

2018

Claim No. 479778

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Powell v. MacDonald*, 2019 NSSM 71

BETWEEN:

MARLENE POWELL

APPELLANT (CLAIMANT)

and

ERIN B. MACDONALD

RESPONDENT (DEFENDANT)

REASONS FOR DECISION

BEFORE: A. Robert Sampson, Q.C., Adjudicator

DATE OF HEARING: Hearing held at Sydney, Nova Scotia on October 24, 2018 and November 13, 2018

DECISION RENDERED: March 25, 2019

APPEARANCES:

For the Appellant: Self-Represented - Marlene Powell

Witness - Elizabeth Lewis

For the Respondent: Self-Represented - Erin B. MacDonald

Witness - Chris MacDonald

BY THE COURT:

1. This appeal arises from a Decision/Order made under the authority of the Director of the Residential Tenancies pursuant to the *Residential Tenancies Act* (Nova Scotia) (“the *Act*”), made the 28th day of August 2018 and confirmed as file no. 2018-02776. The Notice of Appeal was filed on the 30th day of August 2018 claiming the Appellant, Ms. Powell, was not present at the Residential Tenancies hearing that took place on August 27, 2018 and she is requesting the Court, under this appeal, to review the matters at issue and render a new decision. The Director’s decision which formed part of the court record was given in writing by Kim Sinclair, Residential Tenancy Officer, on August 28, 2018.

2. In summary, the Director's decision found for the Respondent Landlord (Claimant by Counterclaim), Ms. MacDonald. The decision confirmed that the Claimant, Ms. Powell, was not present at the Residential Tenancies hearing. Ms. Powell advanced a claim for repairs, relief from rent owing, return of security deposit, and payment for moving expenses incurred. In response the Landlord, Ms. MacDonald, claimed that the Lease arrangement had not been properly terminated and that the Tenant had abandoned her one-year lease after one month and therefore claimed payment of the August rent in amount of \$1200.00 as well as the right to keep the security deposit in the amount of \$600.00 as payment towards rental arrears. The Director found for the Landlord.

3. As is the practice of this adjudicator, before proceeding the Court explained to the parties the normal process and order for how this hearing was to take place. The Appellant, Ms. Powell, was made aware that she held the burden of essentially proving her original application to the Director for relief and in turn the Respondent held the burden of providing evidence relative to her Counterclaim. Each of the parties were sworn in at the outset and advised by the Court that anything they told the Court would be considered evidence under oath.

SUMMARY OF EVIDENCE

4. The Court wishes to acknowledge at the outset of this decision that this matter spanned over two lengthy hearing sessions and there were multiple and extensive exhibits tendered (10 exhibits) from both sides together with the materials from the Director's file. In rendering this decision reference will be paid to various exhibit documents but for certain not all. The Court confirms, in addition to its notes taken from the oral evidence provided by each of the parties and their witness at each of the hearing dates, it has also reviewed each of the exhibits tendered and it is on that basis that this decision is made.

5. The Appellant confirmed that in June 2018 she relocated from Stephenville, Newfoundland/Labrador where she and her two children had been residing. Ms. Powell had been attending school. She confirmed that prior to arriving in Cape Breton on or about June 27, 2018 she had secured a rental unit online on Ashby Road in Sydney. She confirmed that upon attending this location on June 27th she found that it was not suitable. She confirmed at this point she was towing a U-Haul trailer with her belongings and had nowhere to go. She confirmed she was staying in a hotel and found the Respondent's rental unit on Kijiji and spoke with Chris MacDonald, husband of the Respondent, to make arrangements to view the rental unit situate at 25 Fraser Ave, Sydney Mines, Unit #2 ("Unit"). Arrangements were

made to meet on June 29th at 6 pm at which time the Appellant together with her two children (her son 4 years old and her daughter 11 years old) viewed the unit for inspection. The Appellant testified that during this visit she asked Mr. MacDonald whether there were any problems with rodents and was told no. She also asked questions about neighborhood, crime issues (if any) and further had taken some photos of the unit. The evidence further confirms that the Landlord was nearing the final stages of completing some renovations to the unit, notably the kitchen counter and bathroom area of the unit.

