

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Archibald v. Gerard, 2011 NSSM 49

Between:

Lorraine G Archibald

APPELLANT

- and -

Tom Gerard and Alyson Gerard

RESPONDENTS

ORDER

Adjudicator: David T.R. Parker

Heard: September 22, 2011

Decision: September 27, 2011

Parker: this is an appeal from a decision of the Order of the Director of Residential Tenancies dated July 12, 2011 and being file number 201101939.

The Order stated that the tenants/respondents herein pay the landlord/appellant \$600 and that the landlord/appellant pay the

tenants/respondents \$882.73

It would appear from the Order the \$600.00 paid to the landlord was the difference "in rent relating to a sublease."

The \$882.73 appeared to relate carpet cleaning costs of \$69.00 which was taken from the security deposit \$951.73.

The appellant in her notice of appeal stated that the director did not received the envelope and receipts upon hearing date. And also stated that work will be completed on the hardwood floors with the total cost to be submitted along with new evidence that tenant had another party living at the house without the landlord's permission. This cause damage and neglect to the property.

The present claim is for \$3816.73 plus costs of service and costs of this appeal. They are broken down as follows:

- a. Kents building supplies (cleaning) \$84.72
- b. Ivy League Developments \$1011.68
- c. Roode and Rose plumbing \$227.13
- d. Kerr Controls Limited(motor) \$457.70
- e. Abner carpets cleaning \$69.00
- f. Blackburn and Bennett plumbing \$776.25
- g. TK Carpet Flooring and Outlet \$1190.25

The respondents in this particular lease had decided to leave the premises early, that is prior to the termination date of the lease. They did notify the

appellant and in addition to that they found someone to sublease the premises which the appellant agreed. After agreeing to the sublet the appellant decided that she wanted an additional \$50 per month from the sublessee. The respondents did not want to go back to the sublessee and say that the appellant was requesting an additional \$50 per month rent. In this case they agreed to pay over one year an additional \$50 per month rent on behalf of the sublessee or \$600.00. I gather this has been done. It would also appear from this that the sublessee must have entered into a full year lease with the appellant from the time he moved in.

There was another inspection in which the tenant was present and an agent for the landlord however that person acting as agent for the landlord was not present to give any evidence. Following the out-inspection the respondents e-mailed the appellant and amongst other things in the e-mail stated the following to the appellant:

"As discussed, with your consent to release us from our full obligations of the lease effective May 29th 2011 including any and all required repairs/remedies associated with the out inspection, you may keep our damage deposit in full. We will also mail you the cheque for \$600.00 (Matheson's \$50 per month rental subsidy) as soon as we receive our rent cheques back from you for July and August."

This e-mail dated Tuesday May 31st 2011 was received by the appellant and was signed by the appellant and the respondent {exhibit R-9}. That ends the matter or should have ended the matter.

An application however was made to the director of residential tenancies on June 6, 2011 by the appellant landlord. It is my view that the landlord and tenant are legally bound by that agreement which they both executed and there is no evidence from the agent of the appellant landlord to contradict any evidence provided by the respondents. In the event this matter does go to appeal I shall make a couple of comments with respect to the appellant's evidence. The out-inspection report that was provided to the court as evidence appears to be created well after this inspection occurred. There is no analysis provided to the court with respect to the items enumerated in the Kent building supplies invoice. As well the invoice amount exceeds the amount determined by the director and why those amounts are different was not explained to this court. The invoice from Ivy League developments is a company from or at least a business from British Columbia owned by the appellant or the appellant's partner. There was no one here to supply information on this invoice nor was any provided other than what is written on the face of the invoice. With respect to the furnace inspection this was to be done after the new tenant had taken over the lease from the respondents. The sublessee or new tenant in this case would have entered into the lease. The annual maintenance invoice was after the new tenants took over the lease premises. With respect to the flooring invoice for \$1190.25 there was no one here to give evidence on that, particularly when it was challenge as normal wear and tear and could be rectified for little over \$300.00 according to the invoice quote provided by the respondents. In this case both are of equal value and I would not prefer one over the other. With respect to the other items I would agree with the Order of the director of residential tenancies that these are the responsibility of the appellant. I agree there was some damage and repairs that had to be done such as the nail holes in the

wall but the damage deposit should have been enough to cover that expense.

Therefore the agreement of May 31st 2011 will prevail. The \$600.00 being the rental subsidy as it was called has already been paid and the appellant will keep the damage deposit of \$951.73. One further point with respect to the tenant/respondent having people stay in their home and this cause damage and neglect the property there is no information other than the tenant acknowledging they had guests stay at their place but no specific period of time was even mentioned.

It is therefore ordered that the Director of Residential Tenancies Order be varied as follows:

It Is Ordered That the appellant shall retain the deposit of \$951.73 and there shall be no order as to costs

Dated at Halifax this 27th day of September 2011