Claims No: 344186 and 344188

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

Cite as: Harris v. Molcsan, 2011 NSSM 25

BETWEEN:

DEBORAH HARRIS

Tenant (Appellant)

- and -

EVA V. MOLCSAN

Landlord (Respondent)

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearings held at Dartmouth, Nova Scotia on March 9, 14 and 21, 2011

Decision rendered on March 25, 2011

APPEARANCES

For the Tenant self-represented

For the Landlord Blair MacKinnon, counsel

REASONS FOR DECISION

Introduction

[1] This is an appeal by the Tenant Deborah Harris from two Orders of the Director, both dated the 9th of February 2011, allowing the Landlord's application for rental arrears and vacant possession, and dismissing a counter-application by the Tenant for repairs and other items of relief, including a claimed rental rebate.

[2] The Tenant's counter-application was not actually heard on its merits, as it was scheduled for a different time from the Landlord's application, and there was a mix-up and the Tenant appears to have been mistaken as to when that was scheduled to be heard.

[3] In the result, there has not been a full airing of the merits of this dispute until the hearings at this court, which occupied three lengthy evening sessions on March 9, 14 and 21, 2011.

[4] The net effect of the two Orders of the Director was that the Tenant was directed to vacate the home at 65 Allison Drive in Dartmouth as of the 18th of February 2011, and to pay rental arrears in the amount of $7,742.50 (having been credited with a $600.00 security deposit). Her counterclaims were dismissed as abandoned because of her non-attendance.

[5] The Tenant appealed almost immediately.

[6] As everyone understands, I am not bound by the findings of the Residential Tenancies Officer, and must base my decision on the evidence

before me and the law as I understand it. It could hardly be otherwise when the Residential Tenancy Officer has not had the opportunity to hear both sides.

[7] The lengthy hearing before me revealed a situation that is complex in its emotional undertones and replete with personal issues that the parties, in particular the Tenant, had difficulty teasing out of the legal and factual issues.

[8] Both of the Tenant and the Landlord are intelligent and accomplished individuals who had much in common and had become, for a time, personally friendly beyond what is most often the case in what is essentially a business relationship. That friendship was sorely tested and eventually shattered by events that were largely out of anyone's direct control, as I will describe below, and which in turn brought to this dispute a sense of both anger and sadness that has interfered with both parties' ability to find a sensible resolution that would have met both parties' needs.

[9] Unfortunately, once matters reach this Court they are typically beyond repair. Unlike the procedure at the Residential Tenancy Officer level, I do not have the mandate (or even the ability) to steer the parties into mediation or otherwise force them to negotiate or even encourage them to find a creative solution. In the result, the parties must accept from the Court a result that is somewhat legalistic and blunt.

[10] The parties must also appreciate that the urgency to arrive at a result, which is reflected in the requirements of the *Residential Tenancies Act* that I deliver my decision within fourteen days of the conclusion of the hearing, does not allow me to recite all of the evidence and argument that I heard, but instead compels me to cut to the chase, so to speak.

The parties and the facts

[11] The premises in question (which I will refer to as "the home") is a side-split single family home in Colby Village which the Landlord purchased in the summer of 2008. The listing agent for the home was the Landlord's sister, Elizabeth Martin, who had sold the home some years earlier to clients, and who obtained the listing when they later decided to sell. The home had been slow to sell and Ms. Martin eventually interested her sister in buying it. On the evidence, the Landlord owns or has owned several rental properties, but she is hardly a real estate mogul.

[12] The home is approximately 33 years old. On the photos shown on the listing cut from 2008, it appears to be quite attractive and was advertised as a "gorgeous show home" which was "totally renovated." Similar superlatives appeared in the ads when the Landlord offered it for rent in the newspaper and in Kijiji. It was also advertised as having a wood-burning fireplace.

[13] In the fall of 2008, the Tenant had plans to move into a house together with a gentleman friend, Mark Hansen, who was expecting to relocate from Ontario. The Tenant's teenaged son Richard was also in the equation.

