Claim No: 370671

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

Cite as: Murphy v. Julien, 2011 NSSM 60

BETWEEN:

JASON D. MURPHY

Tenant (Appellant)

- and -

ROBERT JULIEN and BONNIE PETTIPAS

Landlords (Respondents)

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on December 20, 2011

Decision rendered on December 22, 2011

APPEARANCES

For the Tenant self-represented

For the Landlord self-represented

REASONS FOR DECISION

[1] This is an appeal by the Tenant from a decision of the Director dated December 6, 2011, which decision terminated the tenancy at 115 Petpeswick Drive, Gaetz Brook, Nova Scotia as of December 16, 2011. The order further required the Tenant to pay to the Landlord the sum of $1,607.90, which represented rent arrears minus the security deposit with accrued interest.

[2] The Residential Tenancy Officer refused to allow any compensation to the Tenant for what he claimed to be deficiencies in the mini-home. A great deal of the evidence before me concerned these alleged deficiencies, which the Tenant alleged not only reduced his enjoyment of the property but also cost him money. I will say more about that later.

[3] The tenancy was created on a month to month basis by a written lease which commenced the 1st of September 2010. The monthly rent is $800.00. The parties under the lease are actually Mr. Murphy along with Amanda Mannette. The status of that relationship was not elaborated upon at the hearing, and I gather that this may be an issue (whether or not they are a couple) that is of interest to Social Services. I make no findings in that respect. For reasons that are not explained, the proceedings started by the Landlord did not name Ms. Mannette, and I am in no position legally to add her to my order.

[4] The Landlords testified, and I accept, that they became unhappy with being landlords (at least to these tenants) and decided to terminate the tenancy and sell the property. The *Residential Tenancies Act* in section 10(1)(b) gives the Landlords the almost absolute right to terminate the tenancy on three months' notice, without making any allegation that the tenants have done anything wrong. Sometime before the 1st of October 2011, the Landlords did

exactly that. They served a proper Notice to Quit, ending the tenancy on December 31, 2011.

[5] Of course, the mere fact that the tenancy is ending does not give the tenant any right to stop paying rent. The lease remains in effect until the tenancy is over.

[6] According to the Landlords, the Tenant failed to pay rent for October and November of 2011, which prompted them on November 7, 2011 to take the additional step of serving a Notice to Quit under s.10(6), giving the Tenant fifteen days to vacate. This was followed a couple of days later by the application to the Residential Tenancy Officer who heard the case on December 1, 2011 and made the order referred to above.

[7] The evidence before me presented two starkly contrasting views of the relationship and the facts.

[8] According to the Tenant and some of his witnesses, the Landlords were virtually “the Landlords from Hell” and, moreover, he claims that he did pay his rent for October and November. He admits that he did not pay December rent, but attributed that to the fact that (he claims) the Landlords called his social worker and caused Social Services to reduce drastically his benefits cheque. Among other claims, he seeks to hold the Landlords responsible for his reduction in income.

[9] According to the Landlords, the Tenant (and to a much lesser extent Ms. Mannette) were the difficult parties and as a result of having to deal with them,

they decided to get out of the rental property business. The Landlords were quite adamant that the last rent paid was for September 2011.

Did the Tenant pay October and November rent?

[10] The Tenant claims that on both occasions, he placed cash in an envelope and gave it to one or the other of the Landlords. When asked (by me) why he paid by cash rather than by cheque, he said that the Landlords refused to accept cheques. When asked whether he obtained receipts, his answer was that the Landlords did not give receipts because they did not want any paper trail.

[11] The Tenant produced two witnesses to support his payment of cash. First to testify was Mr. Fred Bowser, a neighbour who also took on the unofficial role of representing the Tenant at the hearing and cross-examining the Landlords. He said that he was with the Tenant in his car and saw him count out $800 in cash, place it in an envelope, and then leave his car and meet up with Ms. Pettipas in a Superstore parking lot. He said that he saw the Tenant pass Ms. Pettipas the envelope.

[12] Ms. Pettipas testified that on the occasion in question, the Tenant actually handed her an envelope with $100.00 which was still owing from September.

