Claim No: 453995

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

Cite as: Wallace v. Blue Shed Consulting Inc., 2016 NSSM 57

BETWEEN:

JOHN WALLACE

Tenant (Appellant)

- and -

BLUE SHED CONSULTING INC. (previously named as Paul Lavers)

Landlord (Respondent)

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## REASONS FOR DECISION

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on September 15, 2016

Decision rendered on September 22, 2016
ADDENDUM issued November 1, 2016

**APPEARANCES**

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|---|---|
| For the Tenant | Roy Argand<br>Articled clerk |
| For the Landlord | Jeff Franklin |

Counsel

## REASONS FOR DECISION

### Introduction

[1] The Tenant appeals from an order of the Director of Residential Tenancies dated July 14, 2016, that dismissed his claims to the effect that the Landlord had unilaterally changed the terms of his lease and denied him some of the benefits that he had previously enjoyed, in connection with his premises at 3180 Isleville Street, Unit 103 in Halifax.

[2] In his application to Residential Tenancies, the Tenant had named Paul Lavers as his Landlord. In fact, Mr. Lavers is the owner of a corporation that owns the building, namely Blue Shed Consulting Inc. I ordered on a previous court appearance that the name of the Landlord be amended as a misnomer. Nothing turns on it, and there was no prejudice to the Landlord being wrongly named in earlier proceedings. The mistake was understandable as ownership of the building had recently changed hands, and the Tenant had been introduced to Mr. Lavers as the owner, without a clear statement that the actual owner was his company.

### The building

[3] The building in question is a mixed use commercial/residential building in North End Halifax. In fact, it is mostly commercial, with only one residential unit. As described by several witnesses (before recent changes that sparked this application) when one entered the lobby to access the commercial units, off to the

right there was a short staircase to a landing that provided access to a longer staircase up to the residential unit which is #103. Nearby on that landing level there is also a staircase to the basement.

[4] The Tenant first rented the unit in August 2011, from the then-owner Clarence Romans. The rent started out at $600.00 per month, went to $625.00 about a year later, raised again to $645.00 in January 2015, and soon there after was reduced to $620.00 under circumstances that I will detail later.

[5] The tenancy proceeded (at least initially) on the basis of an oral lease. No one disputes that it was intended as a year to year tenancy, and there were no issues between the Landlord and Tenant that called into question what the terms of the tenancy were.

[6] The configuration of the premises at the time can be further described as follows. At the top of the small staircase there was a locked door that separated the Tenant's premises from the rest of the building. Once inside that door, there was a room measuring perhaps 11 ft. X 16 ft. (according to the Tenant). He says he mainly used it as a cloakroom. On that same level, there was a door to the basement. There was also a staircase to the top floor which consisted of an approximately 800 square foot bachelor apartment. There was no door to that staircase. The Tenant essentially had a 2-level apartment.

[7] Because the door to the basement was also within the boundaries of the residential unit, the Tenant had a great deal of control over who came and went. Much of the basement consisted of mechanical facilities, and the Tenant understood that meter readers and service people would need occasional access to those facilities. In such cases, the Landlord (Mr. Romans) had a key and

typically would allow people access to the basement. Sometimes, but not always, he would alert the Tenant to the fact that the basement was to be accessed.

[8] The Tenant used part of the basement for storage. Because there was limited access, he felt secure leaving some of his belongings there. It is unclear on the evidence exactly what he was storing. Mr. Romans testified that he thought the only thing the Tenant was storing were his wine-making supplies and inventory of wine, but I accept that there were other belongings stored there.

[9] Another incident to the tenancy was parking. Initially, there was no discussion of onsite parking. In 2011 the Tenant parked his vehicle on the street nearby. During the first winter, however, he started getting tickets during nights that the winter parking ban (to allow snow clearing) was in effect. He asked Mr. Romans if he could park somewhere on the property during the winter months. Mr. Romans agreed that he could park on a grassy strip between 3180 Isleville and an adjacent building that he also owned. The stipulation was that the Tenant was responsible to clear snow off the spot, and that it should only be used during the winter months. This went on for several years, without controversy.

[10] The Tenant was also given access to laundry facilities at the next-door property.

[11] All parties are agreed that there was no written lease from 2011 to 2015.

[12] Things happened in early 2015 that are relevant to this case. The Tenant decided to rent one of the commercial units to open a hair salon. He and Mr. Romans agreed that there needed to be written leases for both the commercial and residential units. Both parties agree that a commercial lease was signed,

and that is not in issue. According to the Tenant, he and Mr. Romans also signed a residential lease. He produced a signed copy of it at the hearing.

[13] This document is on a standard Residential Tenancies Form "P," and mostly it contains terms that are non-controversial. Although purportedly signed on May 1, 2015, it is written as a year to year lease starting January 1. The section that is controversial is section 13, which describes what is included in the lease. There is a checkmark next to "parking" and under "other" there is written in "basement." It is noted that the handwritten parts of the document are in the Tenant's hand, which is unsurprising as Mr. Romans was already developing a very shaky hand that is obvious in his signature.

