SMALL CLAIMS COURT OF NOVA SCOTIA
ON APPEAL FROM AN ORDER OF THE
DIRECTOR OF RESIDENTIAL TENANCIES
Citation: *Monaghan v. Boss*, 2021 NSSM 29

Date: 2021-07-22
Docket: SCCH 506597
Registry: Halifax

Between:

Samantha Monaghan

Appellant (Tenant)

- and -

Robert Boss and Jeanette Boss

Respondents (Landlords)

Adjudicator: Eric K. Slone

Heard: July 19, 2021 in Halifax, Nova Scotia via zoom

Appearances: For the Appellant,
Barry Mason QC, counsel

For the Respondent,
Michelle Boisvert, property manager

BY THE COURT:

[1] This is an appeal by the tenant from a decision of the Director of Residential Tenancies dated May 18, 2021, which decision terminated the tenancy at 3 Trailwood Place, Halifax, effective May 31, 2021, and ordered the tenant to pay to the landlords the net sum of $1,320.15.

[2] There were two applications before Residential Tenancies, which were to be heard together. In one of them, the tenant was seeking $900.00 of rent relief on the theory that she had been improperly required to pay water bills for the property. The landlord's application was for vacant possession and rent arrears.

[3] For reasons which were not explained, the tenant did not attend the Residential Tenancies telephone hearing on May 17, 2021, as a result of which the matter was essentially dealt with by default. This is not uncommon, in my experience, and does not matter ultimately because the hearing in Small Claims is *"de novo"* and both parties are free to advance the positions they could have taken before the Residential Tenancies Officer. But it does sometime mean that the parties have not previously heard the other parties' evidence and may not come to the appeal quite as well prepared for the evidence and argument that they will meet.

[4] The appeal was heard via zoom on July 19, 2021. The court heard the evidence of the tenant herself, and two witnesses on behalf of the landlord, namely property manager Michelle Boisvert and her assistant Melissa Ladouceur, both of whom are employees of Panthura Property Management.

[5] The tenancy began with a standard form of lease signed by the parties on the 23rd and 24th of January 2019, respectively, with occupancy to begin on February 1, 2019. It was specified to be a year-to-year tenancy with a monthly rent of $1,500.00.

[6] Significantly, in section 13 describing the items that can be included in the rent, there was a tick in the box for "water." As any homeowner can attest, the cost of domestic water can be a significant additional expense. As most people would also know, the precise cost is based upon usage and bills are not necessarily the same as the ones before.

[7] I accept the landlords' evidence that this box had been ticked in error by the person who prepared the lease on behalf of the landlords, who had not at the time intended to pay the tenant's water bill. Under the assumption that water was included in her lease, the tenant and her family moved in as scheduled and it was not until a few days thereafter that the error was discovered by the landlords.

[8] The landlords clearly understood that they were obliged, at a minimum, to deliver what they had promised. On February 7, 2019, a memo was

delivered to the tenant by Ms. Boisvert stating:

> Please be advised that your water bill will be taken care of during the first year of your lease. After February 1, 2020, the water will then be your responsibility. Sorry for any inconvenience this may cause. ...

[9] When February 1, 2020 rolled around, the lease had been renewed (without any evident formality) for a further year, and the tenant took over payment of the water bills. More accurately, since the water account had been already placed in the tenant's name, the landlords simply stopped paying the water bills, leaving the tenant to deal with Halifax Water directly.

[10] Over the course of the next year, the tenant struggled to keep up with the water bills. The tenant is a person of limited means, and the cost of water was (she says) somewhat higher than she had anticipated.

[11] The court heard some evidence suggesting that one of the reasons for the high water bill was because of a water leak which the landlord allegedly failed to address, but I consider this theory to be highly speculative. Moreover, because the tenant did not attend to present her case at Residential Tenancies, the landlords had no advance notice that such a theory would be advanced and had not prepared to answer it. It would have been unfair to consider this theory further - particularly where it was based on very scant evidence.

[12] I take notice that the tenant had three children living with her, and nothing is known about the family's water consumption habits.

