SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Moser v. Van Iderstine*, 2019 NSSM 65

Date: 2019-12-02
Docket: SCCH 491510

ON APPEAL FROM AN ORDER OF THE DIRECTOR OF RESIDENTIAL TENANCIES

Between:

Cathy Moser

Appellant (Landlord)

- and -

Jodi M. Van Iderstine

Respondent (Tenant)

REASONS FOR DECISION AND ORDER

Adjudicator: Eric K. Slone

Heard: In Halifax, Nova Scotia on November 26, 2019

Appearances: For the Landlord - self-represented

For the Tenant - self-represented

BY THE COURT:

[1] This is an appeal by the Landlord from a decision of the Director of Residential Tenancies dated August 22, 2019, which was issued following a hearing August 8, 2019.

[2] The said Order required the Landlord to pay to the Tenant the sum of $500.00 as a reimbursement for food (mostly frozen) that the Tenant had left in the premises and which the Landlord took upon herself to dispose of.

[3] That $500.00 was only one of several items of relief that the Tenant had sought at Residential Tenancies following a failed landlord/tenant relationship. While the Landlord might have counted herself lucky to have gotten off this easily, still she appealed.

[4] The Tenant did not appeal those aspects of the order that dismissed her claims, though she acknowledged at the hearing before me that she did believe that the Residential Tenancy Officer was incorrect, and she regretted not having appealed the order. As such, I had no jurisdiction to award the Tenant any relief, though as these reasons will make clear, she might well have succeeded on such an appeal.

[5] The parties both admit that the amount of money involved in this appeal is small, but they both see it as a matter of principle.

[6] The parties signed a written month to month lease on May 26, 2019, with occupancy supposed to begin on June 1, 2019. Rent was $1,195.00 per month. A security deposit of one half of that was also supposed to be paid.

[7] The Tenant is a recipient of social assistance, and Community Services had some role to play in the mechanics of rent payment, which was not fully explained to me. This did create a potential issue. Prior to the intended occupancy date, the sum of $1,195.00 was e-transferred to the Landlord. She chose to allocate it one-half to the security deposit and the other half to a half-month's rent. This only becomes significant when I come to consider whether the Tenant was legally in arrears of rent from the outset of the tenancy.

[8] The Tenant says that she was not aware that the money had been allocated in this fashion, and I believe her. She believed that she had paid rent for the entire month of June.

[9] To make a very long story short, the Tenant never moved in because the unit was not ready for occupancy. A number of repairs were needed, including making the place lockable and secure. There was also an issue of rodents, specifically rats, which were infesting the place. In the meantime, the Tenant continued to reside in a woman's shelter.

[10] The Tenant did move some of her possessions into the premises. Specifically, she had some pet birds which were brought in. She had personal possessions (still packed) placed inside. And she had an amount of food brought

in to be placed in the fridge, most of which was frozen meat filling the fridge freezer compartment.

[11] There were other issues which kept the Tenant from taking occupancy, including what she described as an overpowering smell of urine and feces from multiple dogs in the apartment upstairs. Those dogs were also excessively noisy.

[12] During the relevant times, there was a serious breakdown in communication. Neither side is entirely without blame, but I place greater blame on the Landlord who had a cell phone number for the Tenant which she seemed unwilling to use.

[13] During the early part of June, the parties seemed to be at cross-purposes. The Tenant believed that the place was being worked on to make it habitable. The Landlord was waiting for the Tenant to move in and pay further rent, which she says would have given her the money to make improvements.

[14] On June 17, 2019, the Landlord filled out a Form D - Notice to Quit which she simply left somewhere in the apartment. This document claimed that the rent was 15 days overdue as of June 16 and purported to terminate the tenancy as of June 30, 2019. There are several things wrong with this Notice.

