

Claim No: SCK No. 404280

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Laritz v. Charter Real Estate Advisors Ltd., 2012 NSSM 54

BETWEEN:

Name Susan D. Laritz

Appellant/
Tenant

Name Charter Real Estate Advisors Ltd.

Respondent/
Landlord

DECISION

Editorial Notice

This decision has been edited to correct several typographical and grammatical errors. The findings and results have not changed. Addresses and phone numbers have been removed.

Susan Laritz appeared on her own behalf;

Ross Cantwell appeared for the Landlord, Charter Real Estate Advisors.

- (1) This is an appeal from an Order of the Director of Residential Tenancies issued by Residential Tenancies Officer, Chantal Desrochers on July 3, 2012.

- (2) This appeal concerns the rental of Apartment #19, 9 Balcom Drive, Wolfville, NS. The lease was dated May 21, 2010 and commenced on July 1, 2010 and ended on June 30, 2011. It was a fixed-term lease. The parties to the lease were the tenant, Susan Laritz and Kesme Enterprises Limited, the owner of the building at the time. The building was subsequently purchased by Charter Real Estate Advisors Limited, the Respondent in this matter (“Charter”). The rent was \$1200 per month to be paid at the beginning of each month. There is no evidence before me of any rental arrears or outstanding claims against the damage deposit.
- (3) This appeal concerns an application for the payment of money for losses the Tenant alleges to have suffered while renovations were being performed in the building. The losses arise as a result of alleged breaches of the Statutory Conditions prescribed in s. 9(1) of the *Residential Tenancies Act* and a lost opportunity to rent to a boarder. The details are described later in this decision. Ms. Laritz is seeking a reimbursement of \$500 per month from her rent for a total of \$6000.
- (4) It should be noted at the outset that the copy of the lease provided by the parties was incomplete. The Appellant tendered her copy into evidence to the Residential Tenancies Officer and at this hearing. She has not signed it. Further, the photocopy was cut off at the bottom. Both Ms. Laritz and Mr. Cantwell agree that this is the lease and the only missing reference were the statutory conditions. The Lease is in all respects a Standard Form of Lease as prescribed in the *Residential Tenancies Act* with no additional rules or conditions. I find this to be the governing lease for the purposes of this appeal.
- (5) An appeal of a decision of the Director of Residential Tenancies to the Small Claims Court is a hearing *de novo*, which means that a re-hearing of the issues is conducted before this Court rather than a review of the original decision for errors of law. The decision of this Court is based on the evidence presented at the hearing and the applicable legal principles. The Small Claims Court may confirm, vary or rescind the original order.

The Facts

- (6) Susan Laritz testified that she lived in the unit since 2009 at which time, the building had a live-in superintendent. She signed a new lease in May 2010 with a fixed term from July 1, 2010 to June 30, 2011. She lived in the unit with her daughter. When she signed the new lease, she intended to rent a room to a university student. The building was subsequently sold to the Landlord. Shortly after the sale, the renovations commenced. It was Ms. Laritz’s evidence that the plan for the sale only became known after she had signed her lease. In August of 2010, the tenants were advised that the building had been sold and renovations were going to take place. Ms. Laritz provided a list of notes she made concerning the renovations and her experiences during that time, which she used as a reference during her testimony.

- (7) Ms. Laritz testified to several episodes during the renovations. When she initially moved into the premises, she received permission from the landlord. After the building was sold, windows were replaced in every unit in the building, including the tenants. However, at her request, she completed the painting required after the windows were installed. The tenants were advised that the interior of the building would be painted with fire retardant paint. The sanding began in the hallway on December 21 with the painting commencing on December 24th. The painting resumed on Boxing Day. Her notes indicate that at 8:20am of December 26th, she called "Allee", Mr. Andrews, to ask that he do this another time, when the weather was more favorable. The painting continued on separate days throughout the holidays while her daughter was home until December 31st and resumed January 5, 2011.
- (8) She testified that the next renovations began in January and involved drilling and jack hammering to remove bathtubs from vacant units. She described consistent noise resulting from the renovations. She provided a digital recording of the noise heard from her unit. It was typical drilling and jack hammering noises and there was nothing distinctive about them. Regardless, it is not difficult to imagine that they would be a considerable disturbance for any tenant when occurring inside of the building.
- (9) On January 18, Ms. Laritz experienced a loss of water which was the result of a service switch which was repaired by the electrician who was on-site for other work. The workmen came into her unit later that week, without notice. Mr. Andrews appeared on the 20th with the plumbers without notice. She also described several incidents in the following week of being without water and leaks in the bathroom.
- (10) In addition, she testified to several occasions when entrance to the units was impeded and other times when the water had been shut off without notice. In one entry, Ms. Laritz indicated there was a sign on the door indicating that Ross (Mr. Cantwell) and Daryl will be around between 10am-12pm. She also described a flooded kitchen occurring during the renovations. Throughout the period of renovations, the entrances were impeded and access to the building was generally difficult. It was her opinion that she could not seek a border while the construction was on-going and did not offer a room for rent.
- (11) She testified to making numerous complaints to the Landlord. She had sought the Landlord's consent to either extend their tenancy or move into a different building at the conclusion of the tenancy.
- (12) Donna Trefry is a friend of Ms. Laritz. She viewed the apartment when Ms. Laritz was moving in and subsequently painting the unit. She visited Ms. Laritz at the unit several times, including during the time the renovations were taking place. She described the unit as noisy and not well muffled from sounds in the hallway due to the layout of the unit, since the living areas are