[14] Mr. Romans testified that this is not the lease that he was prepared to sign with the Tenant. He says that his standard form was on legal sized paper, whereas this document is letter sized. Although he admits that it is his signature appears to be on the lease, he does not know how it got there. He disputes that the document contains an original signature, suggesting that (if it were) there should be a strong imprint on the paper, which there is not.

[15] The reason that this lease document is controversial is because, according to Mr. Romans, neither the parking space nor the basement should have been included in the lease. He says that these things were not part of the lease - they were mere "privileges" that he extended to the Tenant because they were (then) on very friendly terms. He also says that laundry was a privilege, for which he had never intended to charge additional rent.

[16] The distinction between a contractual right and a privilege would be that a privilege is gratuitous and could be withdrawn at any time, whereas a contractual term cannot be unilaterally changed without legal consequences.

[17] Whether or not the written lease is legitimate, I find as a fact that parking and access to the basement were terms of the tenancy. I do not accept the characterization of these things as “privileges.” With a history of more than four years of enjoyment, they are contractual terms. It was a package deal. In my view, the only way that they could have been considered less than contractual terms would have been if the Landlord could produce a written document that specified that these were only “privileges” that could be revoked at will. There is no such document.

[18] In fact, the opposite is true. I find that the written lease produced by the Tenant is more likely than not legitimate. While Mr. Romans seemed to be sincere, I find that he most likely is confused about what he signed that day. Although his signature did not leave much of an impression on the paper, it appears to be an original. Other examples of his original signature were shown to the court, and there were no heavy impressions there either.

[19] My view of the legitimacy of the lease is bolstered by another document dated May 1, 2015, which was marked as Ex. 5 at the hearing. It is a typewritten document from Mr. Romans to the Tenant which appears to have been intended to be an addendum to the lease. The typed portion contains three sections:

> BUILDING RULES
> 1/ Keep the front door locked after business hours.
>
> PARKING
> During the winter months you may park on the grass area to the right of the building between 3180 and 3190 Isleville St. Park close to 3180. Snow removal will be your responsibility. This parking spot shall not be assigned or used by anyone else.
>
> BASEMENT

> As you know the building electrical power meters, furnace and some storage is in the basement so unscheduled access is required by the N.S. Power, Rob [Mr. Romans's son] and myself.

[20] On the bottom of the document the Tenant added some handwriting, stipulating (among other things) that access to the basement by others should be limited to 10:00 a.m. to 8:00 p.m. This was important to him as he did not want people entering his space at all hours. This document would make no sense in isolation. It is consistent with there being a written lease, and is inconsistent with there being no lease. Either way, it confirms the Tenant's rights respecting parking and the basement.

[21] A minor footnote is the fact that for the first four months of 2015, the Tenant was paying $645.00 in rent. At about the same time as the written lease was being created, the Tenant advised Mr. Romans that he would be reducing his rent by $25.00 per month, because he no longer needed to use the next door laundry facilities. As of May 1, 2015 he started paying $620.00 per month. Mr. Romans accepted this reduction without complaint, and accepted rent of $620.00 starting May 1, 2015. At the hearing, he stated his position that laundry was not part of the lease, but was simply another "privilege." When asked why (since it was not a right, but only a privilege being abandoned) he did not protest the unilateral reduction in rent, he stated that he did not want to get into a dispute with the Tenant because he was already in negotiations to sell the building.

[22] This is how matters stood until February 2016, when the building was sold. The Tenant received a written notice from Mr. Romans advising him that his current lease would remain in effect and that rent should be paid to the new owner.

[23] It appears that Mr. Romans did not pass a copy of the written lease for unit 103 to the new owner, which is understandable because he denied that there was such a lease and evidently did not have a copy of it. I can only speculate as to what he verbally told the new owner, but shortly after taking over the building the new owner did several things:

a. It removed the door at the top of the landing and placed a new door at the foot of the staircase to the upper floor. This had several effects:

   i. It removed the 11 X 17 first floor space from the Tenant's unit;

   ii. The basement door was no longer within the Tenant's unit, and the Tenant was told that he had to remove all of his belongings from the basement, which was no longer available to him for storage.

b. The Tenant was also told that he was no longer welcome to use the parking space at any time. The new Landlord planted some shrubs on the area, emphasizing the point.

[24] The new Landlord can perhaps be forgiven for being confused about what were the terms of the Tenant's lease, given that it did not have the written lease. But it appears not to have consulted the Tenant to ascertain what he believed to be his rights as a tenant. The Landlord just bulldozed its way through these changes, provoking the application to the Director of Residential Tenancies. The Tenant wants the lease enforced, or alternatively an abatement to compensate him for what he has lost.

