Claim No: 303698

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

Cite as: Byard v. Lummis, 2008 NSSM 81

BETWEEN:

PAULINE BYARD

Tenant

- and -

MARK LUMMIS

Landlord

APPEAL DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on November 25, 2008

Decision rendered on December 10, 2008

APPEARANCES

For the Tenant - self-represented

For the Landlord - self-represented

BY THE COURT:

[1] This is an appeal by the Tenant from an order of the Director dated October 27, 2008.

[2] That order allowed the Landlord's application for arrears of rent in the amount of $2,500.00 and awarded him vacant possession of the premises as of October 31, 2008. The Director also disallowed the Tenant's counter-application for various items, which will be discussed below.

[3] Pursuant to the provisions of the *Residential Tenancies Act*, a hearing *de novo* was held in Dartmouth and extensive testimony under oath taken from the Tenant, Pauline Byard and the Landlord, Mark Lummis. I also heard brief testimony from a friend of the Tenant, Tamara Brown.

[4] For the reasons that follow, I have come to the same result as the Director and will confirm his order, subject to a small adjustment.

The Premises

[5] The subject premises is a semi-detached house at 48A Kennedy Drive in Dartmouth. The Tenant had lived in that house as a tenant for almost exactly ten years, predating the current Landlord's ownership. There was no written lease in evidence and the matter was treated as a month to month tenancy.

[6] The current Landlord bought the building approximately six years ago, and assumed the tenancy of Ms. Byard.

[7] The rent for the premises was $625 per month, with the Tenant being responsible for heat and utilities.

The Complaints

[8] There is no question that the Landlord and Tenant had a somewhat difficult relationship, at least in recent years, which saw them before the Residential Tenancies Commission on at least one prior occasion.

[9] From the perspective of the Tenant, the Landlord was unresponsive to her complaints about repairs that needed to be done in the premises, including a long overdue paint job. The Landlord disputed that there were any significant repairs required, and as for paint he testified that he had been willing to supply paint for the Tenant to paint the premises herself, or have it done.

[10] Back in 2005 the Tenant called the Fire Marshall to have the premises inspected, which resulted in some minor deficiencies being noted. It does not appear that the Tenant ever called for a municipal building inspector to come to the premises, which might have resulted in a more extensive examination of the state of the premises.

[11] Nor does it appear that the Tenant ever took her complaints about the state of the building to the Residential Tenancies Commission, which would have been an appropriate remedy for her to seek to have the Landlord fulfill his statutory obligations, assuming that he was in breach.

[12] In about March 2007, the Tenant arranged to have an energy audit done of the home by Sustainable Housing & Education Consultants. This type of service is often used by people who are seeking to have the energy efficiency of their home evaluated in order to identify upgrades that can be made. Government money is sometimes available to fund such projects.

[13] The report that the Tenant received noted many improvements that could be made, and illustrated the energy savings that might be achieved.

[14] The Tenant did not make the Landlord aware of this energy audit, nor did she provide him with the results until quite recently when they were already embroiled in this conflict.

[15] The largest part of the Tenant's counter application is her claim for a refund of excess electricity and oil costs going back several years, which she says that she incurred because the home was so energy inefficient as a result of poor insulation and other deficiencies.

[16] In the meantime, the Tenant's rent-paying history was somewhat imperfect and she was chronically in arrears. The Landlord eventually decided to serve her with a Notice to Quit for non-payment of rent, at which point the Tenant withheld rent prompting the Landlord to seek an order from the Commission terminating the tenancy.

Rent Arrears

[17] The Director found that the accumulated arrears amounted to precisely $2,500.00. The evidence before me was consistent with that. The

Landlord produced an Excel spreadsheet showing payments made and rent accrued. It was conceded by him both before the Director and me that there had been some minor errors in the report initially presented, which errors were taken into account in arriving at the figure of $2,500.00.

[18] The Tenant's position was that she did not believe she was in arrears to that extent, but she could not produce any coherent record of payments that showed a different result. She was merely critical of the Landlord's accounting methods, and repeatedly challenged him to produce his copies of the handwritten rent receipts that he had given her when, as often occurred, she paid rent in cash. The Landlord stated that he does not keep copies of these receipts and does not consider these receipts to be the definitive record. The Tenant essentially asked me to take her word as a truth-teller, to the effect that the Landlord is wrong.