[13] The lease renewed again for February 1, 2021. By then, there had also been a $30.00 rental increase, making the rent $1,530 per month. This increase was in line with the covid-related legislation passed in 2020 capping rent increases at 2%.

[14] As time went on, the tenant fell behind in both her rent and her water bills.

[15] If I assume for a moment that the tenant was legally responsible to cover her own water bills, as well as her rent, the landlords' claim would be indefensible. However, counsel for the tenant has advanced a legal theory that the lease provision requiring the landlord to cover the cost of water has never been legally changed. He argues that there needs to have been a new lease, or

lease amendment signed, which there was not.

[16] The landlords argue that the change in water bill responsibility effective February 1, 2020 was accomplished in the manner contemplated by the lease and the *Residential Tenancies Act*, in the nature of a rent increase.

[17] In the Schedule A to the lease containing Statutory Conditions, we find the following:

> **2. Services** - Where the landlord provides a service or facility to the tenant that is reasonably related to the tenant's continued use and enjoyment of the premises, such as, but not so as to restrict the generality of the foregoing, heat, water, electric power, gas, appliances, garbage collection, sewers or elevators, the landlord shall not discontinue providing that service to the tenant without proper notice of a rental increase or without permission from the Director.

[18] The *Residential Tenancies Act* in s.11 contains various provisions controlling rent increases. I set out that section in full, highlighting portions that are especially apt:

> **RENTAL INCREASE**
> **Restrictions increasing rent**
>
> 11 (1) A landlord shall not increase the rent to a tenant for the twelve-month period following the commencement of a week-to-week, month-to-month, year-to-year or fixed-term lease.
>
> (2) Where a landlord intends to increase the rent payable after the first twelve-month period, the landlord shall give the tenant a notice in writing stating the amount and effective date of the increase in the case of
>
> (a) a year-to-year lease, four months prior to the anniversary date;
>
> (b) a month-to-month lease, four months prior to the anniversary date;
>
> (c) a week-to-week lease, eight weeks prior to the anniversary date;
>
> (d) a manufactured home space lease, seven months prior to the

anniversary date, and in no case shall a landlord increase the rent to the tenant more than once in a twelve-month period and without proper notice prior to the anniversary date in each subsequent year.

(2A) Notwithstanding subsection (2), where the landlord is a housing association within the meaning of the Co-operative Associations Act, the landlord may establish a common anniversary date for the increase of rent payable by tenants in accordance with the regulations and that date is thereafter the anniversary date respecting tenancies in the buildings owned by the association and the notice periods referred to in that subsection apply with respect to those tenancies.

(3) In the case of a fixed-term lease, the lease shall indicate the amount and effective dates of any increases and in no case shall the rent be increased to a tenant more than once in a twelve-month period.

(4) The deletion or withdrawal of a service is deemed to constitute a rental increase.

(5) Where a landlord discontinues a service, privilege, accommodation or thing and such discontinuance results in a reduction of the tenant's use and enjoyment of the residential premises, the value of such discontinued service, privilege, accommodation or thing is deemed to be a rent increase for the purpose of this Section.

(6) Nothing in this Section applies to increases or decreases based solely on the income of a tenant pursuant to a public housing program.

[19] To summarize, once a year to year lease is signed, there may be no rent increases for the first year. If notice is given at least four months in advance, such increase may be effective for the second (or next) year. The notice is supposed to specify "the amount and effective date of the increase." The deletion or withdrawal of a service is deemed to constitute a rental increase.

[20] The main reason for these notice provisions is to give the tenant the opportunity to end the lease before it would otherwise automatically renew. In the case of year to year leases, notice of non-renewal must be given three months in advance, so by receiving notice of a rental increase four months before the renewal, in effect the tenant has at least one month to consider whether to accept that rent increase.

[21] Under this regime, there is no doubt that the landlords here gave the tenant more than four months notice that a service (payment of water bills) would be withdrawn for the second year of the lease. In fact, they gave almost a full year's notice.