adjacent to the hallway. She described the building as made of concrete and not soundproof.

- (13) Ross Allan Cantwell is a principal of Charter, along with Albert (Allie) Andrews. Mr. Cantwell provided the only evidence on behalf of the Landlord. Charter purchased the building on August 19, 2010. He described the building as having been built in the 1970s. It was well constructed but required upgrading due to “decades of neglect”. He described the need for three days of work inside Ms. Laritz’s unit to replace the windows. He testified that the only times he entered the units without notice were for emergencies. He indicated that he was required to remedy several deficiencies with the sprinkler required by CMHC as a condition of his financing, although the state of the building “was not an issue with the Wolfville Fire Department”. After purchasing the building, he and Mr. Andrews intended to “freshen up the building and bring it forward”.
- (14) Mr. Cantwell tendered into evidence several e-mails from Ms. Laritz expressing concern about the repairs. He also described an incident concerning a noisy tenant on one of the floors which was an issue for Ms. Laritz. He testified that other tenants have been able to successfully sub-let their units and thus, he does not feel the construction was an impediment to her being able to find a border. He submits that where the tenancy is governed by a fixed term lease, he was under no obligation to renew the tenancy.

The Issues

- (15) There are several key issues raised in the appeal:
- Was the Landlord required to renew the Tenant’s tenancy or give her an opportunity to do so at the end of the term of the lease?
 - Was the Landlord in breach of any of the provisions of the *Residential Tenancies Act* so that the Tenant is entitled to compensation against the rent she has paid?
- (16) I shall deal with the issues in the order listed.

Findings

Renewal Request

- (17) On May 9, Ms. Laritz received a letter from the Landlord reminding her of the fixed term and directing her to leave the premises. In an e-mail dated May 14, 2012, Ms. Laritz e-mailed Mr. Andrews asking for him to consider allowing her and her daughter to reside there.

- (18) In paragraph 6 of the lease, it states as follows:

“The tenancy is for a fixed term, beginning on the 1st day of July, 2010 and ending on the 30th day of June, 2011. Any continuation of the tenancy at the end of a fixed term requires the written consent of the landlord. At the end of the fixed term, the tenancy is finished and the tenant must vacate (emphasis mine).”

- (19) The Act creates certain rights for all tenants but these are modified for parties to a fixed-term lease. It does not address or place limitations on either party’s decision not to rent the premises when the tenancy has ended. The conditions underlined in the previous paragraph are found in the Standard Form of Lease. Unless the Landlord consents to renewing the lease in writing or remains in the premises, the tenancy is finished at the end of the term and the tenant must vacate. I find the Landlord was within its rights to withhold its consent to renew the lease and require the Tenant to vacate the premises.

Breach of Statutory Conditions 1, 2 and 3

- (20) In her Notice of Appeal, Ms. Laritz states the following:

“I am not in agreement with the decision of the Residential Tenancy director. It was not only for loss of wages (exchange student rental), but also for violations of the statutory conditions #1, #2 & #3.”

- (21) Statutory Conditions 1, 2 and 3 are found in section 9(1) of the *Residential Tenancies Act*. They form part of every residential lease and cannot be amended by either party. The conditions provide as follows:

“Statutory conditions

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.

2. Services - Where the landlord provides a service or facility to the tenant that is reasonably related to the tenant's continued use and enjoyment of the premises such as, but not so as to restrict the generality of the foregoing, heat, water, electric power, gas, appliances, garbage collection, sewers or elevators, the landlord shall not discontinue providing that service to the tenant without proper notice of a rental increase or permission from the Director.