6. The Director's file materials from the evidence from the initial application contained a copy of a Standard Form Lease ("Lease") between the parties relating to the unit having been executed (effective) on July 1st, 2018. The term of the Lease was for one (1) year at a monthly rent of \$1200. In addition it provided for the payment of a damage deposit in amount of \$600.00 which the parties confirmed had been paid. The Lease also contained a Schedule "A" which set forth the statutory conditions under the *Act* as well as three pages of "rules and regulations" relating to various terms and conditions of tenancy. Each of these pages were signed or initialed by the Tenant. The evidence confirmed that the Landlord exchanged texts with Ms. Powell confirming she would be checking references and hoped to let her know their decision the following day. The Tenant, Ms. Powell, together with her two children and pet dog began moving into the unit on June 30, 2018.

7. The Appellant, Ms. Powell, confirmed that after she moved in, the following Friday (July 6th) she was required to travel back to Newfoundland with her children. The unit was left vacant however the Tenant acknowledged that she gave permission to Mr. MacDonald to enter the unit for purposes of completing the renovations that were under way. She testified that upon her return on the following Tuesday evening, July 10th, she found there were spiders in and around her unit, including the entrance and porch area. She said she found a window on the ground level unit open. She testified that she sent a text to the Landlord around 9 pm asking that she/he call her. The Landlord testified that he and his family were in Ingonish at the time, approximately two hours away. Evidence confirmed that the Landlord packed up his family and returned to Sydney Mines where he found that a window, approximately seven feet above ground had been left open and he closed it.

8. On July 12/13 the Tenant contacted the Landlord advising that the living condition was not working out and she wished to leave and be released from the Lease and have her deposit returned. The Landlord, through text messages,

confirmed her surprise but that she was free to leave if she felt unsafe but that she would be responsible for the continued rent until either the Tenant or the Landlord was able to locate a new tenant. This upset Ms. Powell. In further text messages exchanged the parties discussed Ms. Powell's need to provide formal Notice to Quit to the Landlord so they could proceed to advertise the unit for rent. I find from my review of the text exchanges up to this point in time it was very cordial and the Landlord was completely respectful of the Tenant's convenience and privacy insofar as wanting to access the unit to complete the renovations underway. Exhibit #2 confirmed a signed notice by Ms. Powell dated July 14, 2018 of an "Early Termination of Tenancy and Lease Agreement". In this notice she states that she believes she and her family and pet are at health risk. She sets forth her reasons as follows:

- infestation of silver fish, rodents, spiders
- weak infrastructure
- improper handling of poison (none approved containers)
- lack of repairs
- tin foil stuffed into crevasses to prevent rodents
- lack of insect control in main foyer where spider nest present.

This document also confirmed that she had made arrangements for a new apartment in Sydney and that she would be leaving the Unit no later than July 31, 2018.

9. The Appellant's evidence, as confirmed by records tendered from the District Health Authority, confirmed that she attended to see a doctor in the Emergency Department on July 12th. The medical information confirms a visit related to "a forearm injury after falling". In addition there was evidence from the District Health Authority (Emergency Crisis Service) that she attended to see someone on July 15th at approximately 2:35 pm. The Appellant's evidence was that she was extremely stressed over her apartment situation including what she believed to be the presence of rodents, spiders and infestation. Ms. Powell exhibited to the court a small bag which contained what appeared to be dead small spiders which she said represented the type of spiders that she was finding all over her unit, including the entrance.

10. The evidence was that as a result of Ms. Powell's visit to the Emergency Crisis Service she was referred to Transition House, a home for abused/battered women in Sydney and she moved into this residence with her children on July 15th although her furnishings and personal belongings remained in the unit. On this

same date (July 15th) there is a text exchange which suggests Ms. Powell was intending on taking her son to the Emergency Department as she felt he was ill, possibly from the condition of the apartment. In exchange the Landlord's evidence was that they had found an empty can of "Woods" insect repellent which would contain a very strong toxic known as deet and that Ms. Powell should advise the doctor if in fact this was repellent she herself had sprayed in any small area of the unit or porch which he believed she had. There were no reports associated with her son's visit for medical treatment.

11. Elizabeth Lewis provided evidence in support of Ms. Powell's position as to the state of the premises. She testified that she was in the same program as Ms. Powell in Stephenville. She said that she visited with Ms. Powell after her return from Newfoundland on July 12th. She testified that she noticed radiator pipes going through the floor and saw what she believed to be mouse droppings on the floor. She attempted to identify the same by picture but it was less than clear.