[19] I accept that the Tenant very likely believes that she was not this far in arrears, but she is more likely than not honestly mistaken. The Landlord's record keeping is less than perfect, but it is the only coherent account available and I have no choice but to accept it as proved, on a balance of probabilities.

Termination of the Tenancy

[20] The termination of the tenancy was not appealed *per se*, since the Tenant has relocated and appears to be happy (or relieved) to be out of this premises. However, there is an issue of whether or not she should be obliged to pay rent for the whole of the month of October.

[21] The decision of the Director was released on October 27, 2008. By then the Tenant had already had the electricity service discontinued and had moved out, and the Landlord felt justified in having the locks changed and electricity restored on his own account. The problem is that the Tenant had still not removed all of her things, some of which still remain in the premises (at least as at the date of the hearing before me) even though there are new tenants in place.

[22] On a related note, there had been an incident earlier in the month when the Tenant claimed that she was denied full access to the home as a result of a large vehicle being parked in the shared driveway for a number of hours. This made it difficult for her to use one of the two doors to the premises, which may have made it more difficult to move some of her things.

[23] Although this vehicle was not the Landlord's, the Tenant blames him because he allegedly told the neighbours that she did not live there any more, and allegedly gave them permission to block her access.

[24] I have to say that I was not impressed with the Tenant's position about this incident. It does not appear that she did what any reasonable person would have done, which would have been to politely ask the neighbour to move the vehicle, if it was indeed blocking her door. Her position was simply indignance that such a thing was occurring. In the result I do not hold the Landlord in any way responsible for the inconvenience, if there was actually any.

[25] As for the premature lock-out, the Landlord had some legitimate concerns about securing the premises, but I think he acted prematurely. There is no

reason to find that waiting another five days would have been problematic. There were no freezing temperatures to guard against. He had to have known that the Tenant still had some belongings in the premises, and that changing the locks would prevent her from getting them.

[26] Under different circumstances, the Tenant might have been able to call the Landlord to gain access to do what she had to do, but this relationship was so conflicted that it would never have proceeded normally.

[27] In the result the Landlord cannot claim rent for the last five days in October, and he must deduct that from the amount he is otherwise owed. That amount is $100.80. I also allow the Tenant the further sum of $149.20 for the inconvenience and additional expense she will incur obtaining her things. There shall be a credit of $250.00 applied to the order, with the result that the Tenant owes the Landlord $2,250.00 rather than the $2,500.00 which the Director ordered. Of course, the Director could not have known about subsequent events that had not yet occurred when he made his order.

The Counter Application

[28] The thrust of the Tenant's claim is that she incurred additional expense for a number of years because of the energy inefficiency of the home. She seeks a further credit for lack of repairs, which she says lessened her enjoyment of the premises.

[29] I note that the energy audit found this home to have an energy efficiency rating of 58 out of 100, which is within the range of what it considers typical

for an “upgraded older house.” It made recommendations for what could be done to raise that rating as high as 75, which would have been at the low end of an “energy efficient new house.”

[30] The Tenant had to have known that the home she was renting was an older home which had not been significantly upgraded. That was what she was paying rent for at the frankly very low rent of $625 per month, and less in previous years. To compensate her as if this were an energy efficient newer home, without charging her the rent that such a newer home might command, would be unjust to the Landlord and ignores the principle - although not perfectly applicable to tenancies - that “you get what you pay for.”

[31] I might have found differently had the energy audit concluded that this home was below all reasonable standards, but that is not the case before me.

[32] The claim for a 5% rent abatement because of other deficiencies suffers from the same problem. There is no convincing evidence that the premises were unfit for human habitation. They were simply a bit run down. For this I pin no medals on the Landlord, but neither do I feel justified in essentially lowering the rent retroactively because the premises needed some routine maintenance.

[33] The Tenant further based her claim for compensation on what she feels was disrespectful behaviour of the Landlord toward her. She believes that she was harassed directly and defamed behind her back, and says that this

interfered with her possession and occupancy, contrary to Statutory Condition 3.

[34] I am not satisfied that any such interference occurred, such as would give rise to compensation. My sense is that these two people have simply come to detest each so much that each has become hyper suspicious of, and virtually “allergic” to the other. While the Tenant may feel victimized, I cannot objectively say that the Landlord did anything that crossed the line and might give rise to any legal consequences.

Conclusion

[35] In the result, the decision of the Director is confirmed although the amount of $2,500.00 is reduced to $2,250.00, for the reasons set out above.

Eric K. Slone, Adjudicator