

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Rockwood v. Humes, 2016 NSSM 29

BETWEEN:

Name Pauline Rockwood

**Appellant/
Tenant**

Name Jon Humes

**Respondent/
Landlord**

Date of Hearing: April 21, 2016

Date of Decision: April 25, 2016

Editorial Notice: phon numbers and addresses have been removed from this electronic version of the judgment.

Pauline Rockwood appeared on her own behalf along with Nancy Webber.

Jon Humes appeared on his own behalf.

DECISION

This is an appeal of the Decision and Order of Residential Tenancies Officer, Linda Hardy, dated February 19, 2016. In that decision, she ordered the Tenant to give up vacant possession of the premises at 107 Cavendish Road, Halifax, and to pay arrears of rent to the end of February 2016. The Tenant appeals claiming she did not have an opportunity to present her case due to bad weather and the Tenancy Officer did not consider the evidence surrounding a flood in her residence arising from the actions of the landlord.

An appeal from the decision of a Residential Tenancies Officer is a new hearing based on the evidence presented before the Small Claims Court Adjudicator. The evidence presented usually consists of that presented to the Residential Tenancies Officer and any additional evidence the parties seek to adduce.

The Facts

The parties entered into a Standard Form of Lease dated September 12, 2014, for the premises at 107 Cavendish Road in Halifax. It is a fixed term lease of three years duration, from October 1, 2014 - October 1, 2017. The rent is \$850 per month. The tenant paid a security deposit of \$400.

The lease was signed contemporaneously with an Agreement of Purchase and Sale for the premises. That agreement contained a rent to own provision where a portion of each month's rent was applied to the purchase price up until closing. Ms. Rockwood also paid a deposit on the property of \$1200. It was a condition of the agreement that the rent remain current. I was not asked to rule on the agreement. As this matter is a residential tenancies appeal, the court has no jurisdiction to hear any issue on its interpretation in the instant case anyway. Consequently, this decision does not prejudice either party from taking any action respecting that agreement in future, should either of them decide to do so.

At various times since the beginning of the tenancy, the tenant has paid her rent late, or the landlord has agreed to a reduction. Sometimes, the lateness has been of inconsequential duration, such as several days, others as much as a month or more. The application initially concerned rental arrears of \$50 for December 2015, although the tenant has not paid her rent since the latest application was made by the landlord. Currently, she is in arrears of rent for four months, December 2016 – March 2016, for a total of \$3450 (i.e. \$3400 + \$50). Unfortunately, the facts are not as straightforward as a pattern of habitual lateness paying rent. The landlord's actions, while inadvertent, are a significant factor in the current dispute between the parties.

On August 22, 2015, while attempting to fix an outside faucet for the tenant's unit, Mr. Humes entered the tenant's premises without notice. In making adjustments, he caused a split in the water pipe inside the tenant's premises. The split caused the pipe to fail resulting in a significant water leak throughout. Mr. Humes testified that since then, he has attempted to resolve matters with his insurance company and the owner of the adjacent unit. According to Ms. Rockwood, the walls remain soaked and the mess not cleaned. Despite these allegations, at no time has she sought to have the tenancy terminated or taken any action under the Agreement of Purchase and Sale. Any action to terminate the tenancy has been at the behest of Mr. Humes.

The Issues

- Has the landlord established sufficient grounds to terminate the tenancy?
- Has the tenant established grounds for an abatement of rent?

As noted below, the answer to both questions is in the affirmative.

The Evidence

Jonathan Humes testified to Ms. Rockwood's pattern of rental arrears. He submitted a journal showing difficulty on Ms. Rockwood's part paying rent. Oftentimes, the parties agreed to a rent reduction. Since August 1, 2015, the rent has been late, beginning with 26 days in August, \$50 for December and then from December to the present day. She was served with a Notice to Quit terminating her tenancy effective December 10. The amount of the arrears was \$50. He filed an

application on December 11, 2015. Mr. Humes testified that he was not aware of the extent of the damage as he was not so advised by Ms. Rockwood.