[15] First of all, it was never properly served. A Landlord is obliged by s.15(2) of the *Residential Tenancies Act* to serve a Tenant in the following manner:

> 15 (2) Service of all documents, except documents relating to an application to the Director under Section 13 and documents relating to an appeal to the Small Claims Court, must be served by a landlord on a tenant by
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> (a) personal service on the tenant;
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> (b) personal service on an adult who lives with the tenant;
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> (c) leaving a copy in the tenant's mailbox or mail slot at the residential premises if the tenant currently resides there;
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> (d) sending the documents to the tenant by prepaid registered mail, prepaid express post or prepaid courier service to
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> (i) the address of the residential premises if the tenant resides there, or
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> (ii) a forwarding civic address provided by the tenant; or

(e) sending it electronically if

(i) it is provided in the same or substantially the same form as if written,

(ii) it is capable of being retained by the tenant so as to be usable for subsequent reference,

(iii) the tenant has provided, in the lease, an electronic address to receive documents, and

(iv) it is sent to the electronic address referred to in subclause (iii).

[16] Simply leaving a document in the premises, especially where it is questionable that the tenant is currently residing therein, is not proper service. As such, for that reason alone I find that the Form D was a nullity.

[17] Secondly, and more importantly, I do not believe that it can properly be said that the Tenant was in arrears of rent as of June 1. The Landlord unilaterally decided to treat the first month's rent as only half a month's rent, with the other half being a security deposit. As such, at worst the Tenant fell into arrears as of June 15, i.e. when the second half of the month began. A Tenant must be in arrears for 15 days to trigger the Landlord's right to terminate. This Tenant was not in arrears for 15 days. For that second reason I believe this Form D was legally ineffective.

[18] The Landlord also knew, or ought to have known, that the premises were unfit for occupancy. In fact, although this did not happen until early July, the Tenant called for a building inspection by the municipality, which made an order to remedy the premises under HRM Bylaw M-200 Respecting Residential Occupancies. That order listed a number of significant deficiencies that the Landlord was obliged to remedy.

[19] At the hearing before me, the Landlord made light of these needed repairs, and appeared to believe that she did not have to perform them unless she was receiving rent. If that is her belief, she is mistaken. The more accurate statement is that the Tenant had no obligation to pay rent for premises that were not habitable.

[20] As time marched on, the Landlord evidently believed that the Tenant was simply abandoning the tenancy. This was an assumption that she had no right to make. As of July 1, 2019, she simply installed another tenant, without contacting

the Tenant to find out where matters stood. In my opinion, she did not have grounds to terminate the tenancy with the Tenant and her act of renting to someone else was simply unlawful. Legally, the Tenant still had a valid lease.

[21] As such, when the Landlord went into the premises and removed the Tenant's belongings, including her food, she was acting unlawfully.

[22] It could have been much worse, in the sense that the Landlord dealt reasonably with the birds and the Tenant's other possessions, but she had no reason to take all of the food and dispose of it as she did.

[23] The Tenant explained that she has (three?) service dogs for whom she makes special food, and the food in the freezer consisted of meat for the dogs that she estimated had cost her $500.00.

[24] There is no valid argument for why the Tenant should have to absorb that loss. Furthermore, I do not believe that the Landlord made a reasonable effort to contact the Tenant to direct where the frozen food should be taken. As mentioned, the Tenant has a cell phone which she says she keeps on her person at all times. The Landlord preferred to attempt communication through a mutual friend rather than simply calling the Tenant. I need not get into what happened with that communication. The most charitable view (from the Landlord's perspective) is that there was a misunderstanding. Nevertheless, I find that the Landlord had no basis to dispose of the Tenant's food and must shoulder the loss.

[25] The Landlord should count herself fortunate that the Tenant did not appeal other aspects of the Residential Tenancies decision, as there was convincing evidence to the effect that the premises were never habitable and, as such, no rent ought to have been payable for June 2019, nor for any period thereafter as the Tenant was effectively evicted (improperly) and denied any further right of occupancy.

ORDER

[26] The order of the Director of Residential Tenancies dated August 22, 2019 is accordingly confirmed, and the Landlord is ordered to pay the Tenant $500.00.

Eric K. Slone, Adjudicator