[14] The initial inquiries were made by Mr. Hansen, but it was the Tenant who viewed the property and decided that it fit the bill. Unfortunately, just as a lease was about to be signed, Mr. Hansen's transfer fell through and he dropped out of the picture. The Tenant decided to rent the home anyway and moved in with her son on the 20th of November 2008. Technically the lease runs from December 1, 2008, on a year to year basis at a monthly rent of $1,200.00.

[15] Before signing the lease, the Tenant was informed that the fireplace was not in working order because it needed a new chimney or perhaps an insert. The Landlord told the Tenant that she was not prepared to undergo the expense of repairing it, at least not for another year, but she might consider it thereafter. I mention this because one of the Tenant's loudest complaints about the home is that it did not have the working fireplace, or any other secondary heat source, that she believes she was promised.

[16] On all of the evidence, it is clear that the Tenant knew that the fireplace was not in working order and signed the lease anyway. I cannot say that the promise of a working fireplace ever rose to the level of a contractual term between these parties. Similarly, the Tenant cannot succeed in a claim that the home was not the "gorgeous show home" that she was promised. Such language is "mere puffery" as the old English cases have called it, and moreover such characterizations were totally subjective. The Tenant saw what was on offer and accepted it at face value, at least insofar as its aesthetic qualities are concerned.

[17] The first year of the tenancy went fairly well. The Tenant was gainfully employed as the manager of an employment agency and made her rental payments in a timely manner, even occasionally ahead of time. She and her son enjoyed the home and there is no evidence of any real complaints about the state of repair, beyond a few inconsequential matters that would never have been raised but for later events and the animosity that developed. The Tenant and the Landlord became friendly and their relationship became personal as well as business.

[18] In about October of 2009 the Tenant was unexpectedly terminated from her job. This was a shock both personally and financially. She hired a lawyer and commenced a claim for wrongful dismissal. Because of the financial uncertainty, she paid a visit to the Landlord and made the first of two offers to end the tenancy. The Landlord said that she would not hear of it, and expressed confidence that the Tenant would land another job. She also echoed the Tenant's confidence that the wrongful dismissal case would likely meet with some success.

[19] The Tenant was forced to apply for Employment Insurance, which she found to be humiliating and which also took a while to kick in. With no money coming in, and then a much-reduced income, despite good intentions she started to fall into arrears of rent.

[20] The Tenant's wrongful dismissal claim was heard in Small Claims Court in February of 2010. The adjudicator reserved decision. It was not until early May of 2010 that the decision was released. Although the decision is not itself in evidence, and I have not seen it, according to the Tenant the result was that she was not awarded any additional pay in lieu of notice beyond the two weeks that the Employer had already paid her upon termination. This was another blow to the Tenant, and prompted another visit to the Landlord to give her the bad news and, once again, offer to leave the tenancy.

[21] This is an important point in time. According to the evidence, the following was the rental arrears situation by that time, starting with the first missed payment:

DATE	RENT RECEIVED	OWING (ARREARS)	TOTAL ARREARS
November 2009	$0.00	$1,200.00	$1,200.00
December 2009	$0.00	$1,200.00	$2,400.00
January 2010	$1,200.00		$2,400.00
February 2010	$0.00	$1,200.00	$3,600.00
March 2010	$2,400.00		$2,400.00
April 2010	$0.00	$1,200.00	$3,600.00
May 2010	$0.00	$1,200.00	$4,800.00

[22] The evidence of the Tenant and her son Richard, is that at this meeting with the Landlord in May of 2010, after the Landlord reassured them that she did not want them to leave, there was a discussion about what amount of rent the Tenant could afford to pay, since she was clearly not keeping up with the $1,200.00 per month. The figure of $800.00 was mentioned. The Tenant thought she could manage that amount.

[23] The Landlord testified that she did not offer to reduce the rent to $800.00, but she did not elaborate on where the $800.00 figure came from and what it may have meant. The Tenant testified that she understood it to be a temporary reduction in the rent.

[24] There is nothing in writing that confirms any understanding coming out of that meeting, which is not surprising considering that the parties were still on friendly terms. There seems to be no question that the Landlord was trying to be helpful, but there is no cogent evidence that she gave up her contractual rights. It must be remembered that the parties were operating under a written lease, and in order for an oral agreement to override any provision of that written contract - assuming in strict law that it could - it would at the very least have to be unequivocal. I cannot say that there was an unequivocal agreement to reduce

the rent to $800.00. However, consistent with this discussion the Tenant paid $800.00 for each of June and July 2010, and the Landlord would have known that and is not on record as having protested.

