Claim No: 412556

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

Cite as: Atlantic Living Property Management v. Watkins, 2013 NSSM 13

BETWEEN:

ATLANTIC LIVING PROPERTY MANAGEMENT

Landlord (Appellant)

- and -

SHARILYN WATKINS

Tenant (Respondent)

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on March 12, 2013

Decision rendered on March 22, 2013

APPEARANCES

For the Landlord	Angie Craig, property manager
For the Tenant	self-represented

REASONS FOR DECISION

[1] This is a residential tenancy appeal by the Landlord from the decision of a Residential Tenancy Officer dated February 14, 2013. That decision denied any relief to the Landlord arising from its application for a number of items of relief, including (most seriously) termination of the tenancy.

[2] The Tenant occupies a third floor unit at 15 Kennedy Dr. in Dartmouth, Nova Scotia. The building itself has eight storeys with some 125 units. Her year to year lease is dated October 22, 2009, and was entered into with a previous owner of the building. Atlantic Living Property Management only took over management of the building in October 2012. Under the lease, the rent is said to be $555 per month, although Ms. Craig on behalf of the Landlord testified that it has since been increased to $560 per month. The Tenant claims not to know whether there ever was a formal rental increase. Not much turns on this small five dollar difference.

[3] It is very clear from the evidence that the Landlord takes a dim view of this Tenant, in light of what it regards as her inappropriate behaviour in a number of respects, which I will comment upon further below. However, it appears that the event which precipitated this action by the Landlord to terminate the tenancy began on the evening of January 8, 2013 when a heating pipe burst in her apartment, spewing hot water throughout and causing chaos and some damage to other units.

[4] Some of the facts are not in dispute. Everyone agrees that the pipe burst, that hot (perhaps even scalding) water came out in a sufficient quantity to flood her apartment with several inches of water. Alarms went off. The fire

department came in response, and at one point the police were called because of some concerns about the Tenant's behaviour.

[5] The Landlord contends that the burst pipe was caused by the Tenant leaving a window open in her spare bedroom, during extreme outside cold temperatures, which in turn caused the pipe to freeze and then burst. The Landlord wishes to charge the Tenant with approximately $1,425 in cleanup and plumbing costs, and also seeks to rely on this incident as bad behaviour supporting early termination of the lease.

[6] The Tenant denied having left any window open for any significant length of time, and simply denies that this burst pipe was caused by her. She admits that she opens the window from time to time, when she smokes.

[7] The only evidence submitted by the Landlord to support the theory that the Tenant caused this damage, was testimony to the effect that the window was found to be open at the time of the flood, as well as a terse written statement in an invoice from the plumber who did the repair, which suggests "frozen split radiator pipe in the middle bedroom from open window and thermostat off." The Landlord also produced Environment Canada temperature reports for January 7 and January 8, which supports the fact that these days did include some significantly cold temperatures.

[8] As I indicated at the hearing, the court tends to place very little weight on statements of supposed experts who do not attend in court to support their opinions, state their credentials, and to be cross-examined on their conclusions. In the situation here, it is difficult to know precisely who authored this statement (his name is not legible), what his credentials are, whether he did any serious

investigation, or took as his starting point what the Landlord had already concluded and relayed to him. In other words, the statement is potentially self-serving and lacks objectivity.

[9] I have a great deal of difficulty believing that the burst pipe could have happened in the way the Landlord suggests. In the absence of a qualified expert telling me that I am wrong, the following factors come to my mind:

a. Heating systems frequently contain anti-freezing compounds, such as (but not necessarily) glycol, to lower their freezing point. I would have been interested to hear more about this system and whether it contained an anti-freeze agent and whether it was properly maintained.

b. For the pipe in question to freeze solid, the fluid therein would have had to be static and exposed to the cold temperature for a considerable length of time. Even if the thermostat in the Tenant's apartment were turned off, it seems improbable that the temperature in the apartment (or at least that room) could have gone so low for so long, given that the building as a whole is heated; i.e., there are heated apartments above and below.

c. If the heat in the unit were turned off, then even if the pipe had frozen and burst, one would not expect the water to begin gushing out at the rate it apparently did. The only reason for hot water to be in motion within the unit would be to supply heat. This seems inconsistent with the theory that the thermostat was off.