[22] As I understand the tenant's argument, this notice was insufficient and ineffective for two reasons:

a. The amount of the deemed rental increase was not stated, and
b. The parties did not sign a new lease document.

[23] I am unable to give effect to either of these arguments.

[24] As for the amount of the rental increase being unstated, I believe this is simply the nature of "deemed" rental increases for withdrawal of a service. While it might be possible to estimate the value of such a service, it is fundamentally different from a rental increase that is measured in dollars and cents.

[25] Of course, the tenant is entitled to have an idea of what the service is worth, to inform their decision whether to accept the increase or end the tenancy. That is a matter of fairness. In the case here, on the facts, the tenant had such information available to her. The water bills were already in her name, and she could have (and might have) seen them as they came in. At least, she could have asked to see copies of the bills for 2019 to get a proper sense of what the new cost might be.

[26] As such, there is nothing unfair about the notice respecting this deemed rent increase.

[27] The second argument suggests that the parties ought to have signed a new lease to reflect the change in terms. With respect, there is nothing in the *Residential Tenancies Act* that says this, nor was any authority to this effect provided.

[28] Periodic leases are renewed automatically unless one party or the other does something:

> 10A (1) A lease, except for a fixed-term lease, continues for the same

> type of term if no notice is given pursuant to subsection (1) of Section 10 and is deemed to have been automatically renewed.

[29] Nowhere in the Act does it say that such deemed automatic renewal must be accompanied by a new written lease or amendment. Indeed, requiring a new signed document would be at odds with the deeming provision. If something is deemed to have been renewed, it is renewed. If a fresh document were required, as counsel suggests, what would happen if one or the other party refused to sign? Would it then not renew? How does that work with the deemed renewal?

[30] It is in the nature of lease renewals that some of the terms might change, such as rent increases. There is clearly a need for some documentary evidence of what the new terms are, for clarity and future reference, but it would be unrealistic to expect new leases to be drawn up in every case. I dare say that the province has thousands, if not tens of thousands, of tenancies where there is an initial written lease that has been amended by memorandums or emails or some other simple document, possibly many times. It would overturn all expectations to say that all of those tenancies are deficient, because not all of the terms can be found in a recent, formal signed lease.

[31] As I have observed, there is no authority for such a proposition, nor any convincing reason to uphold that argument.

[32] It is accordingly my finding that the tenant was properly informed that she would be responsible for her own water bills as of February 1, 2020. Her behaviour, until she ran into this legal problem, was consistent with her understanding that she was legally bound to pay her own water bills. Her arguments in this appeal are technical and, though innovative, not sustainable.

[33] As such, the appeal from the Director of Residential Tenancies should be dismissed.

[34] However, with the passage of time there are some adjustments that need to be made to the order. It is no longer feasible to keep June 30 as the date that the lease terminates. I believe that the new termination date should be August 31, 2021, which gives the tenant a little over a month to organize her move.

[35] As did the Residential Tenancies Officer, I am offsetting the small security deposit from the amount owing. This does not preclude the landlord

seeking damages from the tenant for any damage caused to the home, which they would have to pursue in a fresh application to Residential Tenancies once they have taken possession.

[36] The amount of the financial order should be changed to reflect the rent that has accrued for July and August 2021. The amount owing is:

rental arrears up to May 2021	$1,443.00
June rent	$1,530.00
Payments credited	($1,218.00)
July rent	$1,530.00
Payment received	($718.00)
August rent	$1,530.00
Offset security deposit	($154.00)
Residential Tenancies application fee	$31.15
	$3,974.15

ORDER

[37] In the result, the order of the Director of Residential Tenancies dated May 18, 2021, is confirmed, subject to the following variations:

a. The tenant shall provide vacant possession of the premises at 3 Trailwood Place, Halifax by no later than 11:59 p.m. on August 31, 2021.

b. The tenant shall pay to the landlords the sum of $3,974.15.

[38] It should be noted that if the landlords receive any moneys towards rent, whether from the tenant or a third party, such as a rent subsidy, such moneys shall be credited against the amount of this order.

Eric K. Slone, Adjudicator