

SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Highfield Park v. Diamond*, 2023 NSSM 73

ON APPEAL FROM AN ORDER OF THE
DIRECTOR OF RESIDENTIAL TENANCIES

Date: 20230907
Docket: 524953
Registry: Halifax

Between:

Highfield Park Residential Inc.

Appellant (landlord)

- and -

Vincent Diamond

Respondent (tenant)

REASONS FOR DECISION AND ORDER

Adjudicator: Eric K. Slone

Heard: via zoom in Halifax, Nova Scotia on September 5, 2023

Appearances: For the Appellant, Claire Kaiser

For the Respondent, self-represented and Joel Diamond (father)

BY THE COURT:

[1] This is an appeal by the landlord from a decision of the Director of Residential Tenancies dated June 21, 2023, which decision awarded the tenant \$1,425.99 in compensation for what was found to be the landlord's lack of diligence in processing the tenant's request to be permitted to assign his lease.

[2] This is the relevant time line:

- a. The tenant is a relatively young man, who it seems was a model tenant. He entered into a year-to-year lease for the subject unit on Highfield Park Drive, effective March 1, 2022. Rent was \$920.00 per month. A \$460.00 security deposit was provided.
- b. In early December 2022, the tenant decided to move out of the apartment and move back into his parental home. He advised the landlord that he wished to take advantage of the provision in his lease that allows for assigning or subletting "subject to the consent of the landlord," and which further provides that the landlord may not arbitrarily or unreasonably withhold consent.
- c. On December 6, 2022 the tenant was granted permission to assign, and instructed to direct all potential tenants to the landlord, who would scrutinize them for acceptability.
- d. The tenant placed an ad on Facebook Marketplace and received numerous replies, which he directed to the landlord. He estimated that he passed along at least a dozen in December.
- e. The tenant had hoped to be able to move out before the 1st of January, and reasonably believed that it would be easy to find a new tenant, given the housing shortage in Halifax.
- f. The tenant did not hear from the landlord that any suitable applicant had been found. He was informed through other sources that the landlord actually had a waiting list of people who were looking for apartments in this complex.

- g. The tenant renewed his advertising in January 2023. To complicate matters somewhat, he specified in his ad that he was hoping to sell his washer and dryer to the tenant taking over his lease.
- h. Through January he continued to get inquiries which he passed on to the landlord.
- i. On or about February 6, 2023, the tenant was told that a suitable tenant had been found and he was in a position to move out. He was told that he would have to collect his security deposit from the new tenant, rather than receive it back from the landlord.
- j. In the result, the tenant had paid January and February rent despite moving out on February 6.

[3] The tenant brought an application to Residential Tenancies seeking compensation for rent he had to pay, beyond the time he should reasonably been allowed to assign his lease. The Residential Tenancies Officer allowed him a refund of rent for half of January and all of February, on the assumption that the landlord ought reasonably to have been able to find a suitable tenant by January 15, 2023.

[4] The landlord's representative testified that despite the keen interest in the apartment, very few prospective tenants went through the fairly rigorous approval process and it was not until February that someone suitable was approved. She says that it is not unusual for it to take two months to go through such a process. She also speculated that the tenant's attempt to sell his appliances limited the number of people who might be interested.

[5] I got the distinct impression from Ms. Kaiser's testimony that the landlord made the process unnecessarily complex and slow. She was at pains to mention on multiple occasions that the tenant was "breaking" his lease, as if that excused a lack of diligence on the landlord's part. I reminded her that the lease itself contains a process for assignment, and the tenant was only taking advantage of benefits provided by the lease.

[6] It is common knowledge that there is a crisis in affordable housing. This apartment would have been in high demand, which is borne out by how many inquiries that the tenant fielded as a result of his ads. The landlord acknowledged that there is a waiting list for apartments, yet there is no evidence that it offered the opportunity to any people on their list, which people would presumably have already been pre-approved and might have been interested in this alternative. I do

not accept Ms. Kaiser's evidence that such people are only waiting for "new" apartments. Anyone offered the apartment would presumably have looked at it, and could have decided for themselves whether it was in good enough condition.

[7] I also take issue with the way that the landlord dealt with February's rent. The tenant was instructed to collect his \$460.00 security deposit directly from the new tenant, which he did. Given that the new tenant was moving in on or about February 7, 2023, the tenant ought to have been instructed to collect 21 days of rent from the new tenant. No such instruction was given, and in the end the new tenant received free rent for the balance of February.

[8] I am hard pressed to find that the landlord acted reasonably. Rather, it acted begrudgingly and bureaucratically.

[9] The Residential Tenancies Officer made an assessment that the process should have taken until the 15th of January 2023, and he awarded the tenant 16 days of rent for January and the whole of February, plus he awarded him the \$31.15 application fee.

[10] I find that this was a reasonable assessment, and I would have independently come to the same conclusion.

ORDER

[11] This court orders that the Order of the Director of Residential Tenancies dated June 21, 2023 is confirmed, and the landlord shall pay to the tenant the sum of \$1,425.99.

Eric K. Slone, Small Claims Court Adjudicator