[10] The Landlord has an onus to prove its theory. The evidence is far from convincing. I am not saying that it does not raise a suspicion, but that is not enough. On a balance of probabilities, I am not satisfied that the Tenant was the cause of the burst pipe, and even more so that she was careless or reckless such as to endanger property. As such, I would not hold her legally responsible for the costs associated with the repair and cleanup. Also, I do not regard this incident as Tenant misbehaviour that would support termination of her tenancy. At most, it would have been an accident that does not reflect on her suitability as a tenant, but I would not even go this far.

[11] Once that event is removed from the equation, what remains is a series of small complaints that have as much to do with the personality of the Tenant as it does with any actual harm. The following is a catalogue of the complaints as I understood them from the evidence:

a. She has been accused of improperly smoking in public areas of the building.

b. She has been accused of rude behaviour toward other Tenants.

c. Her apartment is said to be kept in an untidy condition.

d. She was uncooperative with exterminators who were trying to spray her unit for bedbugs.

e. She is said to have been chronically in arrears of rent.

f. She is accused of having behaved inappropriately toward the building manager (Jim Ayling) by grabbing for his crotch on January 23, 2013.

g. She is accused of having inappropriately used an emergency exit door on at least one, if not more occasions.

h. She has been accused of being a careless pet owner, with unfixed cats roaming free around the premises.

[12] I will address each of these in turn, but will observe at the outset that they do not add up to a sufficient reason to evict this Tenant with all of the expense and disruption that it would cause.

improperly smoking in public areas of the building

[13] The Tenant admits that she did this several times, but denies doing it any more than that. She appears to understand that this is wrong. I would not penalize her for this, but she should not take any comfort either from having escaped any more serious consequences. Should she engage in this kind of behaviour in the future, she may yet face a further effort by the Landlord to terminate her tenancy.

rude behaviour toward other tenants.

[14] The Landlord filed several letters of complaint from other Tenants. These individuals were not called as witnesses, and their letters necessarily carry only limited weight. More to the point, what they point to is a tenant who appears to

be a challenged and challenging individual. By her own evidence, she has various disabilities and is taking heavy pain medication. She is on a disability pension. Based on the evidence, she also does seem to be rude on occasions.

[15] The Tenant did not elaborate at great length on her disabilities, and there may well be more to it than meets the eye. I have little doubt that she is a challenging person as a tenant and neighbour. But people with disabilities have a right to be accommodated, and it would be a mistake to simply label her as antisocial and in breach of her obligations as a tenant, without a much deeper inquiry into whether or not her behaviours are, in whole or in part, the function of some disabling conditions.

apartment kept in an untidy condition.

[16] The Landlord took photographs of the interior of the Tenant's apartment on two occasions. One was in the immediate aftermath of the flood, and the other was on a prescheduled inspection in early March 2013.

[17] The Tenant's apartment does appear to be in a state of disarray, dirty, disorganized and with things strewn around. The Tenant herself explained that she needs help to keep her home in proper condition, and she testified that she has applied for and hopes soon to obtain that help.

[18] Again, I have a concern that this particular problem is a function of this Tenant's disabilities, and the Landlord should be more understanding and accommodating. Even so, it is the Tenant who has to live in this disarray, and it has little to do with any of the Landlord's legitimate concerns. I do not find there

to be sufficient reason to hold the Tenant in breach of her lease because of her poor or lacking housekeeping skills.

uncooperative with exterminators

[19] The Tenant admitted that she was uncooperative when an exterminator hired by the Landlord came through needing to spray her apartment for bedbugs. It is noted that according to the Tenant, she did not actually have bedbugs in her unit, but the proper protocol involves treating the whole building.

[20] The Tenant explained that she was concerned that the chemical used might have an adverse effect on her cats. She says that she did some research and no longer has that concern.

