IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Brown v. Cornerstone Developments Ltd*., 2018 NSSM 37

Claim No: SCCH 478272

BETWEEN:

SHAWN C. BROWN

Appellant/ Tenant

-and –

CORNERSTONE DEVELOPMENTS LTD.

Respondent/ Landlord

Shawn C. Brown – Self-Represented

Michael Lawen for the Landlord – Self-Represented

Editorial Note: The electronic version of this judgment has been edited for grammar, punctuation and like errors, and addresses and phone numbers have been removed.

DECISION

(1) This is an appeal of a Decision and Order of the Director of Residential Tenancies rendered by Residential Tenancies Officer, Sheila Briand, dated July 5, 2018. The Tenant sought a substantial abatement of rent. The Landlord countered seeking eviction. In her decision, Ms. Briand ordered vacant possession of the premises and directed the Tenant to pay arrears of rent less the security deposit. Both parties appeal alleging various errors. Having considered all of the evidence, I made a number of findings and varied the original order.

(2) An appeal from the decision of a Residential Tenancies Officer is a *de novo* hearing based on the evidence presented before the Small Claims Court Adjudicator. The evidence presented usually consists of that presented to the Residential Tenancies Officer (in whole or in part) and any additional evidence the parties seek to adduce. It is

not necessary to address the specific grounds of appeal in the course of this decision as the evidence and arguments are heard fresh by me.

Background

(3) The Tenant, Shawn Brown, moved into the premises on July 29, 2016. At the time, the construction of the apartment was not completed. Indeed, an occupancy permit had not yet been issued until either August 11, 2016 or August 29, 2016. The tenant owns pets which, while permitted, have been problematic and messy from the landlord's perspective. The landlord also alleges Ms. Brown has been unreasonable claiming rights to a specific parking space due to her disability. (Ms. Brown uses a walker.) Ms. Brown alleges the Landlord has violated the *Human Rights Act*. The Landlord also converted the rent payment from post-dated cheques to automatic debit from her bank account. Apparently, this was not authorized by Ms. Brown. It is not clear how her bank authorized such a change in the first place. The Landlord alleges his bank advised he had no choice but to make such a switch. I have addressed this issue below.

Evidence in General

(4) The relationship between the parties has broken down to a point where it is irreparable. Each has been unreasonable and, at times, considerably so. As a result, their oral evidence and in the case of Ms. Brown a lengthy written statement, is replete with exaggeration and hyperbole. I do not accept either party's oral evidence on its own unless both parties acknowledge it or it is against their respective interests.

(5) Ms. Brown has submitted letters from her previous landlords regarding her rent payment history. However, she has admitted adjusting her rent on her own accord during this tenancy. She also provided an advertisement to show the place for rent following the date given from eviction. The rent is slightly higher. All of that documentary evidence is irrelevant.

(6) The landlord has submitted letters and e-mails from its employees which are unsworn, despite being described as "affidavits". Much of the statements purport to be based on physical observation. Clearly, the observations of these witnesses are relevant and would have been beneficial had the witnesses attended court to give evidence and answer questions under cross-examination or directly from me. While admissible under the *Residential Tenancies Act*, such statements carry very little weight.

(7) I accept the photocopies of the Occupancy Permits as true copies and the Nova Scotia Power Bill as evidence. The "Pre-Authorized Debits" statement is relevant and admitted.

(8) For any transgression alleged by the Landlord, Ms. Brown seeks substantial abatements of rent rather than directions by the Residential Tenancies Officers or this Court. Some clearly would attract abatement, most of them would not. Notwithstanding my findings regarding her evidence, Ms. Brown impressed me as articulate, intelligent

and capable of thorough research. Her decision not to seek any directed action by the Landlord was not an oversight.

Findings and Disposition

Occupancy Permit

(9) Subsection 1.4.1.1(7) of the *Nova Scotia Building Code Regulations* requires an occupancy permit to be issued before any building or part thereof is occupied. There are copies of occupancy permits in evidence, one effective August 11, 2016 and the other August 29, 2016. Either way, both were issued after Ms. Brown moved into the premises.