Pauline Rockwood testified that since she took possession of the premises they smelled musty. She described mold throughout the premises as a result of the water. She tendered photographs into evidence. She described various work performed by her son-in-law, which was not authorized, following the water leak and damage. She indicated that the wall is crumbling and the premises remain dirty. She has spoken with the others living in the complex and they have described Mr. Humes as uncooperative. She was advised by the Residential Tenancies Officer that she would need to file a counterclaim. At the hearing, Ms. Rockwood indicated she was ready to move out by March 31. She was seeking an abatement of half of the rent since the accident.

Ms. Rockwood recalls speaking with Mr. Humes but thought everything would be addressed by him. Thus, she did not follow up any further.

The Law and Findings

Sections 10(3A) – 10(6C) of the *Residential Tenancies Act* provide as follows:

(3A) A landlord shall not give to the tenant a notice to quit residential premises except in accordance with this section.

(4) A notice to quit residential premises shall be in writing and shall contain the signature of the person giving the notice or his agent, a description of the residential premises and the day on which the tenancy terminates.

(5) A notice to quit must be in the form prescribed by regulation.

(6) Where a fixed-term lease exists or where a year to year or a month to month tenancy exists or is deemed to exist and the rent payable for the residential premises is in arrears for fifteen days, the landlord may give to the tenant notice to quit the residential premises fifteen days from the date the notice to quit is given.

(6A) Within fifteen days after receiving a notice to quit under subsection (6), the tenant may

(a) pay to the landlord the rent that is in arrears, and upon the payment of that rent, the notice to quit is void and of no effect; or

(b) apply to the Director under Section 13 for an order setting aside the notice to quit.

(6B) Notwithstanding Section 13, the one year period referred to in that Section does not apply to an application under subsection (6A).

(6C) Where a tenant who has received a notice to quit under subsection (6) does not pay the rent that is in arrears or make an application to the Director in accordance with subsection (6A), the tenant (a) is conclusively deemed to

have accepted that the tenancy is terminated on the residential premises by that date. effective date of the notice; and (b) must vacate the

(6D) Where a notice to quit has been given by the landlord under subsection (6) and

(a) the notice to quit has not been voided under clause (6A)(a) by the tenant paying to the landlord the rent that is in arrears within fifteen days after receiving the notice to quit;

(b) the tenant has not disputed the notice by making an application to the Director under clause (6A)(b); and

(c) the fifteen day time period for making the application under subsection (6A) has expired,

the landlord may apply to the Director under Section 13 for any one or more of the following:

- (d) an order to vacate the residential premises;
- (e) an order requiring the tenant to pay to the landlord any rent owing for the month in which the notice to quit is given to the tenant and any rent in arrears for months previous to that month;
- (f) an order permitting the landlord to retain the tenant's security deposit and interest to be applied against any rent found to be owing for the month in which notice to quit is given to the tenant and against any rent in arrears for months previous to that month.

Rental Arrears

Before reviewing my findings under this section, I must state that the decision by Ms. Rockwood to withhold rent was not a proper one. The correct action in the face of problems to the premises would have been to make application to the Director to order any problems rectified. If it had been bad enough, Ms. Rockwood could have vacated the premises and sought relief before the Director. I have no difficulty in awarding \$50 for November's rent. In addition, I order Ms. Rockwood to pay for the rent from December – March, less the abatement ordered below.

I note as well that given the plain language of the legislation and the practice of Residential Tenancies Officers to require a "counterclaim" for condition issues noted below, I reject any assertion by the tenant that she was advised by the Residential Tenancies Officer or other employee that she should wait to pay rent until the matter is resolved. I find she advised Mr. Humes as a means to stall any further payment.

Vacant Possession

A landlord has different obligations for giving notice to quit to their tenants depending upon the reasons. These are set out in s. 10 of the Act and ss. 4-4J of the Residential Tenancies Regulations. The form referred to in s. 10(6) can be found in s. 4A of the Regulations and Form D, *Landlord's Notice to Quit for Rental Arrears*. There was no Form D in the Residential Tenancies file. It was tendered into evidence as part of Mr. Humes' file. Ms. Rockwood acknowledged receiving this document and I find it was served upon her.