[21] The Tenant does need to understand that the Landlord has an obligation to all of its Tenants to eradicate pests, and she must cooperate in the future with any effort by the Landlord such as bedbug spraying.

arrears of rent

[22] The issue of rental arrears seems to be more of a misunderstanding than anything else. The Tenant's rent is paid directly by Social Services. According to the ledger filed by the Landlord, the rent has only been paid at the rate of $535 per month. It appears that the rent cheques arrive in the third week of the month, and are deposited around the 21st or 22nd. It is hard to tell from the ledger whether they are being paid three weeks late or one week early. It may very well be the latter.

[23] The main reason that the Tenant is shown to be in arrears is that the Landlord has charged the cost of the cleanup from the flood to her rent account, to the tune of approximately $1,425. If one subtracts this, there is a discrepancy of less than $200, which appears to be explained by the fact that the rent is being underpaid by the amount of $25 per month, and an arrears amount has been accumulating. No doubt, this discrepancy needs to be resolved and the arrears made up. If in the future the amounts paid by Social Services are less than the lawful rent, then the Tenant will need to make proper arrangements to pay the difference directly.

[24] Although the Tenant may technically be in arrears for this small amount, it is hardly significant enough to be the basis of a termination.

Incident with building manager Jim Ayling on January 23, 2013.

[25] There is little dispute that something happened on this occasion. The real difference concerns the Tenant's intention. Mr. Ayling testified that he was standing outside and was approached by the Tenant, who (as she often does) bummed a cigarette from them. He says that she then made a quick grab for his crotch while saying something to the effect of "thanks hon". He claimed to have been taken aback by this inappropriate behaviour, though there was no pain or injury. He did not report it to the police.

[26] The Tenant did not deny that she did something like what he says. She says that she was kidding around, and regarded it as something playful. She seemed at the hearing to be suitably embarrassed. She obviously felt that she had a good relationship with Mr. Ayling, and she thought they were just joking around.

[27] My assessment of the situation is that the behaviour was clearly inappropriate, but innocently intended. The Tenant appears to lack social skills and insight into her own behaviour. She owes Mr. Ayling an apology, but that is up to her if she wants to continue to have a good relationship with him. In the final analysis, I do not believe any harm was done or intended, and this would not be a ground to terminate her tenancy.

using emergency exit door

[28] This is another relatively trivial item. When someone uses the emergency exit door, an alarm sounds and the building manager is obligated to respond. It seems that a number of tenants use this door because it is more conveniently located, and it saves them some walking time. The Tenant here admits to having done it once (and there is no proof that she did so more than once), and I believe she is now sufficiently warned that this is inappropriate. It places everyone at risk much in the same way as is depicted in the story of the boy who cried “wolf.” If alarms from people inappropriately using the door become commonplace, people may not take it seriously if a real emergency arises.

careless pet owner, with unfixed cats roaming free

[29] This last accusation is without any merit. Although some tenants’ leases may contain a clause requiring them to fix any pets, there is no such clause in this lease which is a holdover from the previous owner. Furthermore, the best evidence is that the Tenant herself who testified that she has two older cats who are both fixed, and a recently acquired kitten who is still too young to be fixed. The Landlord’s evidence to the contrary is utterly unconvincing.

Conclusion

[30] In the end, I do not find any significant reasons to terminate this tenancy. I repeat my earlier statements to the effect that this Tenant appears to be somewhat of a challenge. Some of her behaviours are clearly inappropriate, and if continued risk precipitating further actions by the Landlord. She may well have escaped any serious consequence this time, but she should be clearly on notice of what is considered acceptable and what is not acceptable behaviour for a tenant.

[31] On the other side of the equation, the Landlord is going to have to work with the Tenant in a way that accommodates any particular problems that arise out of her multiple disabilities. Both parties should be clear that accommodation is a two-way street, and the Tenant should be clear about those areas where she may need some leniency from the Landlord, at the risk of being treated more harshly.

[32] In the result, the order of the director is confirmed and the Landlord's appeal is dismissed.

Eric K. Slone, Adjudicator