Claim No. SCCH-450570

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

Cite as: Crouse v. Timbercreek Asset Management Inc., 2016 NSSM 16

BETWEEN:

ELAINE CROUSE and GEORGE CROUSE

Appellants (Tenants)

- and -

TIMBERCREEK ASSET MANAGEMENT INC.

Respondent (Landlord)

REASONS FOR DECISION AND ORDER

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on May 3, 2016

Decision rendered on May 5, 2016

APPEARANCES

For the Appellants	self-represented
For the Respondent	Joan Mahar, Area Manager

BY THE COURT:

[1] The Tenants appeal an order of the Director of Residential Tenancies dated April 19, 2016, which ordered them to pay $1,472.50 to their former Landlord. This amount consists of $775.00 toward their rent for January 2016, $1,395.00 for February 2016 rent, minus the $697.50 security deposit.

[2] The Tenants deny responsibility for the February rent.

[3] The Tenants had been in the building less than two years. Their year to year tenancy extension was set to expire March 31, 2016. For reasons which I will touch upon below, the Tenants were in some conflict with the Landlord and/or its property management, and did not wish to continue in this tenancy. The feeling was mutual. The Tenants asked to be allowed to leave before their lease expired.

[4] In late 2015, an agreement of some sort was entered into which would allow the Tenants to leave their tenancy a month early, without penalty. I do not know if it was verbal, or reduced to writing. In any event, both parties agree that this was a binding agreement.

[5] In late 2015 or early 2016, the Tenants went looking for apartments in the Larry Uteck Drive area, which they favoured, and put in applications. Two prospective landlords called for a reference and were given negative information by the Timbercreek building manager, Joanne Hamm.

[6] Ms. Hamm had been dealing with the Tenants for about 5 months, and in that time had formed some negative opinions about them. She thought they

were complainers; specifically they had multiple complaints about the condition of their unit, as well as the cleanliness of the building. She had spoken to other tenants who also believed the Tenants were complainers. She admits that much of her information was pure hearsay.

[7] When called by these two other landlords, she says that she told the truth. They asked if the Tenants were smokers, to which she replied yes. She was asked if they had dogs, to which she replied that they had two well-behaved dogs. She was asked if they paid their rent on time, to which she replied that they did. She was then asked if she would rent to them again, to which she replied "definitely not," because they were complainers. Essentially, she red-flagged them. As she told the court, there is an unwritten rule in landlord circles that you do not pass on your problems to other landlords.

[8] The Tenants learned from one or both of their prospective landlords about the poor reference they were being given. They became very concerned about being able to rent a place in their desired area. They spoke to one of the landlords who had been given a negative reference, and managed to persuade him to rent to them anyway. He said he had an apartment currently vacant, which they could take so long as they did so on or before no later than February 1, 2016. They were afraid of letting this opportunity go, so they took it despite the fact that they had agreed to continue with their tenancy until the end of February.

[9] The question they raised before the Residential Tenancy Officer, among some others which were not raised on this appeal, and again in this court, was

whether they could get relief from the extra month's rent because of the Landlord's actions in unjustly giving them a poor reference.

[10] The Residential Tenancy Officer observed that what the Tenants were essentially claiming was relief on account of defamation of character, and that Residential Tenancies had no jurisdiction in this area.

[11] The Tenants were legally bound to their tenancy with the Landlord until the end of February, as a result of the agreement reached. In order to be relieved of their agreement, there would have to be some legal basis, grounded in the *Residential Tenancies Act* or the law of contract. For example, the unit would have had to have become uninhabitable, or the Landlord would have had to have breached the tenancy agreement in some fundamental way, which in turn would have legally given the Tenants the right to be relieved of their lease obligations, including the obligation to pay rent.

[12] What actually happened here, at its highest, is that the Landlord slandered the Tenants, with the result that it made it more difficult for them to rent an apartment of their choosing.

[13] For present purposes, I am willing to assume that the Tenants are good people and not "complainers" in the sense that they made unfounded complaints. As such, it would arguably be defamatory for Ms. Hamm to have suggested otherwise.

[14] In Nova Scotia, claims for libel or slander - the more precise words sometimes used to differentiate between written and oral defamation - are within

the exclusive jurisdiction of the Supreme Court of Nova Scotia. There is a specific prohibition against such claims being raised in Small Claims Court. Section 10(c) of the *Small Claims Court Act* reads:

> 10 Notwithstanding Section 9, no claim may be made under this Act .....
>
> (c) for defamation or malicious prosecution;

[15] Although there is nothing specifically speaking of defamation claims in the *Residential Tenancies Act*, I am quite certain that the legislature never intended that Residential Tenancy Officers adjudicate complaints of defamation. One indication to this effect is that the *Judicature Act* provides that trials for libel or slander must be heard by a judge and jury:

> 34 Subject to rules of Court, the trials and procedure in all cases, whether of a legal or equitable nature, shall be as nearly as possible the same and the following provisions shall apply:
>
> (a) in civil proceedings, unless the parties in person or by their counsel or solicitors consent to a trial of the issues of fact or the assessment or inquiry of damages without a jury, the issues of fact shall be tried with a jury in the following cases:
>
> (i) where the proceeding is an action for libel, slander, criminal conversation, seduction, malicious arrest, malicious prosecution or false imprisonment,

[16] Given that neither the Residential Tenancy Officer nor this court has any jurisdiction to consider claims of defamation, the Tenants are simply without any remedy for the poor reference that Ms. Hamm provided.

[17] In so finding, I do not wish to be taken as approving of Ms. Hamm's actions. She had very little direct experience with these Tenants, and mostly

relied on innuendo and gossip to tar them with the brush of being “complainers.” This was unfair to the Tenants and, in my opinion, unprofessional on her part.

[18] Even so, in the result I have no choice but to dismiss the appeal and confirm the Order of the Director of Residential Tenancies.

ORDER

[19] In the result, the appeal is dismissed and the Tenants are ordered to pay to the Landlord the sum of $1,472.50.

Eric K. Slone, Adjudicator