IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Vacheresse v. K2 Properties*, 2023 NSSM 64

Date: 20231031
Claim: 527090
Registry: Pictou

Between:

Richard (Rick) Vacheresse

Tenant/Appellant

And

K2 Properties

Landlord/Respondent

Adjudicator: Raffi A. Balmanoukian, Adjudicator

Heard: October 30, 2023, by Teams

Counsel: Richard Vacheresse, personally, for the Appellant Tenant
Gilbert Beer, property manager, for the Respondent Landlord

By the Court:

[1] The Landlord says one of its units is uninhabitable. The Residential Tenancies Officer (the "RTO") agreed. The Tenant does not. He wants to stay, despite citing various shortcomings with the apartment and, by extension, its property manager. He appeals to this Court seeking to set aside the order for vacant possession.

[2] As the vacant possession was set to come into effect on October 31, 2023, I stayed that order pending disposition of this appeal, which was heard via Teams on October 30, 2023. As with many disputes such as this, time is of some importance; the parties are entitled to know "where they stand" on an expedited basis, but still in keeping with substantive law and natural justice.

[3] As has been outlined in numerous decisions, this is a hearing *de novo*. Although I have the RTO's decision and findings, and can refer to them, I am neither bound by nor owe deference to them. I have done so, pursuant to s. 17F(2) of the *Residential Tenancies Act*, R.S.N.S. 1989, c. 401 as amended (the "RTA").

[4] Each party called one witness, and filed documents. Mr. Vacheresse testified on his own behalf. Gilbert Beer, an employee with K2 Properties,

testified for the Landlord. I pause to observe that although the property appears actually to be owned by a third party, there was no dispute that K2 is properly named and served as the respondent. This is consistent with the definition of "landlord" in s. 2(c) of the RTA, which reads:

> (c) "landlord" includes a person who is deemed to be a landlord, a lessor, an owner, the person giving or permitting the occupation of premises and such person's heirs and assigns and legal representatives (emphasis added)

[5] There was also no dispute that the Landlord was properly served with the RTO hearing pursuant to s. 15 of the RTA, and with this appeal.

[6] The Landlord's Notice to Quit and subsequent application to the RTO was based on, and only on, s. 10(8)(c) of the RTA, which reads:

> (8) A landlord may give to the tenant notice to quit the residential premises where
>
> …
>
> (c) the residential premises have been made uninhabitable by fire, flood or other occurrence;

[7] The Landlord says the Tenant's unit comes within this section as it has mold in the bedroom and especially the bathroom, and cannot be repaired or remediated with the Tenant in possession. Although it denied placing any blame for this on the Tenant, it implied that the Tenant interfered with the HVAC system that would allow for air circulation, and that he at least at times taped off an air vent. It points

out that it offered the Tenant a substitute unit at the same rent (and below its market rent), but this was declined by the Tenant (according to him, because of accessibility issues, the need for approval by public officials who pay for his rent, inconvenience, unsuitability due to dogs on the proposed premises, or a combination of these).

[8] The Landlord further points out that this is not a "renoviction" (s. 10AB of the RTA), which is sometimes alleged to take place for the purposes of increasing rent beyond the rent control rates currently in effect, as it has an agreement with Efficiency Nova Scotia which has a maximum rent of $3.00 more than at present. As noted, the Landlord's Notice to Quit and subsequent application was based solely on "uninhabitability."

[9] The Tenant admits that at least there had been mold in the property, but that it has been removed from at least the bedroom. He was evasive about whether it is, or has been, in the bathroom but in any event denies that it makes his unit uninhabitable. He claims to have been in the subject unit for seven years, plus another three in another apartment in the same building. He claims the HVAC system was faultily installed and may be an electrical hazard. Finally, while he flipped back and forth about whether water incursion would cause or aggravate mold growth, he claimed that it came into the apartment due to holes in the roof

and building envelope, and that fixing these would fix any remaining or continuing issue.

[10] The RTO agreed with the Landlord. Respectfully, I do not.

[11] The RTO appears to have accepted the evidence that the unit needs "extensive construction to resolve the mold problem," and in doing so appears as well to have placed some weight on the Landlord's offer of a substitute unit.