12. The Respondent, Ms. MacDonald, gave evidence. She reviewed all of the various works she and her husband had recently completed to the unit including painting, floor finishing, bathroom, and kitchen. It was acknowledged by all that some of these repairs were in the final stages of completion and promised to be done in coming weeks. The Tenant was aware of this. She testified that her husband had assisted the Tenant with moving in on June 30th and July 1st. She testified that in a text exchange she had with Ms. Powell on July 11th, the day after her return from Newfoundland, she stated she was moving out. She testified that up until this point their relationship was cordial between each other and there had been no issues or problems communicating between each other. She stated that the following day, July 12th, she spoke with Ms. Powell so that she was aware of her obligations under the Lease. She confirmed that from this point on a great deal of friction and accusations arose on the part of Ms. Powell. These related to efforts to contact different civic authorities including the police, Metro Planning/By-Law Inspector and so forth, all in effort to complain or have determined that the unit was not fit. It was also after this July 12th exchange that a host of complainants were being advanced, none of which were a problem before the Tenant indicated she wanted out and the Landlord reminded her of her lease obligations.

13. The Landlord tendered Exhibit #6 to the Court being copies of inspections they had secured from Caper Inspection (July 14th, 2018) as well as a "radon report" that had been carried out back in 2010. Having regard to the age of the structure these reports did not confirm any immediate concerns. In addition the Landlord engaged a pest control agency to complete an inspection for mouse and

insect infestation. The inspection was carried out on July 18th and confirmed “there was no signs of active infestation”. Finally on this front, the Tenant had advanced a complaint to the Municipality (CBRM) stating unhealthy premises. CBRM officials completed an inspection on July 27th and received the results on August 1st confirming there were no problems. Ms. MacDonald stated that she could not show or rent the apartment between July 20th and August 1st until the results of this inspection were concluded. She also testified that she and her family had resided in the lower unit of this building for approximately five years until 2017 and did not experience any problems with any type of infestations of insects or rodents.

14. Ms. MacDonald confirmed that immediately after receiving this last noted report she began advertising the apartment and showing it to potential tenants. She also testified that after Ms. Powell moved her remaining belongings out on July 31st, upon inspection they discovered that there had been a significant scratch of the hardwood flooring in one of the bedrooms. She believed it was caused by the Tenant having moved a piece of furniture. Both she and Mr. MacDonald had stated that these were not there when the Tenant moved in. Information confirms the cost of repair to this damage was tendered by way of two quotes, one for \$650.00 and a second for \$1335.00.

ANAYLSIS AND DECISION

15. The Court re-confirms that there were many photographs of the residence and specific unit tendered by both parties in addition to collateral documents of reports, text messages and related documents. All have been reviewed. I find from the photos that the property itself (external view), while an older home, appears to be in relatively good shape. I also find from the photos that the internal unit appears to have been in good condition and in many parts freshly re-done. I find that the Tenant was fully aware of the balance of renovations that were required to be completed and accepted the terms of lease under those conditions. I also find, largely from the email exchange, most of which were date-stamped, that the Landlord was both prudent and sensitive to the Tenant’s privacy as it related to his efforts to finalize the renovations.

16. As with many cases, much of the testimony presented boils down to “he said...she said”. The differences in memory recall arise for a variety of reasons and calls upon the Court to assess issues of credibility. Often, as I find here, the best way to determine conflicting evidence is to look to any collateral documents/evidence that may exist in and around the same timeframe as issues of a dispute may have arisen. What we do know from all of the evidence is that the unit

was inspected before occupancy. Although the Tenant and her family only resided there for several days before departing back to Newfoundland, there did not appear to be any issues. The evidence further confirms that this arrangement, at least on the part of the Tenant, was entered into quickly in late June as she had chosen to not rent the place she originally secured and was spending money on a hotel. I also find that the Tenant was not familiar with the extent of the area within the Municipality of Cape Breton and given the fact that she was intending on enrolling in a BACS program at Cape Breton University she most likely quickly realized Sydney Mines would not have been the closest residence to that institution. As noted above, she returned to the unit on July 10th and it was at that point her only concern was the fact that a window on ground level had been left open. I note in Exhibit #2 (Notice to Terminate) that the Tenant had signed on July 14th, she notes that at that point in time she had secured another apartment in Sydney. It is that same document she sets forth a variety of reasons for such notice, cloaked in overall concern for safety of her and her children's health. I also note, that matters between the Landlord and Tenant began to turn sour immediately after Ms. Powell and Ms. MacDonald exchanged text messages on July 11th and 12th when the issue of leaving first arose. Therefore from this I am left with whatever evidence may exist between July 11th and 14th that would provide any justification for the Tenant being released of her obligations under the Lease.

