Claim No: 346358

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

Cite as: Burke v. Classic Property Management, 2011 NSSM 38

BETWEEN:

DARRYL BURKE

Tenant (Appellant)

- and -

CLASSIC PROPERTY MANAGEMENT

Landlord (Respondent)

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on May 17, 2011

Decision rendered on May 18, 2011

APPEARANCES

For the Tenant	self-represented
For the Landlord	Nora Landry, owner

REASONS FOR DECISION

[1] This is an appeal by the Tenant from an Order of the Director dated March 23, 2011, which ordered the Tenant to pay the sum of $645.00 to the Landlord.

[2] The basic facts are that the Tenant gave notice at the end of December 2010 that he was planning to vacate the unit as of the end of January 2011, based on a medical condition that allegedly made it difficult for the Tenant to continue living there.

[3] The Tenant gave the Landlord a cheque for January rent in the amount of $650.00, but stopped payment on the cheque in early January after certain events which I will briefly discuss. The Order of the Director awarded the Landlord that $650.00 plus a $25.00 NSF charge, minus a $30.00 credit which the Landlord had offered to compensate the Tenant for some energy use for which the Landlord accepted responsibility. The net result was $645.00 due to the Landlord. The Residential Tenancy Officer rejected the Tenant's claim for $500.00 in compensation for oil which was left in the tank, .

[4] The Tenant's complaints concern what he regards as the Landlord's unauthorized entry to the unit on several occasions, which he says violated his legal rights and caused him to move all of his belongings out of the unit sooner than he had intended.

[5] The Tenant took objection to the fact that there were workers in the unit performing repairs to fix foundation cracks in early January. Those repairs required them to cut into and ultimately restore some drywall. The Tenant acknowledged that he had been notified about work needing to be done, but

insisted that he did not know that they would be there multiple days. He took objection to the fact that the work made one of the two bathrooms unusable for a period of time, and that the workers had evidently turned up the heat to a high level - presumably to speed up the drywall repair process. The Tenant said that he felt that his space was violated and that his possessions were not properly secured. As a result, he moved everything out of the unit sonner than he had intended.

[6] The Tenant had actually moved himself out of the unit before any of this happened, but still had many of his possessions there.

[7] The Tenant also took objection to the fact that Ms. Landry entered the unit without his express permission after he had reported to her that the workers left the heat on at an excessive level. Ms. Landry testified that she was responding to what she believed was an emergency complaint. The Tenant replied that he had already turned the heat down and there was no need for Ms. Landry to enter the unit.

[8] It was after all of this that the Tenant stopped payment on his cheque.

[9] There was a bit of a background here, which should be mentioned. The property was on the market in December, and the Tenant had actually put in an offer to buy it, which was not accepted. The property was sold to someone else who took possession in mid January. It was only after the Tenant's unsuccessful bid to buy the property that he first mentioned that he had a medical problem that would require him to move out. The Landlord argued that this gave the Tenant a credibility problem, although I do note that the Tenant's medical evidence was

regular on its face. I will not speculate on what the Tenant might have done had he been the successful bidder.

[10] The Tenant also complained that on one occasion while the property was on the market, an agent and her clients showed up a couple of hours earlier than agreed, and he returned home to find them sitting in his kitchen. This was unfortunate, but would not in itself have justified the Tenant withholding rent several weeks or months later.

[11] On all of the evidence, I find that the Tenant did suffer some minor inconvenience but that the actions of the Landlord were entirely within its legal rights. The Tenant was given proper notice that the Landlord needed access to the unit to perform repairs. The Tenant cannot have been unaware that it takes more than one day to repair drywall, given the need to tape, apply “mud”, sand and paint, with drying times in between.

[12] Although such repair may have felt like an invasion of his space, the Tenant has not satisfied me that the Landlord or its workers posed any threat to his security or were even discourteous in any way. The incident of Ms. Landry entering the premises to check the heat setting can be explained as a misunderstanding.

[13] The bottom line for me is that the Tenant knew he was responsible for rent until the end of January, and the inconvenience he suffered did not amount to a repudiation of the tenancy such as to excuse him from the payment of rent.

[14] The Landlord offered the $30.00 credit to pay for any energy used by the workers, which the Residential Tenancy Officer accepted as reasonable. I see no reason to find otherwise.

[15] The Residential Tenancy Officer refused to award the Tenant a credit for oil that he left in the tank. As I understand the situation, it was the Tenant's responsibility to supply his own heat. There was no evidence of how much oil may have been in the tank when he moved into the property several years earlier. He would have been entitled to leave the tank empty, had he chosen. Instead, it appears that he ordered a full tank in December.

[16] The Landlord argued that he could have drained the tank and taken his oil, as impractical as that sounds.

[17] In any event, my finding is that there is no legal obligation on the Landlord to "buy" the Tenant's oil. Moreover, the Landlord was not even the owner of this property when the tenancy ended at the end of January 2011; someone else was, and there is not even a potential argument that the Landlord was unjustly enriched by having the Tenant's oil.

[18] In the result, I entirely agree with the Residential Tenancy Officer and this appeal is dismissed.

Eric K. Slone, Adjudicator