Claim No: 334208

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

Cite as: Theriault v. Townsend, 2010 NSSM 60

BETWEEN:

LEE THERIAULT

Landlord (Appellant)

- and -

JASON TOWNSEND and MEGHAN TOWNSEND

Tenants (Respondents)

DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on September 28, 2010

Decision rendered on September 30, 2010

APPEARANCES

For the Landlord self-represented

For the Tenants self-represented

BY THE COURT:

[1] This is an appeal by the Landlord from an order of the Director dated August 6, 2010 following a hearing on August 5, 2010. In that Order the Landlord was ordered to pay to the Tenants the sum of $996.50, being the security deposit of $396.50 plus amounts to compensate the tenants for oil left behind in the oil tank, and the cost of repairs to the unit undertaken by the Tenants.

[2] The Landlord had counterclaimed against the Tenants for various damages, mostly stemming from the fact that the Tenants had three cats and there was allegedly a strong smell of cat urine that the Landlord had to address with extraordinary measures before being able to re-rent the house.

[3] Unfortunately, the Landlord did not attend at the Residential Tenancies hearing as he got the date wrong, and the result was that the Tenants got exactly what they were asking for, while the Landlord's counterclaim was not even addressed.

[4] In circumstances like this, despite the fact that the hearing before me is technically an appeal, it is really the first and only time that both sides of the case have been heard.

[5] The evidence persuaded me that there is some merit to the positions of both parties, and that the one-sided result reached by the Tenancies Officer cannot stand.

[6] In short I find that the Tenants are entitled to a credit of $250.00 for the oil in the tank in excess of the one-eighth of a tank that was there when the tenancy started.

[7] I do not accept that the Tenants are entitled to the amount awarded for repairs. The evidence was that a shelf in the closet collapsed and was replaced by the Tenants at a cost of $73.29 in materials. The Tenancies Officer awarded them $350.00, which obviously included labour that the Tenants themselves supplied. The Tenants admitted that the Landlord was responsive to any calls they made about repairs, and there is no reason why they could not have had the Landlord look after this small matter.

[8] The Tenants are obviously entitled to credit for their security deposit in the amount of $392.50.

[9] The Landlord has satisfied me that the Tenants' cats left behind a strong smell of urine, that had to be addressed by extraordinary measures. I am satisfied that the smell was enough to cost him some potential tenants.

[10] I don't doubt that the smell might have been more noticeable to some people than to others, and that the effect might have been exacerbated by high humidity. But still, measures were required and I accept that the Landlord should be entitled to $430.00 for his efforts.

[11] The Landlord's claim to an extra month's rent is more problematic. The parties had a verbal agreement that the Tenants could move out by the end of June of 2010, being one month early. I accept that the Landlord made this agreement believing that he had a tenant willing to move in for July, and that it

was this tenant that backed out because of the cat smell. However, there is no legal basis to charge the Tenants rent when the lease was terminated by mutual agreement.

[12] In the result, I allow the following:

Tenants credit for security deposit	$392.50
Tenants credit for oil	$250.00
Landlord credit for repairs	($430.00)
Net to Tenants	$212.50

[13] In the result the Landlord shall pay the Tenants $212.50.

Eric K. Slone, Adjudicator