[25] About two months later, in July 2010, the parties had another discussion and the subject of rent came up again. According to the Tenant, the Landlord suggested that she continue to pay $800.00 and that they would deal with the arrears at some later date.

[26] There is no evidence that the Tenant protested that this was a departure from an earlier supposed agreement. No doubt the Tenant was still in a vulnerable state and did not feel that she had a lot of bargaining power, but the time to have stood up and suggest that there was a verbal agreement in force would have been at that precise moment.

[27] I believe that the Landlord's offer to deal with the arrears at a later date was consistent with what she had been discussing in May, and reveals that she had never intended to offer any absolute reduction in rent.

[28] It is my finding, on all of the evidence, that in May and again in July 2010, there was a verbal offer by the Landlord to the Tenant to continue to pay at least $800.00, and that the arrears would accumulate but not be enforced until such time as the Tenant either had the ability to pay, or until some reasonable time had passed, and a repayment schedule could be negotiated.

[29] I cannot elevate this offer to a contract. The evidence is quite vague as to whether the Tenant even accepted the offer. At most, I would characterize it as

a promissory estoppel. The following excerpt from the *CED* title *Contracts* outlines the legal principle:

> §139 When one party to a contract has, by words or conduct, made to the other a clear and unequivocal promise or assurance that was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has acted on it, the first party will not be able to revert to their previous legal relations as if no such promise or assurance had been made. Rather, the first party will be subject to a promissory estoppel, meaning that he or she must accept their legal relations subject to the qualification so introduced, even if not supported by any consideration, and regardless of whether or not any variation of the contract has been created. Promissory estoppel differs from estoppel by representation in that the assurance need not be one of present fact, but rather encompasses the parties' promises or representations of intention. The underlying principle rests on the inequity of allowing a party to resile from his or her statement where it has been relied upon to the detriment of the person to whom it was directed.
>
> §140 The constituent elements of promissory or equitable estoppel are: (a) there must be an existing legal relationship between the parties; (b) one of the parties to this legal relationship must, by his or her words or conduct, make to the other a clear and unambiguous promise or assurance; (c) such promise or assurance must be made with the intention of affecting the legal relations between the parties, and that this promise or assurance be acted upon; and (d) the other party must have acted on the promise or assurance, or in some way changed his or her position. (footnotes omitted)

[30] The upshot is that the Landlord was willing to accept a lower monthly payment and allow rental arrears to accumulate, and until she gave reasonable notice otherwise, she would have been legally prevented from insisting upon strict performance of the lease obligations; i.e. full rent and immediate payment of all the arrears. She would have faced an estoppel defence had she sprung to a claim relying on the arrears as a basis to terminate the tenancy. However, as I will touch on below, there is no question that the Landlord's patience and forbearance was stretched beyond her willingness to continue, and her later

actions served notice that they would be reverting to their respective legal positions.

[31] The breaking point appears to have been reached in September 2010. Both parties were under stress. The Tenant was still not working. The Landlord was financially challenged by the fact that rent was not being paid in full, or sometimes at all. A nasty tone crept into the phone messages and email exchanges. The Landlord no longer felt comfortable just dropping in on the Tenant to “chat” about their situation; she wanted a more formal meeting and suggested that the Tenant meet with her and her sister at a local Tim Horton’s. The Tenant took great offence and considered this to have been a declaration of war.

[32] Although she did not testify to this, as such, my sense is that the Landlord sensed a need to get a bit tougher with the Tenant, who is a more forceful personality, and she may have needed her sister along with her in order to keep a stiffer spine.

[33] This time period also coincided with the Landlord entering into a romantic relationship with a gentleman, Michael Durling, who works as a service representative at an auto dealership. Mr. Durling figures into the events a little later in time, but the Tenant suggested in argument that it was the arrival of Mr. Durling that provoked the change in the Landlord’s attitude. I cannot say if there is any truth to that, but it is irrelevant, in any event. The fact remains that the Landlord showed clearly that she was no longer willing to forego her entitlement to rent. On September 13, 2010 she served the first of two Notices to Quit based on arrears of rent.