(10) Section 9, Statutory Condition 1of the *Residential Tenancies Act* requires the Landlord to comply with any statutory enactment or law "respecting standards of health, safety or housing." I find the Landlord allowed the Tenant to live in the premises prior to the issuance of an occupancy permit, contrary to the *Nova Scotia Building Code Regulations*. That provision is a law respecting standards of both safety and housing.

(11) The Landlord was in breach of Statutory Condition 1 from July 29, 2016 until the occupancy permit(s) were issued. I allow an abatement of rent for August 2016, namely $1350, to be applied against the rent due.

Nova Scotia Power Bill

(12) The Landlord seeks reimbursement for power used by the Tenant in August 2016. She testified that she originally tried to change it over to her name but she was denied the opportunity since the occupancy permit was not issued. The bill in evidence shows power charges including the billing period from October 24 to December 20, 2016, several months after she moved in and the occupancy permits were issued. I allow the Landlord $331.94 to be set off against the amount awarded to the Tenant.

Access to Bank Account

(13) Both parties acknowledge the Landlord switched the rent payment method from post-dated cheques to automatic debit. Based on her text messages in evidence, the concern it seems to cause for Ms. Brown is that it is automatically debited on the first day of the month. Thus, she has no ability to cover any shortfall which may happen in the event of late deposit of funds by her to cover her rent.

(14) Obviously, there are advantages to landlords and, indeed, many tenants, for automatic withdrawal of rent payments. This latter process, if not the norm, is certainly widely used by people for regular periodic bills. For the payors, in this case the tenants, it can be convenient. The landlords know to expect payment regularly. There are no cheques to write, count, deposit or otherwise address. However, the decision of which payment method to use must be a mutual decision.

(15) The decision to set up a party for any payment method must be agreed to at the signing of the lease or by subsequent agreement. I find it concerning that the Landlord saw fit to change the payment method unilaterally to one that allows automatic and continuing access to the account.

(16) I have only Mr. Lawen's *viva voce* evidence that his bank required such a switch, and that he automatically did so. I do not accept his evidence. Banks require access to a customer's account to be authorized by the customer. It is not automatic. It is presumptuous to assume any bank account holder would agree to on-going payments. Banks are subject to strict laws and policies regarding such conduct.

(17) Mr. Lawen indicated this was done to address rent payments of over 100 tenants. Thus, the problem may be more widespread. **The practice of access to tenants' bank accounts by the Landlord without consent must cease immediately.**

(18) Ms. Brown seeks a reimbursement. I am not satisfied she suffered any loss. Her account was overdrawn as a result of her failure to have sufficient funds, whether it was withdrawn at the time or later. She has made payments adjusting rent for NSF charges incurred by her, without agreement. She makes the payment by e-mail, a method not authorized by the lease. I order no further compensation under this head.

Bank Charges Adjustment

(19) The Tenant shall restore any adjustments for banking charges made by her to the Landlord. I find this sum to be $136.00 for July 2018, which shall be set off against her abatement.

Work Not Completed

(20) I find there was work not completed which has infringed upon Ms. Brown's enjoyment of the premises. I allow $250.00 abatement.

Parking

(21) Ms. Brown alleges the space nearest her unit is for her access only as she requires an assigned space due to her disability. The lease does not provide for an assigned space. Each tenant may park in any space available. Ms. Brown claims the space nearest the front door belongs to her. She has complained to the landlord and other tenants about other tenants using it, including those who are moving into the building. Mr. Lawen argues that while Ms. Brown frequently uses the spot, it is not exclusively for her use.

(22) At the time the tenancy commenced, Ms. Brown asked for and eventually received an access ramp to her unit. While it would have been a reasonable and appropriate request, there is no evidence that she discussed having her own parking space with the Landlord, let alone their being agreement to it. Had any representative of the Landlord agreed to that form of accommodation, they should have been called to give evidence. I find that at all times, Ms. Brown knew she did not have an assigned

space.

