

SMALL CLAIMS COURT OF NOVA SCOTIA

ON APPEAL FROM AN ORDER OF THE
DIRECTOR OF RESIDENTIAL TENANCIES

Citation: *Motz v. Budden*, 2021 NSSM 30

Date: 2021-07-28

Docket: SCCH 506726

Registry: Halifax

Between:

George Motz and Miranda Lohnes

Appellants (tenants)

- and -

John Budden and Jackie Gallant

*Respondents
(landlords)*

Adjudicator: Eric K. Slone

Heard: July 20, 2021 in Halifax, Nova Scotia via zoom

Appearances: For the Appellants,
Sydney A. Hull, counsel

For the Respondents,
Kalyn Hunley,
counsel

BY THE COURT:

[1] This is an appeal by the tenants from a decision of the Director of Residential Tenancies dated June 3, 2021, in connection with the tenants' occupation of a house at 209 Prince Street in Lower Sackville, owned by the landlords.

[2] The Residential Tenancies Officer ordered the tenants to vacate the home and terminated the tenancy effective June 30, 2021. The tenants were also ordered to pay to the landlords \$4,315.15 consisting of outstanding rent, late payment charges, costs of the application, and crediting the \$850.00 security deposit.

[3] The tenants do not dispute that they stopped paying rent as of March 2021, but say that the landlord should be giving them an abatement to compensate for what the tenants say is their lack of quiet enjoyment of the property.

[4] At a zoom hearing July 20, 2021 the court heard from Mr. Motz, one of the tenants, and from both of the landlords. Both parties were represented by counsel, who made submissions on behalf of their clients.

[5] The difficulties with this tenancy began in about March of 2021 when the landlords decided to list the property for sale, in the hope of cashing in on an unusually hot market. It just so happened that the active period of marketing the home coincided with a major spike in rates of Covid-19 in Nova Scotia, which brought about an almost complete lock-down of the population - a situation that has only recently been relaxed.

[6] The *Residential Tenancies Act* in its Statutory Conditions has provisions that allow a landlord to enter the residential premises for purposes of showing it to prospective tenants or purchasers:

7. Entry of Premises - Except in the case of an emergency, the landlord shall not enter the premises without the consent of the tenant unless

(a) the entry is at a reasonable hour for the purpose of exhibiting the premises to prospective tenants or purchasers and

(i) notice of termination of the tenancy has been given,

(ii) the lease is a fixed-term lease with a term of less than six months and one month or less remains in the term of the lease,
or

(iii) the lease is a fixed-term lease with a term of six months or more and three months or less remain in the term of the

lease; or

(b) the entry is during daylight hours and written notice of the time of the entry has been given to the tenant at least twenty-four hours in advance of the entry.

[7] This provision is well-known and understood by many tenants and landlords, insofar as it operates in normal times. Landlords may enter, whether the tenant is present or not. For their part, tenants can choose whether or not to be home during such an entry. But how does this work during a pandemic, when there are limits to the number of non-related people who can be in the premises at one time?

[8] And, critically in this case, to what extent does this limited right of entry by a landlord satisfy the usual insistence by real estate agents that there be no one home for showings?

[9] Just about when the prospective viewings started, the province was on lock-down. Mr. Motz and Ms. Lohnes occupy the home with four children, some of them teenagers and some of them much younger. Ms. Lohnes was also pregnant and feeling unwell for some of the relevant time. The family also have two large and, I gather, not entirely friendly dogs. The evidence that I heard satisfies me that the landlords' real estate agent, the person who alerted the tenants to the fact that the home was being put up for sale, came on somewhat strongly, or at least over-enthusiastically, at first, and tension developed immediately. There were rumblings of threats to evict the tenants if they did not cooperate with the expected showings. This did not help, to say the very least.

[10] From a practical standpoint, simply trying to get the tenants to agree to the timing of showings and giving 24 hours of notice was not sufficient. Mr. Motz was working half time, a couple of hours' drive away, and he felt obliged to be there for showings to support Ms. Lohnes. This was not unreasonable under the unique circumstances. Being out of the home for showings was mostly impractical. Trying to maintain distancing within the home while it was being viewed was a challenge. Keeping the dogs away from people was a challenge.

[11] One unpleasant event occurred when a visit by a home inspector for a prospective purchaser was scheduled. This individual refused to perform his work with any of the tenants in the house, and the tenants were placed under

severe pressure to absent themselves, no matter how inconvenient that might be.

[12] During this same time frame the landlords also embarked on a few necessary renovations, which resulted in further inconvenience to the tenants.