[25] The Residential Tenancy Officer did not accept the written lease, and sided with the Landlord in dismissing the Tenant's claims. With respect, and having been provided with the lease bearing an original signature of Mr. Romans, as well as other documents that I have referred to, I have come to a different conclusion.

The Landlord has breached the lease by reducing the size of the residential unit, blocking the parking space and denying access to the basement.

[26] Counsel for the Landlord expressed to the Court that his client was looking for guidance as to the terms of the lease. I shall try to give such guidance.

[27] I expect that the Tenant is mostly interested in having restored the benefits that he previously enjoyed. A rent abatement is a second-class solution. He really does not want to have to arrange off-site parking or off-site storage, but he will, if he has to.

[28] I propose to make certain suggestions that would, in part, bring the Landlord into compliance, and only if these things cannot be worked out will I consider abatements.

[29] The Landlord should reconsider its willingness to allow the Tenant the use of the parking space. All it apparently needs to do is remove the shrubs. If it is willing to do that, then the parking issue can be resolved without any abatement.

[30] I understand that the basement door now locks, which creates a level of security not that different from what previously existed. If the Landlord were to provide the Tenant with a key, and designate a space in the basement for storage, similar in size to what was previously used, then this would go a long way to resolving that issue and no abatement would be necessary.

[31] The Landlord may consider whether it wishes to move the door back to its original position. If it does not do so, then a rent abatement is appropriate to compensate the Tenant for the loss of square footage. I do not propose to be

purely mechanical or mathematical, because that is not the way residential tenancies are priced. I take into consideration that the Tenant did not use the lost space for much other than for coats and boots. Although that space represents about 18% of the total, I would ascribe a lesser value to it. The abatement for the loss of that space is more appropriately valued at 10% of the total rent, which I would round down to $60.00 per month. The Landlord has the option of deciding whether to restore the previous door, or absorb the abatement.

[32] I will retain jurisdiction and defer issuing a final order until the parties have had an opportunity to work with these directions. I would ask for a written report from the parties within 30 days of the date of this order, and if necessary we can reconvene the hearing to consider what further order is appropriate. My actual order will not issue until the parties have had a chance to find a solution, and have reported back to the court.

[33] Any such report may be by letter or email, addressed to the court, referencing this court file, and must be copied to the other party.

## ADDENDUM TO REASONS AND ORDER

[1] In my decision dated September 22, 2016, I left certain issues open for the parties to work out. They have since reported back to me.

**Parking space**

[2] I wrote that the “Landlord should reconsider its willingness to allow the Tenant the use of the parking space. All it apparently needs to do is remove the

shrubs. If it is willing to do that, then the parking issue can be resolved without any abatement."

[3] My understanding is that an alternate parking space has been found and is satisfactory to both parties.

**Basement storage**

[4] I wrote that "if the Landlord were to provide the Tenant with a key, and designate a space in the basement for storage, similar in size to what was previously used, then this would go a long way to resolving that issue and no abatement would be necessary."

[5] It appears that the Landlord has created a 10 X 16 foot area in the basement. If it has not already done so, the Landlord should partition the space at its own expense in such a way that allows it to be locked with a padlock, to provide additional security to match or exceed what the Tenant enjoyed when the entry to the basement was within his unit. If the main basement door will continue to be locked, obviously the Tenant should have a key. I would not stipulate particular hours where access to this space is available, as there is no reason to expect that people who need to access the basement would do so at odd hours, except possibly in an emergency. Moreover, they would not be entering the Tenant's apartment space as they were before the door to his unit was removed.

**Entry door to residential space**

[6] I gave the Landlord the option of abating the Tenant's rent by $60.00 to make up for the loss of space when the entry door was moved. The Landlord has opted for this solution.

[7] Although the Tenant still argues for the return to the prior arrangement, I am not prepared to change what I ordered earlier.

[8] The Tenant also argues that his rent should be guaranteed for up to five years, to compensate for the legal costs he has incurred, as well as for the stress he has endured since this dispute began.

[9] While I am sympathetic to the Tenant, I do not believe I have the jurisdiction to freeze his rent. I would point out that any rental increase would have to be done legally, and an increase that appears retaliatory would not be permitted to stand by a Residential Tenancies Officer. Also, since this is a year to year tenancy, any notice of a rental increase must be given four months before the anniversary date. The earliest such a notice can now be given would be in 2017, for 2018

[10] In the result, the Tenant's appeal is allowed, and the Order of the Director of Residential Tenancies dated July 14, 2016, is varied to provide as follows:

a. The written lease dated May 1, 2015 (effective January 1, 2015) is confirmed, subject to the changes made by this decision.

b. The Tenant is entitled to a parking space as an incident of his tenancy.

c. The Tenant is entitled to a partitioned, lockable (by padlock) 10 X 16 foot storage space in the basement, plus a key to the basement door.

d. The rent of $620.00 per month is reduced by $60.00, to $560.00, to compensate for the loss of space when his entry door was relocated.

**Eric K. Slone, Adjudicator**