I find Ms. Rockwood did not seek to restore the arrears or make application to the Director under s. 10(6C). Consequently, she is deemed to have accepted the termination date as December 10, 2015. Further, I find she has remained in the premises and must pay for rent for those months subject to the abatement awarded below.

I order the tenancy terminated on or before 11:59 pm on April 30, 2016. Ms. Rockwood shall pay rent of \$700 on April 1. If she has vacated the premises before March 31, 2016, she shall not be liable for rent in April.

Abatement

At the commencement of the hearing, I indicated that I knew of no reason prescribed in the *Residential Tenancies Act* why a breach of statutory conditions could not be addressed at the hearing before the Residential Tenancies Officer, in response to a claim for rental arrears. There

are decisions of other Small Claims Court Adjudicators where my colleagues have upheld decisions of the Director to not permit such claims for abatement without some form of notice or

documentation. A common practice is for Residential Tenancies Officers to require some type of “counterclaim”. The *Residential Tenancies Act* and *Small Claims Court Act* are silent on such a practice. There is a general recognition by the courts in Nova Scotia that the Small Claims Court is a creature of statute which may determine its own process consistent with the legislation. The ability to hear or not hear a claim by a tenant falls under that jurisdiction.

Regrettably, all Adjudicators and Residential Tenancies Officers have received surprise requests from a tenant for an abatement at the last moment when hearing a claim for arrears. Usually, this had not been raised before. However, in this case, the damage and duration of the problems arising from the flood are hardly a surprise. This is also a case where both parties would benefit from moving forward. With that in mind, I considered the motion for an abatement of rent on the grounds of a breach of the statutory conditions. To do otherwise would result in a needless delay and further enflame a very difficult relationship.

Section 9 of the *Residential Tenancies Act* prescribes statutory conditions which must form part of every lease. They are also reproduced in the lease signed by the parties.

Statutory Condition 1 provides as follows:

“ The landlord shall keep the premises in a good state of repair and fit for habitation during the tenancy and shall comply with any statutory enactment or law respecting standards of health, safety or housing.”

In reviewing the evidence, I do not accept Mr. Humes’ evidence or explanation that he was unaware of the conditions of the premises beyond the notification when he was in California. He has tendered evidence of his dealings with the condominium corporation and the neighbours. He was aware of the difficulties, but he did not bother to investigate or take any remedial action. Perhaps he has not affected repairs because he has not resolved matters with his insurance company. However, with the passage of several months, he has done very little to remedy the problems experienced by the tenant. He had an obligation to fix the pipe (which was done), clean the mess and remedy the resultant damage. This has not been done. Further, this obligation continues while a tenant remains in the unit. His success or failure to resolve things with his insurance company is irrelevant.

I find the landlord, Jonathan Humes to be in breach of Statutory Condition 1. The tenant is entitled to an abatement of \$1500 from the total rent due to the end of March 2016.

Summary

The appeal is allowed in part. The order for judgment is varied as provided in this decision.

- The tenant, Pauline Rockwood, shall give vacant possession of the premises, 107 Cavendish Road, Halifax, NS, on or before 11:59 pm on April 30, 2016.
- The tenant may vacate the premises on or before March 31, 2016.
- If the tenant remains in the premises for any portion of April 2016, she shall be liable for rent in the amount of \$700.00 due April 1, 2016. If she has vacated the premises before then, she shall be entitled to credit for that amount.
- Each party shall bear their own costs of this appeal and the application fee before the Residential Tenancies Officer.
- The landlord shall have judgment as follows:

Rental Arrears to March 31, 2016	\$3450.00
Rent April 2016	\$700.00
Less: Abatement	(\$1500.00)
<u>Less: Security Deposit</u>	<u>(\$400.00)</u>
Total	\$2250.00

(less any credit for vacancy on or before March 31, 2016)

An order shall be issued accordingly.

Dated at Halifax, NS,
on March 24, 2016;

Gregg W. Knudsen, Adjudicator

Original: Court File
Copy: Claimant(s)
Copy: Defendant(s)