[34] Whether or not this Notice was effective will be discussed below. Clearly the Residential Tenancies Officer later found that it was. One immediate effect it did have was that the Tenant paid full rent of $1,200.00 for each of September, October and November 2010. For the month of December 2010, she paid $600.00, which is the last rent that she has paid.

[35] I have no doubt that it was a hardship for the Tenant to pay full rent, as she was still unemployed. One ameliorating factor was that the Tenant advertised for boarders, at the suggestion of the Landlord, and has had a succession of boarders living with her ever since. Some of these have not worked out so well, and one of them even assaulted her, but she has two young people now with whom she has bonded and who are paying respectable amounts.

[36] To summarize, the following is the rental payment and arrears status as it currently exists:

DATE	RENT RECEIVED	OWING (ARREARS)	TOTAL ARREARS
November 2009	$0.00	$1,200.00	$1,200.00
December 2009	$0.00	$1,200.00	$2,400.00
January 2010	$1,200.00		$2,400.00
February 2010	$0.00	$1,200.00	$3,600.00
March 2010	$2,400.00		$2,400.00
April 2010	$0.00	$1,200.00	$3,600.00
May 2010	$0.00	$1,200.00	$4,800.00
June 2010	$800.00	$400.00	$5,200.00
July 2010	$800.00 + $200.00[1]	$200.00	$5,400.00

[1]The Landlord had no record of this additional payment, but did not dispute it.

August 2010	$415.00	$785.00	$6,185.00
September 2010	$1,200.00		$6,185.00
October 2010	$1,200.00		$6,185.00
November 2010	$1,200.00		$6,185.00
December 2010	$600.00	$600.00	$6,785.00
January 2011	$0.00	$1,200.00	$7,985.00
February 2011	$0.00	$1,200.00	$9,185.00
March 2011	$0.00	$1,200.00	$10,385.00

[37] There was very little evidence of events over the course of the fall of 2010, which is not surprising since the Tenant was at least keeping pace with the rent.

[38] Things again ramped up and came to a painful point in December 2010. On December 6, 2010, the Landlord applied to Residential Tenancies for an order for vacant possession and payment of arrears which were well in excess of $6,000.00. Although there is no direct evidence to this effect, it seems more than a coincidence that the Landlord made her application after the Tenant failed to pay the full $1,200.00 on December 1, despite having done so through the fall.

[39] The hearing of the Landlord's application at Residential Tenancies was initially scheduled for January 4, 2011, although it was later adjourned and not heard until January 26, 2011.

[40] In response to the notice of hearing served upon her, among other things the Tenant wrote a lengthy letter dated December 31, 2010, directed to the Residential Tenancy Officer who was initially slated to try and resolve the matter. The letter clearly reveals a distressed Tenant, fighting to keep her home and maintain her dignity. I will not recite from it verbatim, but a number of points that she makes are significant, although I do not agree with all of her perceptions.

She felt that she was being “harassed” by the Landlord. She objected strongly to the Landlord’s attempt to involve her sister Elizabeth Martin, even if only as a witness, going so far as to find this “deeply offensive.” She took objection to the Landlord’s statements that she was “suffering,” suggesting that she (the Tenant) was the one truly suffering. There were some accusations to the effect that the Landlord had interfered with her son Richard’s summer employment, something which was not pursued at the hearing before me. She then dropped what proved to be a bombshell, suggesting that the house was in “desperate need for repair” and would need in the range of $40,000 to $50,000 “just to bring it up to minimum standards.” She claimed that the Landlord had consistently ignored her pleas to look after the repairs.

[41] On the evidence before me, I find nothing that the Landlord did to have constituted harassment, nor was there anything improper in her desire to involve her sister in the communications. With due respect, the Tenant has no right to insist that the Landlord only deal with her one-on-one. That may have been the pattern when they were friends, but as I have already observed I believe that the Landlord came to the conclusion that this was no longer in her best interest.