(23) Ms. Brown alleges the Landlord has failed to comply with the *Human Rights Act*. There is no evidence before me that there was a failure to comply with that legislation. There is a duty on a landlord to accommodate a person with a physical disability to their residence provided under that legislation. There is currently an access ramp in place. The issue to determine is if that is sufficient, and if not, must it include a designated space closest to the building?

(24) While the Small Claims Court must consider the provisions of the *Human Rights Act* in performing its duties, it owes the Human Rights Commission curial deference to enforce the provisions of its home statute and to determine the practical application on issues such as this.

(25) I find Ms. Brown did not file a complaint about the Landlord to the Human Rights Commission. For the purposes of this matter, I find she did not ever intend to pursue a complaint. Furthermore, as noted she did not raise the issue at the beginning of the tenancy.

(26) Had the Human Rights Commission found in her favour or, had Ms. Brown raised the issue at the time she signed the lease, the issue would have certainly warranted more in depth consideration by this Court. Indeed, they were not considered by Ms. Brown. She simply called the parking space her own.

(27) I know of no principle in law which authorizes a tenant to unilaterally assert rights to a specific parking spot which has always been and remains undesignated by the Landlord.

(28) The abatement is denied.

<u>Ladder and Lamp</u>

(29) I do not find the evidence is sufficient to establish the loss of a ladder or a lamp. If I had, I do not find the evidence sufficient to award $200. I deny this claim.

Breach of Good Behaviour Clause

(30) Section 9(1), Statutory Condition 3 of the *Residential Tenancies Act* states as follows:

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.

(31) In many cases, a breach of the Statutory Condition requiring the Tenant's good behaviour is accompanied by a claim for vacant possession.

(32) Ms. Brown has two pets, a puppy and a cat. The Landlord alleges the smell and dirt from the pets is strong and unhealthy. According to Mr. Lawen, the employees

refuse to work there. When they come by to work, the premises are messy and everything is in the way, making it difficult, if not impossible to work despite their giving notice. They have refused to complete work in the past

(33) Furthermore, there is clear evidence Ms. Brown seeks to set her own rules. She has claimed an assigned parking space, which has never been assigned. She has adjusted her rent payments unilaterally.

(34) I find both parties have said and done other things which are unreasonable and troublesome.

(35) No one action is sufficient to warrant an eviction. However, I find when considered together, the actions of the Tenant provide sufficient grounds of a breach of Statutory Condition 3 to justify an eviction. Had it only been one or two issues, I would have been prepared to make an order pursuant to s. 17A(a) and (b) to ensure her compliance with the *Residential Tenancies Act*.

(36) I order the Tenant to provide vacant possession of the premises on or before 11:59 pm on November 30, 2018.

Summary

(37) The Tenant shall provide vacant possession of the premises on or before 11:59 pm on November 30, 2018.

(38) The Tenant shall be entitled to an abatement of rent as follows:

Abatement:

August 2016 Rent	$1350.00
Work not completed	$ 250.00
Subtotal	$1600.00

Set Off:

NS Power Bill:	$331.94
July 2018 Adjustment:	$136.00
Subtotal	$467.94

Therefore, the tenant is entitled to an abatement of rent of $1132.06 to be applied against her rent due on September 1, 2018. The rent for that month shall be $217.94.

(39) All rent owing for the balance of the tenancy shall be paid by post dated cheque to be provided by the Tenant to the Landlord forthwith, unless the parties agree in writing to a different method of payment.

(40) The provisions of the lease and the *Residential Tenancies Act* shall continue to apply. The Tenant remains liable for any damage to the premises upon the expiration of the tenancy.

(41) The Landlord may apply the security deposit against any arrears occurring before the end of the tenancy.

(42) An order shall be issued accordingly.

Dated at Halifax, NS,
on August 9, 2018;

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Gregg W. Knudsen, Adjudicator

Original: Court File
Copy: Landlord(s)
Copy: Tenant(s)