

SMALL CLAIMS COURT OF NOVA SCOTIA

Brooks v. Somers, 2023 NSSM 85

ON APPEAL FROM AN ORDER OF THE DIRECTOR OF
RESIDENTIAL TENANCIES

Date: 20231019

Docket: SCCH 526469

Registry: Halifax

Between:

Martina Brooks

Appellant/tenant

v.

Georgie Somers

Respondent/landlord

Adjudicator: Eric K. Slone

Heard: Via zoom in Halifax, Nova Scotia on October 17, 2023

Appearances: For the Appellant, self-represented

For the Respondent, self-represented

By the Court:

[1] This is an appeal by the tenant from a decision of the Director of Residential Tenancies dated July 4, 2023. That decision denied the tenant's application for an abatement of her rent, plus repayment of what the tenant argues was an illegal rental increase.

[2] There were other issues considered by the Residential Tenancies Officer that are no longer relevant, as the tenancy ended as of August 31, 2023, and as such I will not touch upon them.

[3] The two branches of the claim are quite separate. I will deal with the easier one first, namely the allegedly illegal rent increase.

[4] The tenant took an assignment of her mother's lease on the premises starting in July 2022. The rent at the time was \$1,040.00 per month. The landlord raised the rent to \$1,060.00 as of January 1, 2023. This was under 2% and thus complied with the government cap on rental increases. However, the argument is that the landlord fell afoul of s.11(1) of the *Residential Tenancies Act* which provides:

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.

[5] In other words, after a rent increase a landlord may not increase the rent again until a further twelve months has passed.

[6] The tenant testified that her rent was increased from \$1,020.00 to \$1,040.00 when she took over the lease. The landlord seemed confused and believed that the rent had been increased as of January 2022. The evidence supports the tenant's position. I find that this landlord received \$20.00 per month for seven months, contrary to the *Residential Tenancies Act*. As such she must reimburse the tenant for that money.

[7] The tenant may have overpaid for the month of August 2023, as well, but by then there was a successor landlord in place, and that is between the tenant and that person, who was not a party to this proceeding.

[8] The second branch of the claim is for an abatement as a result of disruptions that the tenant claims to have suffered during the tenancy, all of which were related to the landlord's efforts to sell the property, starting in May 2023. The claim is for one month's rent of \$1,040.00.

[9] The Residential Tenancies Officer refused to consider this claim, because it was not part of the tenant's initial application, but it is clear that I have an

obligation to consider it on this appeal under the principles set out by the Supreme Court of Nova Scotia in *Kerr v. 3340528 Nova Scotia Limited*, 2023 NSSC 271.

[10] The evidence submitted by the tenant consisted of mostly text messages and a few emails which passed between the tenant and the landlord, and between the tenant and the landlord's real estate agent.

[11] Starting on about May 4, 2023, the landlord began asking for access to the premises for the purpose of showings, a building inspection, an appraiser, and several types of repairs.

[12] The situation was complicated by the fact that the tenant is a student engaged in online learning for several hours a day, several days per week.

[13] Having to provide access for these types of events is inevitably disruptive. For many people, it is simply a matter of allowing access and either going out or staying in while the entry is taking place. These disruptions are best handled on a cooperative basis.

[14] In this situation, although it started cooperatively enough, the tone of the exchanges became testier over time and both parties retreated to legal formalities.

The tenant became less flexible over time. Efforts to accommodate her convenience were made but were not always fully successful.

[15] I have little doubt that the tenant found it stressful to be dealing with these disruptions, but it is hard to fault the landlord who acted within her legal rights to gain entry to the premises.

[16] Claims like this are not uncommon. In *Motz v. Budden*, 2021 NSSM 30, I considered a rent abatement claim for the disruption caused by numerous showings of the premises. One critical distinction was that this was at the height of the pandemic, and the tenants were obligated to be absent during the showings:

[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.

[17] The tenants had sought a much larger abatement.

[18] Abatements compensate for the tenant receiving something less than they were promised under the lease. That deficiency may occur with no real fault of the landlord, such as when physical systems fail. A tenant who has to live for a time without heat or water is getting less than they bargained for, and there are many such cases where abatements are ordered.

[19] Here, the tenant was inconvenienced partly by having her unit entered on a more frequent than usual basis, but also by the fact that for every such entry there had to be a time-consuming negotiation of when it was convenient for her. It looks

to me that the landlord and her agents worked reasonably to accommodate the tenant and her particular schedule. I am not satisfied that the tenant was denied quiet enjoyment as that term is used in residential tenancies law. She may well have felt that way, but her subjective experience is not the determinant of whether or not she has rights under her lease that were denied to her.

[20] In the result, the only claim that succeeds is the claim for excess rent of \$140.00.

Order

[21] This court orders that the Order of the Director of Residential Tenancies dated July 4, 2023, is varied to the following extent:

[22] It is ordered that the landlord pay to the tenant the sum of \$140.00.

Eric K. Slone, Small Claims Court Adjudicator