[12] Conversely, while the evidence before me from both witnesses was often rambling and in some cases irrelevant (such as considerable discussion about door repair) and in some cases the parties appeared to be making each other's case (such as the Tenant complaining about unit shortcomings and the Landlord speaking about past and present remediation efforts), I was not persuaded that either the unit is uninhabitable, nor that many if not all issues could not be addressed with the tenant in occupation.

[13] I once again emphasize that this is not a "renoviction" application. Nor did the Landlord cite any other basis for a Notice to Quit. Although there was clearly tension and animus between the parties, the Landlord did not cite "good behavior" or other lease breaches as a basis to evict. While there was some discussion about alleged rental arrears (it being recalled that rent is paid by a public third party

source), there was no notice to quit for rental arrears and this appears, if at all, to be a result of miscommunication or administrative delay with the payor. This should be remedied by the stakeholders in everyone's interests.

[14] I am also convinced that outside repairs to the building envelope will go a long way – if not the whole way – towards addressing ongoing water incursion issues. This is the Landlord's responsibility.

[15] Against this, I do note with concern the allegations that the Tenant has been or is being uncooperative with workers, to the point that there was an allegation that at least one of the Landlord's contractors would no longer attend at the premises with the Tenant present. Conversely, if indeed the HVAC or other systems are faulty, the Tenant cannot be blamed for being concerned (I note that although there was some discussion about whether the new systems were put in place to 'download' expenses onto tenants, this tenant's unit has power included so the system's presence is of no net expense to him).

[16] The common theme is that neither party should be able to rely on any of its own neglect or (mis)conduct as a basis to get its own way against the other. The Tenant says he can and wants to live in the property; however, he cannot let it fall

into waste by precluding necessary maintenance and repairs, to the Landlord's detriment.

[17] I have the authority under s. 17D(1)(b) of the RTA to "make any order that the Director could have made." That authority includes ordering lease compliance and repairs (17A(a), (b), and (c)), and setting aside a Notice to Quit under s. 10(8)(c).

[18] I am setting aside the Notice to Quit. The landlord-tenant relationship remains in full force and effect.

[19] However, I am also ordering the Tenant to make the property reasonably accessible to the Landlord, its workers, servants and agents for the purposes of inspection and repair, including but not limited to the HVAC system. As the Tenant asserts the property is not uninhabitable, he is in no position to object to or interfere with any work reasonably connected with repairs the Landlord is seeking to do to areas currently or previously impacted by mold, including the bedroom and bathroom. He is also not to interfere with the Landlord's use and function of the HVAC system, including its accessories, upon being provided with a written opinion of a licenced electrician that its electrical functions are (or have been made to be) compliant with relevant Codes. These orders are consistent with the

Landlord and the Tenant's obligations under statutory conditions 1-4 under s. 9(1) of the RTA, namely:

> 1. Condition of Premises - The landlord shall keep the premises in a good state of repair and fit for habitation during the tenancy and shall comply with any statutory enactment or law respecting standards of health, safety or housing.
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> 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.
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> 3. Good Behaviour - A landlord or tenant shall conduct himself in such a manner as not to interfere with the possession or occupancy of the tenant or of the landlord and the other tenants, respectively.
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> 4. Obligation of the Tenant - The tenant is responsible for the ordinary cleanliness of the interior of the premises and for the repair of damage caused by wilful or negligent act of the tenant or of any person whom the tenant permits on the premises.

[20] There is no application before me by the Tenant to compel the Landlord to do anything (except to continue the Landlord-Tenant relationship). I would hope, given that the Landlord wants the Tenant out to do repairs, it will proceed with anything it considers necessary (my having found that the property is not "uninhabitable") with due dispatch. This decision is without prejudice to the rights of each party to bring any new application they may respectively deem necessary to maintain or enforce their respective rights and obligations.

[21] The relationship between the parties may well continue to be fraught. That is too bad. Hopefully, the scope of this Order will put each stakeholder in a position clearly to understand the good faith rights and obligations I have noted above, and to establish the framework under which they are to go forward.

[22] I will forward a copy of the Order as drafted by the Court with the original of this decision.

Balmanoukian, R., Small Claims Court Adjudicator