[13] While all of this was occurring, the tenants - unwisely, in my opinion - decided to stop paying rent. Their precise motives for doing this were not made clear in their evidence, but if it was intended to put pressure on the landlords, it certainly succeeded. Surely, the tenants could not have imagined that they would be eventually absolved from paying any rent. The disruption and inconvenience that they experienced would never reasonably have reached that level.

[14] As April, May and June rents went unpaid, the landlords experienced significant financial pressure, with mortgage payments coming due and no rental income coming in. They took the totally predictable step of seeking eviction through Residential Tenancies, which resulted in the order under appeal.

[15] The property is no longer on the market. The landlords believe they lost two prospective sales because of the presence and behaviour of the tenants. I do not discount their suspicions entirely, but do not consider such an allegation proved. There is some evidence that other considerations contributed to the prospective purchasers' decisions.

[16] The landlords plan to put the house on the market again after the tenants have left, which will undoubtedly be a simpler process with the property vacant.

[17] Reduced to simple terms, I must decide whether to award the tenants an abatement of their rent to compensate them for all that they experienced during the times of the prospective showings and renovations. I must also decide when to terminate the tenancy. The landlords would like that to take place immediately. The tenants would prefer to vacate by the end of August, which is the date that the tenancy expires anyway. The court has no legal ability to extend the lease beyond August 31, 2021. Nor would I do so, even if I had the authority. This landlord tenant relationship has become toxic.

[18] The tenants cite the case of *Laritz v. Charter Real Estate Advisors Ltd.*, 2012 NSSM 54 (CanLII) as authority for this court's power to award an abatement, or damages, for breaches of statutory conditions under the lease. As stated by Adjudicator Knudsen in that case:

(22) In adjudicating an Appeal, the Small Claims Court has the power to make any order as the Residential Tenancies Director including the payment of money. These powers are prescribed in s. 17A of the Act. The finding of a breach and the remedy in each case depends on the circumstances. The courts have found that a breach of any of these conditions by the landlord can result in a reduced rent, termination of the tenancy at the tenant's option or a complete loss of rent. The Tenant in this case is seeking a reimbursement of some of the rent paid.

[19] I accept that this power exists, but the facts must truly justify its exercise.

[20] It is my finding that the landlords failed to appreciate that the power to enter the premises on 24 hours notice is a relatively narrow right, at the best of times, and such power was further abridged by the lock-down provisions intended to address the pandemic. While it may be desirable to have occupants vacate a property to facilitate showings, there were considerable practical obstacles to that occurring in this case. The landlords would have been well advised to approach the tenants with a bit more humility and consideration and worked out how showings could occur with minimum disruption to the tenants. Instead, there were threats, explicit or implied.

[21] For their part, the tenants seemed to dig in their heels and tried to punish the landlords with their ill-advised rent strike.

[22] But did the actions of the landlords, or others operating on their behalf, amount to actionable breaches of the lease, and all of the express or implied covenants therein? I believe it did, but only to a minor extent. I do not think the abatement should amount to more than \$1,000.00 for the disruption to the tenants' quiet enjoyment of the premises, and this is the abatement I order.

[23] This is where the account now stands, apart from any court or Residential Tenancies filing fees, which I will discuss below:

Rental and late fees up to June 30 (as found by Residential Tenancy Officer	\$5,134.00
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July rent	\$1,700.00
Less abatement	(\$1,000.00)
Owing by tenants to landlords	\$5,834.00

[24] The tenants have indicated their willingness to pay August's rent immediately if they are allowed to stay until the lease runs out. This is a reasonable solution, as I would otherwise have ended the tenancy earlier. I have been advised that such rent has been paid, and accordingly the order of this court will be that the tenancy shall terminate on August 31, 2021.

[25] I do not propose to award any costs of filing the Residential Tenancies application or this appeal. In my respectful view, there is plenty of blame to go around and neither party should receive costs.

[26] I am also declining to offset the security deposit of \$850.00, which is something that the Residential Tenancies Officer did. I believe it is best that the disposition of the security deposit should be handled in the usual course, i.e. the landlords should be entitled to retake possession and determine whether they intend to make a claim for damage, or return the deposit to the tenants pursuant to the procedures set out in the *Residential Tenancies Act*.

ORDER

[27] As such, the order of Residential Tenancies is varied, in part, to provide that the tenants shall pay to the landlords the sum of \$5,834.00 and that the tenancy at 209 Prince Street in Lower Sackville terminates on August 31, 2021 at or before 11:59 p.m., at which time the tenants and all other occupants will vacate the premises.

Eric K. Slone, Adjudicator