17. Again having regard to collateral evidence from third parties, I find from the evidence, the best is from the inspection reports that were prepared by independent third parties. I believe it is reasonable to assume that these individuals would have no reason to not state with accuracy what they found upon completing their inspection. I find with regard to all inspections, notably the Pest Control and CBRM inspection as well as the building inspection, that nothing was reported that in any way confirms the concerns expressed by the Tenant supporting justification for being relieved from her obligations under the Lease. I also note that the Respondent (and her husband) had resided in the lower unit of this property for approximately five years and indicated that at no time did they experience any of the concerns alleged by the Tenant.

18. I am mindful of the dead spiders exhibited to the court and have no doubt they were collected from somewhere on the rental property. The Landlord readily acknowledged that having regard to the climate in Cape Breton, the heat of the summer and so forth, no doubt there may have been spiders present in and around the external or porch section of the home. I further find that this would not be outside of the ordinary and it is reasonable to expect, from time to time during the summer months, that some presence of insects and the requirement to remove them

may be required. I do not find that there was anything out of the ordinary at this rental home. I also accept that the Tenant may well have a phobia regarding insects and rodents and the fact there may have been the presence of spiders may have increased her anxiety towards this concern. However, that in itself does not form, in my opinion, the basis for claiming that the unit was not fit to live in. As it relates to evidence of pictures suggesting there may have been presence of mice, I am not convinced and none were clear. I accept the Pest Control report to be sufficient evidence that these concerns or allegations were unfounded.

19. I find that for whatever reason, either prior to or immediately upon return from Newfoundland on July 10th, the Tenant formed the decision that she no longer wished to live in this unit situate in Sydney Mines. I find that after her exchange with the Landlord on July 11th and 12th and upon her learning that it would be her decision to leave or stay but that she would be responsible for any rental loss until a new tenant was found, things turned sour. I find in the days following, in spite of the Landlord's best efforts to listen and address any of her concerns, she was determined to find reasons to justify her actions so that she would not be exposed to any financial repercussions. The Landlord was firm in their position which clearly aggravated the situation even more.

20. From the Court's assessment of the demeanor of the Appellant there was little doubt that she was an anxious individual. She testified that she had endured some traumatic experience in her earlier life which may have contributed to her personality and anxiousness. Nevertheless, these problems are hers and not the Landlord's. The Landlord has a statutory obligation to "...keep the premises in a good state of repair and fit for habitation during the tenancy...and comply with laws regarding health, safety and housing". Based on all of the evidence I find that the Landlord, at all relevant times during the tenancy, "did not" breach her statutory requirement.

21. I further accept the evidence of the Respondent that she advanced her best efforts to mitigate potential loss once she received formal notice from the Tenant of her intention to vacate. I further find that as a result of these efforts she was able to secure a tenant for this unit commencing September 1, 2019. I further find, based on this, that the Landlord has suffered a loss of one month's rent (August, 2018) in the amount of \$1200.00. I order that the Tenant shall pay to the Landlord this amount.

22. I further accept the evidence of the Landlord/Respondent as it related to the damage to the hardwood floor in the unit caused by the Tenant together with the

two estimates submitted into these proceedings. In this regard I find for the Landlord and direct that the Tenant shall pay to the Landlord an additional amount of \$650.00, being the lower of the two estimates, to cover the cost of the floor repair. I further direct that the \$600.00 security deposit which the Tenant paid under the terms of the Lease shall be surrendered to the Landlord as part payment of this Floor damage.

23. Based on the foregoing the Court upholds the Director's original order as it relates to the Tenant's requirement to pay one month's rent (\$1200.00). Having regard to the passage of time and the fact that the unit was able to be re-rented for September 1st. 2018, the original Director's Order is revised to the extent that the security deposit amount (\$600.00) is no longer directed to be surrendered to cover off additional rent loss but shall be paid to the Landlord as part payment for damages caused to the unit by the Tenant.

24. It is hereby ordered that the Appellant's Appeal is hereby denied and the Tenant's cross-claim is revised, re-confirmed and accepted as follows:

i) That the Appellant/Tenant is ordered to pay to the Respondent/Landlord the following:

August rent	\$1,200.00
Damage to Floor	<u>\$650.00</u>
	\$1,850.00
Less:	
Damage Deposit	<u>-\$600.00</u>
Total:	\$1250.00

DATED at Sydney, Nova Scotia this 25th day of March, 2019.

A. ROBERT SAMPSON, Q.C.
Adjudicator