

Claim No: 352839

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

Cite as: Tynes v. Omers Realty, 2011 NSSM 52

BETWEEN:

CLARENCE TYNES

Landlord (Appellant)

- and -

OMERS REALTY

Tenant (Respondent)

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on August 23, 2011

Decision rendered on August 29, 2011

APPEARANCES

For the Tenant self-represented

For the Landlord Kevin Russell, property manager

REASONS FOR DECISION

[1] This is an appeal by the Tenant from a decision of the Director dated July 14, 2011, denying the Tenant a claimed rental rebate.

[2] The tenancy for this unit, #63 at 86 Highfield Park Drive, ended on mutual consent on June 30, 2011, and - subject to the rebate claim - there is an agreed amount still owing for rent and parking charges, namely \$2,069.00.

[3] The rebate claim concerns the fact that the Tenant experienced trouble attempting to use the Eastlink internet service in his unit. In the case of high-rise apartments, a service provider such as Eastlink connects its service to the building as a whole, and the responsibility for cabling to the individual units is that of the building owner. Once inside the individual unit, Eastlink has some further responsibility in that it supplies and takes responsibility for the cable modem which delivers service to the internet-ready devices in the unit.

[4] The evidence of the Tenant, which was not controverted by any other evidence, is that he experienced intermittent internet service beginning in early 2011, and that he pursued it through Eastlink - believing that it was most likely an Eastlink problem. It appears that several different technicians were dispatched, and that at one point in late January the Tenant was told that the problem was most likely a defective wire somewhere in the walls between the basement (where the Eastlink service is delivered to the building) and the unit in question. It does not appear that any other units in the building were experiencing the problem.

[5] To further complicate matters, at times when the technicians would attend they found the service working or did something that they believed might have fixed the problem. At no time was a durable fix accomplished. I believe it is a matter of common experience that intermittent problems can be notoriously difficult to diagnose, let alone to fix.

[6] The problem for the Tenant was complicated by the fact that he works at home as a customer service agent for Convergys, a call centre. This requires him to link up via the internet to his company, in order to receive calls. If he is not hooked up, he cannot work and does not get paid. The Tenant explained that this arrangement is quite common nowadays, and is very handy for all concerned. However, it is his responsibility to have a reliable internet connection. He explained that he could not use the Aliant system as an alternative, because the speed of its service (at least in that area) was only about one-third of what Eastlink provides.

[7] After months of frustration, the Tenant arranged to sub-let a room in Halifax which had reliable Eastlink service, which became his place of work. For this he paid \$90.00 per week, starting on March 27, 2011.

[8] He testified that when it became apparent that the Landlord was not prepared to rewire the internet to his unit, he asked to be relocated within the building. The Landlord did not agree to do so. At the hearing, no explanation was offered as to whether this was because of lack of availability, or some other reason.

[9] The Tenant claims that the Landlord should absorb the cost of \$90.00 per week for the last 13 weeks of his tenancy. The total rebate claimed was

\$1,170.00. On a monthly basis that amounts to \$390.00. It should be noted that the rent for the entire apartment was \$584.00 per month.

[10] It is well established that the failure of a Landlord to supply a necessary service can support a claim for a reduction in the rent. It is a matter of contract. The rent is payable for a promised level of accommodation, and full rent should not be collected where some significant service is withheld or otherwise unavailable.

[11] We live in an age where internet service is as vital to some people as electricity would have been seen to be in past times. A building that cannot deliver internet service may well be uninhabitable, for some significant segment of the population.

[12] The Landlord's partial answer, which appears to have been accepted by the Residential Tenancy Officer, is that the Tenant had the alternative of using Aliant. I do not believe there are any other alternatives in Nova Scotia. The other answer is that the Tenant knew or ought to have known about the problem when he took over the tenancy, as a result of having lived there as an occupant under a previous tenant.

[13] The Tenant's response was that he also used his internet to download movies and other content, which made Eastlink the only viable choice. He did not come right out and say - at least not in specific terms - that he could not have performed his Convergys job using Aliant.

[14] The Tenant also conceded that he had some knowledge of an Eastlink problem from 2010, but that he was not the Tenant at the time and had limited knowledge. Also he believed it was something that could be addressed.

[15] My findings on the evidence are these:

- a. There was and probably still is a wiring problem in the building. The fact that the current tenants appear not to have reported a problem does not prove anything, as their circumstances are not known.
- b. The Landlord knew that there was a problem and chose not to fix it in a timely manner.
- c. The Tenant was denied a service that is vital in the modern age.
- d. The alternative that the Tenant had, namely using Aliant, would likely have met some but not all of his needs.
- e. The alternative he chose, using an outside location to perform his work, was a reasonable response.
- f. Some form of rebate is appropriate, but it should not be disproportionate to the value of the rental unit. \$390.00 out of \$584.00 would represent almost exactly two-thirds of his rent. This is excessive.

[16] In the result, I am prepared to order that the Landlord cover one-half of the Tenant's additional \$90.00 per week expense; namely \$45.00. Over 13 weeks this amounts to \$585.00.

[17] I note that the Tenant had additional expenses associated with using this outside location, namely his travel expenses, so the rebate falls short of fully compensating half his full cost, but this is the amount that I believe is appropriate under the circumstances.

[18] The order of the Director will be varied to read that the Tenant shall pay the Landlord \$2,069.00 minus \$585.00, namely \$1,484.00.

Eric K. Slone, Adjudicator