[13] The Tenant also called Kara Pearce, who is a friend of Ms. Mannette who was in the house with the Tenant on a day in early November. She said she saw the Tenant count out some cash and place it in an envelope. She then saw the Tenant go outside to meet with Ms. Julien who had driven by in his truck. She could not say for certain that the envelope of cash passed from the Tenant to Mr. Julien although she believed that this was what was happening.

[14] Mr. Julien denies entirely receiving any cash on that day, and flatly denies receiving anything toward October or November rent.

[15] Someone is not telling the truth. Ms. Pearce is not necessarily lying, as she may honestly believe that the envelope changed hands, even if it did not.

[16] As for Mr. Bowser and the Tenant (i.e. Mr. Murphy), I am obliged to say that I simply do not believe them. The story that they tell is highly improbable. Given that the Landlords had already given notice to terminate the tenancy, and given that there was already a great deal of animosity between the two families, it is very hard to believe that the Tenant would have been so foolish as to hand over envelopes of cash - not once, but twice - without getting some form of receipt. His excuse that “they don’t give receipts” is lame. If he had $800.00 in cash to hand over, all he had to do was ask for a receipt, failing which no money would be paid. The Landlords would hardly have refused. Also, he could have paid by cheque, which is the way it is done 95% of the time. The statement that “they don’t take cheques” is equally lame.

[17] Equally to the point, I do not believe that these Landlords would have fabricated a story about rent being in arrears just as a device to get the Tenant out earlier. They had already served notice to terminate the tenancy for December 31, and they seemed quite content to wait it out. To accept cash and then claim that none was paid would amount to outright fraud. Having observed the demeanor and carefully weighed all of the testimony of the Landlords, I find that they are extremely unlikely to have engaged in that type of activity. They seemed to me to be basically honest people who are acting in good faith.

[18] I cannot be so charitable to the Tenant. His testimony was all over the map. He appeared not to be able to distinguish facts from his suspicions or wishful thinking. He was making accusations left, right and centre against the Landlords, without any factual basis. He was nasty and belligerent, and appeared to have lost any objectivity. As such, wherever his testimony conflicts with that of the Landlords, I prefer the evidence of the Landlords and reject the evidence of the Tenant.

[19] Mr. Bowser was not much better. He appeared to have a real axe to grind notwithstanding that he has no personal relationship with the Landlords. His evidence was not that of a fairminded observer.

[20] Ms. Mannette appeared caught in the middle. She has been through a difficult time. As a result of these events, she has had her 8-year-old daughter apprehended by Children and Family Services, and she has been told that she will not get her daughter back as long as she is living in this house. She is admittedly still in a bad emotional state following a death in her family. All in all, I did not find anything in her evidence to redeem the case.

The condition of the home

[21] I accept that there have been problems with the home. It is also likely that the Landlords were not always responsive, at least not in a timely way. However, I believe that there were extenuating circumstances. The Tenant and Ms. Mannette own three large dogs that the Landlords say they found to be very intimidating, which made them reluctant to visit the property. The Tenant's explanation that the dogs were always properly penned is far from a complete answer. Dogs have been known to escape from their pens, and moreover the

Landlords cannot have been certain that the dogs would be penned when they visited the property.

[22] The Landlords also referred to having difficulty with the Tenant's "anger management" issues. In other words, they were intimidated by him and avoided encounters with him. Having observed him for almost three hours in court, I can see why. Even within the confines of a court room, when he would be expected to be on his best behaviour, he was hyper-aggressive and volatile. I can easily accept that the Landlords, and particularly Ms. Pettipas, would have been very wary about dealing with him.

[23] The Tenant attempted to advance claims that he should be compensated for a number of things that were wrong with the property. I will address these:

a. He testified that his fridge broke down and as a result he lost $800.00 worth of food. I asked him whether he reported this to the Landlords and asked them to get it fixed. He said that he did not, because he knew that they would not do anything. The Landlords' obligation is to supply a working fridge. They are not insurers of the contents. Appliances break down from time to time, but the Landlords cannot be expected to repair something that they do not know about. I reject this claim, also observing that I find it very difficult to believe that there was $800.00 worth of food in this fridge, or that anywhere that amount was actually lost.