[42] On her own evidence, by this time the Tenant had developed severe depression and was struggling mightily to keep her sanity. She appears to have placed a great deal of blame for this on the Landlord. I believe this was unfair, as there were many pressures upon the Tenant that contributed to her difficulty. In such a delicate state, even garden variety “pressure” from the Landlord would have been experienced as harassment, but the characterization is unfair.

[43] The bombshell suggestion that the home may have needed as much as $50,000 in repair obviously struck a nerve. Based upon this, the Landlord

decided that someone needed to have a look inside the interior of the home to see if this was true. By this time the Landlord herself was not prepared to confront the Tenant face to face. Perhaps unwisely, in retrospect, she decided to appoint Mr. Durling as her "property manager" and tried to get him access.

[44] This was a disaster.

[45] Mr. Durling announced his presence to the Tenant by knocking on her door on the evening of the 6th of January 2011, serving a notice to the effect that he would be entering the premises the following Saturday to conduct an inspection. He says it was at 8:00 p.m. The Tenant and her boarder, Jeff Tallon, both say it was after 8:30 p.m. He says he knocked on the door. They say he pounded. I am inclined to believe that the truth lies somewhere in the middle: it was well after 8:00 p.m. and he knocked loudly.

[46] The Tenant was intimidated by Mr. Durling from this point onward, and imputed to him motives that were sinister. She demanded to see his credentials and insisted that she would not be allowing anyone entry unless he was a fully qualified house inspector. Mr. Durling insists that he introduced himself as a "property manager" and not as a house inspector, but it is more likely than not that he was careless in his language. Even so, he was the Landlord's appointed agent and the Tenant's insistence that only a qualified house inspector should be allowed entry was, with respect, out of line.

[47] The Tenant disputes that Mr. Durling presented a written letter of authority from the Landlord, which he says he did, but under all of the circumstances the Tenant could not have legitimately doubted that Mr. Durling was acting with

authority and, moreover, she could have easily checked on this with a phone call or an email to the Landlord to confirm.

[48] I do not propose to recite everything that happened over the next two Saturdays, other than to say that the RCMP attended on both occasions and Mr. Durling never did get to enter the home to examine what there might be in the way of needed repairs. The experience was unpleasant and unproductive for everyone concerned.

[49] The Tenant insisted that Mr. Durling had only been sent to intimidate her, and she claimed to know that he was a recovering alcoholic - as if that somehow made him more of a threat to her. On the evidence, I find none of this to be substantiated.

[50] The Tenant's position, then and at the hearing before me, was that there was no need for an interior inspection because all of the repairs that she was referring to were on the exterior of the home. Again, with respect, this is difficult to accept. Her letter of December 31, 2010 had complained of problems with cold air leaking into the home and an implication, at least, that the heating system was deficient. By the time the matter came before me, the Tenant and her son had taken numerous photos of problems that they identified in the interior, including (they say) inadequate insulation in the attic. The exterior problems that they identified were mostly matters that would not interfere with the immediate enjoyment of the home. As such, any responsible Landlord would want to have a look inside the home and it was utterly unreasonable for the Tenant to refuse access under any circumstances. Mr. Durling was willing to come inside and take some photos under the watchful eye of the RCMP, but was

denied even that option by the Tenant who took the position that Mr. Durling was not to enter her home under any conditions.

[51] Shortly after her first introduction to Mr. Durling the Tenant's health went into a further tailspin and she had to call her son to come home from university in New Brunswick because she could not cope. Her condition was so bad that her son, Richard, feared she might commit suicide. Fortunately, further medical intervention appeared to have helped her regain some stability, but the stresses of this situation were intense for her.

[52] By the time Mr. Durling had been denied entry two times, and with the knowledge that the Tenant was seeking a peace bond against him, the Landlord served a further Notice to Quit on January 23, 2011. Counsel for the Landlord stated that this was out of an abundance of caution, as there was already an outstanding notice from the previous September. The effect on the Tenant was just to cause her further outrage and provoke a sense that she was being harassed.

[53] By then the Residential Tenancies hearing(s) were only a few days away - January 26, 2011. I have already mentioned what happened there.

[54] The Residential Tenancy Officer makes no mention in his Order of this second Notice to Quit. It was on the first Notice that he based his order to provide vacant possession.