3. Good Behaviour - A landlord or tenant shall conduct himself in such a manner as not to interfere with the possession or occupancy of the tenant or of the landlord and the other tenants, respectively.... “

- (22) In adjudicating an Appeal, the Small Claims Court has the power to make any order as the Residential Tenancies Director including the payment of money. These powers are prescribed in s. 17A of the *Act*. The finding of a breach and the remedy in each case depends on the circumstances. The courts have found that a breach of any of these conditions by the landlord can result in a reduced rent, termination of the tenancy at the tenant’s option or a complete loss

of rent. The Tenant in this case is seeking a reimbursement of some of the rent paid.

- (23) In reviewing the circumstances, I find the Landlord's renovations were undertaken in good faith with a view to having them completed in a timely manner. The intention at all times was to upgrade the building and keep it in a fit state of repair. However, certain of the Landlord's actions and conduct during the renovations breached Ms. Laritz's rights under the Act. These are described further in this decision.
- (24) In making these findings, I am not unmindful of the difficulties involved with renovating a building, particularly one with multiple units. A landlord in these circumstances seeking to make renovations is required to undertake a balancing act. On the one hand, the Landlord is required to maintain the premises in a good state of repair and fit for habitation and to comply with the law respecting standards of health, safety or housing. This necessarily requires renovations to the premises; renovations inevitably result in inconvenience and disturbances to the tenants. At the same time, these renovations must be performed in a manner that does not breach any of the rights contained in the Act, regulations or other lease conditions. In short, the tenants' rights under the Act continue notwithstanding the renovations.
- (25) In reviewing all of the evidence before me, I find that many concerns or complaints raised by Ms. Laritz do not result in breaches of the Statutory Conditions. Several of the complaints of mess during renovations were remedied in a timely manner. Many other concerns were undoubtedly frustrating and annoying for her. As noted, with renovations and consequential improvements, some noise and disturbance can be expected. Mr. Cantwell's answer to one of her complaints was "no pain, no gain", a statement which only aggravated her frustrations.
- (26) The Tenant indicated that one of the fire extinguishers on-site was out of date. While this is concerning, I am not satisfied that this resulted in a breach of the Fire Code as would make the unit unsafe. Indeed, based on the evidence, I am unable to find any statutory requirements for health, safety or housing have been breached. Furthermore, I find it curious that Ms. Laritz would wish to continue to live in the building after her tenancy was over. I question her credibility in this regard.
- (27) Ms. Laritz submitted that she was unable to rent out part of the premises to a boarder. In my view, the evidence is not sufficient to establish that was in fact the case. Aside from her own testimony, she did not present any evidence on the part of a potential boarder who refused to accept the tenancy. She presented several e-mails of tenants expressing interest in the unit, although none of them followed up with her indicating they did not want to live there as a result of the renovations. She testified that she did not feel comfortable showing the unit.
- (28) I find there were several breaches of the Statutory Conditions, although not to the extent alleged by the Tenant. Specifically, I find the following as breaches of one or more of these Conditions:

- I find there was a flood in the kitchen and the loss of use of water on several occasions without sufficient or any notice. This resulted in both a loss of essential services and uninhabitable premises, even though only on a temporary basis. This clearly affected her enjoyment of the premises.

- The decision of the landlord to enter the premises without notice was a breach of the Act. In his evidence, Mr. Cantwell asserted that this was an emergency, which if proven, would have created a justification allowed by the Act. I find the Landlord has not proven the existence of an emergency.

- The Tenant was required to endure noise daily for extended periods of time. This resulted from the drilling and jack hammering. This created a significant disturbance for Ms. Laritz and undoubtedly for the rest of the tenants as well. In his cross-examination of Ms. Laritz, Mr. Cantwell asked her if she worked at the time, suggesting that while being home, she would tend to notice the construction. However, this does not excuse the noise.

- Access to the building was temporarily impeded or blocked numerous times.

(29) In summary, I find there were breaches of the Statutory Conditions by the Landlord for which the Tenant should be compensated. Ms. Laritz is seeking to recover \$6000, a sum equal to one-third of the rent she has paid over the course of the tenancy, which I find to be excessive. I find the circumstances justify a reimbursement of \$1000.

Conclusion

(30) In summary, the appeal is allowed; the Order of the Residential Tenancies Director is varied. The Tenant shall have judgment against the Landlord for \$1000.00. There will be no order as to costs.

(31) An order will issue accordingly.

Dated at Dartmouth, Nova Scotia,
on August 27, 2012.

Gregg W. Knudsen, Adjudicator

Original	Court File
Copy	Claimant(s)
Copy	Defendant(s)