b. There was also a complaint about flooding of the septic field, and of the repairs that were eventually done to rectify the problem. While I accept that there may have been a time when the property could not

be enjoyed to its fullest, I also find that the Landlords attended to the problem in a timely manner. I do not accept the Tenant and Mr. Bowser's evidence as to what had occurred, and how badly the repairs were allegedly handled. I believe that the Tenant has blown this incident up out of all proportion, in the hope that it will deflect attention away from the real issue which is that he is being evicted.

c. The Tenant complained that the house is not properly winterized, and in particular that the windows (or some of them) are outdated and very drafty. I do not doubt that there is some truth to that claim. Indeed, the Tenant called Halifax Regional Municipality and had an inspection performed, which came to the same conclusion. I believe that the Landlords knew that if they were going to continue renting the place, that some upgrading would have to be done, which I believe was part of the rationale for selling the property and terminating the tenancy. There is no doubt that a drafty house can be uncomfortable and expensive to heat. I am prepared to allow a modest abatement for extra heating expenses. Unfortunately, there was virtually no evidence put before me to indicate what the heating bills were, or what they might have been. As such, the best I can do is take something of a guess and allow $50.00 for each of the winter (or winter-like) months of the tenancy: December 2010, January 2011, February 2011, March 2011, April 2011, November 2011 and December 2011, for a total abatement of $350.00.

d. The Tenant seeks to have the Landlords responsible for the fact that the oil tank was apparently vandalized and disconnected, with the result that the Tenant has jerry rigged some other way to feed oil to

the furnace. Again, he did not bring this to the Landlords' attention. There is no basis to hold the Landlords responsible for anything in connection with the furnace. If anything, it is the Tenant who would be responsible for what happens while in possession of the property.

e. The Tenant made several other complaints that I see as trivial, such as the allegation that the Landlord failed to supply a missing screw that was necessary to operate a shower faucet. With due respect, surely the Tenant is capable of fixing such a small thing himself. I totally reject all of the Tenant's complaints about the Landlords allegedly interfering with his receipt of welfare payments. Not only has he failed to prove that the Landlords are responsible, but I have no jurisdiction under the *Residential Tenancies Act* to consider such a claim.

[24] The Landlords also advanced a claim for what they say is the poor condition of the property. They supplied (among other things) a photo showing that the back deck was (at least on that occasion) littered with piles of dog faeces. The Tenant does not deny that his dogs use the deck for this purpose, but claims that he washes it off every few days and that this picture makes things look worse because it was just after snow had melted following a freak snowstorm last month.

[25] The photo certainly paints a troubling picture. A deck is not a suitable toilet for three large dogs. It remains to be seen whether the deck is permanently damaged.

[26] I believe it is premature to judge whether or not the Tenant (and Ms. Mannette) may be responsible for damage to the home and property. This is better assessed after they vacate. As such, I will leave open this question to be considered, if the Landlords are so advised, in a future application to Residential Tenancies.

Conclusion

[27] At the conclusion of the hearing, I indicated to the parties that I would not terminate the tenancy before January 15, 2012 at the earliest. This is simply a reflection of the reality that the termination date in the Residential Tenancy Officer's order (December 16, 2011) had already passed, and that the December 31, 2011 termination date under the original Notice to Quit was almost upon us. The Tenant exercised his right to appeal the Director's order, and was entitled to have that appeal dealt with before making final arrangements to vacate.

[28] The Tenant's argument that it is inappropriate to terminate a tenancy during the winter is simply wrong. There is no principle of law supporting that.

[29] After consideration of all factors, I am ordering that the Landlords be given vacant possession by no later than 11:59 p.m. on Saturday, the 15th of January 2012. I am holding the Tenant responsible for one-half of a month's rent for January.

[30] According to my calculations, the Tenant owes the Landlords the following moneys:

October 2011 rent	$800.00
November 2011 rent	$800.00
December 2011 rent	$800.00
January 2012 rent	$400.00
TOTAL	$2,800.00

[31] The Tenant is entitled to be credited with $350.00 as the heating abatement, plus the security deposit of $405.00 (which includes interest). The Tenant accordingly owes the Landlords the sum of $2,048.00.

[32] As indicated above, all issues concerning damage done to the premises by the Tenant (and Ms. Mannette) may be dealt with (if so advised) in a fresh application to Residential Tenancies.

Eric K. Slone, Adjudicator