The Tenant's complaints

[55] The most serious complaint that the Tenant makes about the home is that it is cold and drafty. She contends that there is air getting in around a door on the lower level, which she also says does not close properly, is prone to blowing open on its own, and needs to be replaced. She says that most of the windows in the house are old and ineffective to keep out the cold. She complains that there is far less insulation in the attic than would meet today's standards. She says that one of the heating zones in the home is simply not working.

[56] In pursuance of these and other complaints, the Tenant brought in two outside agencies. On January 22, 2011 she obtained a free Energy Efficiency Evaluation Report from Clean Nova Scotia, which prepared a report dated January 30, 2011. These so-called "energy audits" examine all of the areas where heat is lost and look for ways to improve the efficiency of the home. The report in this case found much to be desired, in terms of energy efficiency, but actually found that the home was slightly above average for a typical home in Nova Scotia of this age and type which, admittedly, might not be saying much.

[57] The Tenant put this report forward as evidence that the home requires repairs, but I do not see it that way. It is an older home performing at an average level. Any improvements would amount to an upgrade, which may be something the Landlord would want to undertake, and might even charge a higher rent for, but the failure to do so is not a breach of the Statutory Conditions under this lease.

[58] The Tenant also called for an inspection of the home by Halifax Regional Municipality, which produced an Order dated the 7th of March 2011. In that Order, the Landlord was directed to make several repairs, namely:

> 1. Siding must be repaired or replaced where rotten or damaged to prevent entry of water.
>
> 2. All growth in the house must be removed and all damages caused by growth must be repaired (under the laundry sink in basement).
>
> 3. All damaged or rotten doors and windows (including patio door) must be repaired or replaced to prevent air and water infiltration.
>
> 4. Repair hole in the bathroom downstairs damaged by water leak.
>
> 5. Repair settlement of rear deck to prevent deck from being further detachment from the house.
>
> 6. Have certified professional repair the main heating system (oil fired boiler) so all radiators are working properly.
>
> 7. Reduce temperature of hot water to a safe level (between 43 and 60 degrees Celsius).
>
> 8. Fireplace and chimney, if intended for usage, must be inspected by a qualified professional with documentation sent to this office verifying it is safe to use.
>
> Should you feel unable to complete all of the required work within the specified time frames, you may provide the Building Official with a schedule outlining specific time frames within which the work specified in the Order will be completed. The Inspector may accept or amend the schedule, at which time the schedule will become part of the Order. In order to consider the submission of such a Compliance Plan, it must be received within 7 days of the date of the Order.

[59] I understand that the Landlord has appealed this order, and as such there will be some form of ongoing process that is entirely outside the purview of this case.

[60] The question of whether or not the Landlord has a duty to the Tenant (as opposed to some public duty) to perform repairs is a question of contract. Statutory Condition #1 as contained in the *Residential Tenancies Act* - and which is imported into every lease - provides:

> 1. Condition of Premises - 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.

[61] I am unable to find that the home is unfit for habitation.

[62] I accept that there are problems which are not unusual for an older home. I also accept that in a different situation, there might be a basis for holding the Landlord to some of these repairs. Assuming that the Tenant has established some basis for repairs being required, it does not follow that repairs must be ordered - rather it raises the question of whether or not repairs should be ordered. There is no question that there is some jurisdiction of the Board, and of this court on an appeal, to order repairs.

[63] In the unusual circumstances of this case, the more pertinent question is whether any alleged need for repairs entitles the Tenant to stop paying rent, and to remain seriously in arrears? Put another way, if the Tenant is liable to be evicted for non-payment of rent, would there be there any point for this Court (or the Residential Tenancy Officer) to order repairs?

Decision

[64] The relationship between these parties is poisonous. The Tenant is seriously in arrears. The cause of the arrears is her employment and financial situation; it is not the actions or inaction of the Landlord. I appreciate that the Tenant has focussed a lot of her anger and resentment on the Landlord, but to this neutral outside observer, that is quite unfair. It does not lie in the Tenant's mouth to suggest that the Landlord should be able to absorb the loss of rent

because, the Tenant believes, she has other properties and could draw on the equity to subsidize her losses. The Tenant has no monopoly on stress and hardship.

