Claim No: SCT - 454900

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
ON APPEAL FROM AN ORDER OF THE DIRECTOR OF RESIDENTIAL TENANCIES
Citation: *Millman v. McRiner*, 2018 NSSM 101

BETWEEN:

CHRISTIAN MILLMAN and MICHELLE MILLMAN

Tenants (Appellants)

- and -

SCOTT McRINER

Landlord (Respondent)

CLARIFICATION OF ORDER

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Truro, Nova Scotia on December 10, 2018

Decision rendered on December 12, 2018

APPEARANCES

For the Tenants self-represented

For the Landlord self-represented

CLARIFICATION OF ORDER

[1] On March 1, 2017, Adjudicator Peter Lederman QC made an order in response to an appeal by the Appellants from a previous order of Residential Tenancies. The complete text of that order is as follows:

> "I have considered all of the evidence presented in oral and documentary form. There is no doubt that Mr. Millman acknowledged that three months rent was owing for the apartment in question. I don't see any convincing evidence that there was an agreement providing that Mr. Millman was to be compensated for labour expended on behalf of the landlord
>
> Mr. Millman has provided receipts indicating that he put $412.04 worth of oil in the tank and I except this as a proper deduction from the amount owed. I agree with the appellant that the security deposit was $450.00, not $400.00. Under the circumstances, I find that the appellant's Owe $1,255.67, made up as follows: three months rent at $2,550.00 less damage deposit of $450.00, late fee overpayment of $99.00, materials at $133.29, oil at $412.04 and two $100.00 payments made to date. The Respondent is therefore awarded $1,255.67. I am not convinced that the appellants should be compensated in money for items left on the premises, but they are at liberty to retrieve them from the Respondent. I decline to award costs, either at the level of the Tenancies Board or in this court."

[2] This order was made approximately one and a half years after the tenancy had ended in October 2015. This time delay is significant, as I will later explain.

[3] The controversy concerns the so-called "items left on the premises." Adjudicator Lederman appears to have made the assumption that those items would be made available to be retrieved by the former

Tenants[11]. As it turned out, this assumption appears to have been mostly incorrect, giving rise to the controversy that brings this matter back into court.

[4] I should mention at this point that Adjudicator Lederman would have been seized of this matter, and any application for a variation or clarification would in the normal course have come before him. Unfortunately, his appointment as an Adjudicator of this court has lapsed, and as such he is not available to consider this matter at this time. He may yet be reappointed, but at this time this matter can only be dealt with by myself as another adjudicator of the court. The problem that this raises is not so much jurisdictional, but rather the fact that I can only speculate to a certain extent on what Adjudicator Lederman might have done had he been made aware of facts that he did not have before him when he made his original order.

[5] In the days and weeks following that order, Mr. Millman sought to retrieve three items specifically purchased, or so he says, for this property. In particular, there was a lawnmower, a whippersnipper and an air conditioning unit, which Mr. Millman assumed he would be able to pick up. The whippersnipper and the air conditioning unit were simply unavailable, because as explained by the Landlord, it appears that a subsequent tenant simply took them and there was no way to get them back. As for the lawnmower, there was an old and apparently non-functional one on the premises, but Mr. Millman insists that this was not

[1] 1For sake of the narrative, I will refer to the Appellants as the “Tenants” or Mr. And Ms. Millman, respectively, and to the Respondent as the “Landlord.”

the one he had left behind. He declined to take it, with the result that he was unable to retrieve those items that he believed he was entitled to under Adjudicator Lederman's order.

[6] It was at that time that Mr. Millman made the unilateral decision to deduct what he believed to be the value of these items from the money that he was prepared to pay on the judgment. He valued the items in question at $348.74.

These items, he said, had been bought specifically for this tenancy and he produced receipts alleged to be for the lawnmower and whippersnipper, while placing a nominal value on the air conditioning unit which had apparently been bought used.

[7] In the meantime, the Landlord had taken out an execution order for the full amount of the order and had instructed the office of the Sheriff to collect this amount from Mr. and Ms. Millman. Over the next short while, Mr. Millman made payments toward the judgment, but held back $348.74 on account of the items that he had been unable to retrieve. In other words, he assumed that he should be entitled to the cash value of the items, in lieu of the items being returned. He also assumed that the cash value should be what he determined it to be.

[8] In retrospect, the only proper course of action would have been for Mr. Millman to seek a clarification from Adjudicator Lederman back in 2017, to either endorse his approach of deducting the supposed value of these items, or to clarify that this was not an appropriate action on his

part. By taking the course he did, he ran the risk that the judgment would be considered not fully satisfied.

[9] The record is clear that at no time did the Landlord accept that he ought to compensate Mr. Millman for these items, and at no time did he indicate that he was satisfied with that amount, or indeed any amount, being deducted from the judgement. His instructions to the Sheriff were clear: collect the whole amount.

[10] About a year later, the Sheriff's office had apparently not pursued collection any further, and the registration of the personal property security document came up for renewal. The landlord renewed it, with the result that the file became active again and the Sheriff's office resumed its collection effort. In or about August 2018, Mr. and Ms. Millman were surprised when money began to be garnisheed from one of their bank accounts. Even though the ostensible amount owing was only $348.74, the Sheriff ended up collecting $1,684.75. This discrepancy can be explained by the fact that there were multiple layers of fees added to the judgment based on the execution efforts. Also, there was interest on the original judgment continuing to accrue.

[11] Mr. Millman then wrote to the court on September 28, 2018 asking for a clarification of Adjudicator Lederman's order, in which he objects to this further collection effort by the Sheriff, given that he believes he was justified in withholding the monies that he did. If his deductions were proper it meant that there was in fact nothing owing on the judgment at the time the Sheriff resumed its collection efforts.

[12] The positions of the parties can be summarized as follows. Mr. Millman contends that if Adjudicator Lederman had known that the items were not available to be retrieved, he would have allowed a further deduction from the amounts otherwise awarded to the Landlord, representing the value of the missing items.

[13] The Landlord takes the position that Adjudicator Lederman ascribed no financial value to these items, as evidenced by his statement "I am not convinced that the Appellants should be compensated in money for items left on the premises."

[14] In other words, each of the parties takes Adjudicator Lederman's words and selectively chooses the interpretation that favours their position.

[15] In my opinion, it is clear that Adjudicator Lederman did not intend to force the Landlord to “buy” anything left behind by the Tenants. I would read into his wording that the Tenants were at liberty to retrieve any of their items left behind “if available.” On the record as I interpret it, I find it hard to believe that he would have held the Landlord responsible to safeguard these items for over a year and through successive tenancies. He may well have concluded that the Tenants had abandoned them.

[16] I conclude that it is more likely than not that, had Adjudicator Lederman been informed after making his order that some of the Tenants’ items had gone missing, he would not have changed his basic

order. He might well have noted that the lapse of time between the end of the tenancy and the hearing before him was long and carried with it the risk that these items would go missing.

[17] By seeking to obtain a cash value for these items, the Tenants are seeking a fundamental change in the order of March 1, 2017, which they cannot do. I also consider that the unilateral step by the Tenants to withhold moneys from the judgment, without a clear order authorizing them to do so, was an inherently risky manoeuver. They ought to have sought clarification from Adjudicator Lederman while the matter was still relatively fresh, and before further harm could be done.

[18] In the result, I would not change the order, nor would I seek to opine on any of the actions taken by the Sheriff to collect moneys on the original judgment. That is outside my jurisdiction.

Eric K. Slone, Adjudicator