost of a new hot water heater which she was forced to buy in late 2007, when her previous one gave out. Again, I am satisfied that this fell within her area of responsibility under the tenancy.

[7] The part of the claim that is more problematic for the Defendant relates to the municipal water bill. The Claimant learned at some recent time that she had been paying for water for the entire building, which includes a second floor flat. With only one water meter for the building, it is impossible to know precisely how much she paid for the water used by the other tenants, but her estimate of $500 (being one-quarter of the total over the applicable time) was not challenged by the Defendant. It was his evidence that part of the verbal agreement was that the Claimant was responsible for the entire water bill because she was the “primary user.”

[8] I have a hard time believing that the Claimant understood this. While a net lease certainly implies that the Claimant would be responsible for all of the expenses of the space she occupied, it would not necessarily be expected that she would have to supply free water to the other tenants in the building. I am accordingly satisfied that the Claimant has been put to an expense which ought to have been covered by the Defendant. The sum of $500.00 is accordingly allowed to the Claimant.

[9] The Defendant retained the $650.00 damage deposit because of the condition of the premises after the Claimant vacated. Photos were placed in evidence, showing numerous holes in the wall, cut pipes where plumbing fixtures and copper pipes had been removed, missing light fixtures, a broken window and some general untidiness. The Defendant produced estimates to bring the space back into a proper condition, which ranged between $2,400 to $2,700, approximately. In the end no outside company was used to perform the work. The Defendant conceded at trial that he was not really “pressing” the Counterclaim, except to justify retaining the damage deposit.

[10] I am satisfied that the Claimant did not leave the premises in good condition. It appears that relations were already poor and perhaps the Claimant was rushed or simply did not care. But I have no doubt that she did not leave the premises in as good - or more accurately as “neutral” - a condition as when she took it over.

[11] It is difficult to measure with precision how much was normal wear and tear, and how much was beyond that measure. Sometimes written leases make it clear what the tenant’s responsibility is, but we have no written lease here.

[12] I believe that the damage to the premises would offset the damage deposit of $650, plus whatever interest it might have accrued over the years.

[13] In the result, then, the Claimant is entitled to recover $500.00 for her excess water bill payments, plus her costs to bring the matter before the

court. The cost to file a claim under $5,000 is $87.06, and that is the amount that I will allow. The Claimant did not prove any cost of personal service upon the Defendant . Judgment in favour of the Claimant will therefore be for $587.06.

Eric K. Slone, Adjudicator