[65] The problems with the home have clearly had an effect, but by the same token the Tenant and her boarders have waxed eloquently on how much they enjoy the home. It is an imperfect home, but not an uninhabitable one.

[66] The Tenant stopped paying rent several months ago. Since December 1, 2010 she has increased the arrears by $4,200.00. I appreciate that there is a bit of a Catch 22 - why pay rent if you may shortly be evicted? But by the same token, she has been collecting her boarders' rent money ($925 per month) and not passing any of that on to the Landlord. Her reasoning is that she is catching up with other bills, such as oil and electricity, which fell into arrears.

[67] I note that the Tenant has landed a new job, but she declined to disclose the name of her Employer when asked by counsel.

[68] While not expressed as such, the Tenant is essentially on a rent strike pending an order overturning her eviction, and pending the completion of repairs.

[69] While I appreciate the practical considerations that are motivating her, I find that the Tenant is misguided. Her strategy of withholding all rent has done nothing but cause the arrears to mount and placed hardship on the Landlord. She has waged war when she ought to have sued for peace.

[70] I find as a matter of law that the need for repairs, such as it may be, does not excuse the payment of rent nor impact on the arrears. I believe that the

estoppel which would have prevented the Landlord from insisting upon the arrears, or allowed for a reduced rent, has long since passed. Even if the Landlord might not be able to insist on immediate payment of some of the earlier arrears, those arrears have basically doubled in the months since the Landlord clearly communicated that she wanted strict adherence to the lease.

[71] I believe that the only result that is justified in law is that the Tenant quit the premises on a date which I will determine.

[72] As such, in my view it is pointless to determine which, if any, of the repairs ought to be ordered. The jurisdiction to order repairs is for the sake of the tenancy, not to improve the building at large. Given the time of year, with temperatures warming up (hopefully), the Tenant will have to get by with the home “as is” for a short further period of time.

[73] It is a matter of my discretion as to when the vacant possession should be ordered. In the exercise of that discretion, I strive to be fair to both parties and try to limit the hardship that will be suffered. I am aware that the Tenant and her boarders will need some time to find alternate accommodations, and I am also aware that the Tenant’s son will be returning from New Brunswick sometime in April after his classes and exams are concluded.

[74] I believe that April 30, 2011 should mark the end of this tenancy, and I am ordering that the Tenant give up vacant possession at or before 11:59 p.m. on that date.

[75] The arrears stand at $10,385.00 as of this date, and they will increase by another $1,200.00 on the 1st of April. There is also a $600.00 security deposit to

be factored in. As such, my order shall read that the Tenant owes the Landlord $10,985.00 and is liable for the payment of $1,200.00 rent should she remain in the home past April 1, 2011, which I fully expect she will.

[76] These arrears are going to be an issue that the parties will have to deal with in the future. As they say, you cannot get blood from a stone, and while it is perhaps not my place to say so, I would encourage the parties to put aside their emotions and negotiate an orderly and sensible arrangement for how those arrears will eventually be handled.

[77] For the sake of completeness, I also see no merit in any of the Tenant's other claims which she advanced before me:

a. She has not established that the Landlord should contribute to her heating bills because of the alleged deficiencies in the home. The energy audit confirmed that this home is about average in terms of its energy efficiency, and the Tenant cannot base any legal claim to a more efficient home.

b. I have no jurisdiction to issue a "cease and desist" order against Mr. Durling, and moreover I see no rational basis for the Tenant's almost pathological aversion to him. It is not up to the Tenant, nor to me, to dictate to the Landlord who she may deputize.

c. I do not accept that the actions of the Landlord had the effect of setting back her re-employment timetable, thereby causing her a loss of income; nor should the Landlord reimburse the Tenant's son for his trip back from New Brunswick in early January. These

problems were caused by the inherent pressures of the situation, and not by any actionable wrongs committed by the Landlord.

d. For reasons which I have already gone into, I do not see any basis for a reduction in the arrears based upon the supposed agreement to reduce rent from $1,200 to $800 per month, which would in essence be a retroactive rent abatement that the Tenant was seeking. Any rent reduction was, as explained, an indulgence extended by the Landlord with only a temporary effect.

Eric K. Slone, Adjudicator