

Claim No: 414682

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA  
ON APPEAL FROM AN ORDER OF THE  
DIRECTOR OF RESIDENTIAL TENANCIES**

Cite as: Misener v. Thompson, 2013 NSSM 36

BETWEEN:

KAREN MISENER

Tenant (Appellant)

- and -

CORINE M. THOMPSON and BRIAN L. MacDONALD

Landlords (Respondent)

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**REASONS FOR DECISION**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on June 25, 2013

Decision rendered on July 2, 2013

**APPEARANCES**

For the Tenant                      self-represented

For the Landlords                  self-represented

## REASONS FOR DECISION

[1] This is an appeal by the Tenant from an Order of the Director of Residential Tenancies dated April 8, 2013, which ordered the Tenant to pay the Landlords \$2,397.59 for various items which will be set out below, minus the \$700.00 security deposit, for a total of \$1,697.59.

[2] The amounts allowed were mostly outstanding rent, and the cost to clean and repaint the home after the Tenant and her family moved out at the end of February 2013. A small amount was for the repair of a French door, and several other items. The Tenant's counterclaim for a rent rebate in the amount of \$550.00 for what she had paid in February 2013, was disallowed by the Residential Tenancy Officer.

[3] The subject property is a house on Lake Fletcher, which was rented to the Tenant for \$1,400 per month, commencing November 3, 2012. She resided therein with her two children. Her friend William Hart spent some time there but did not reside in the house.

[4] According to the Landlords, the property was seriously unclean and reeked of animal urine when they resumed possession on February 28, 2013. There were some photos which show some of the conditions testified to, but photos can only tell part of the tale. The Landlords produced written statements from several witnesses who had also experienced the strong urine smell. As unsworn, out of court statements, these carry limited weight, but do provide some corroboration.

[5] The Tenant, her somewhat elderly and frail mother and Mr. Hart all testified that they did a thorough, top to bottom cleaning of the home before they

vacated. They denied that there was any urine smell. They conceded that there had been some damage to one of the glass panels of the French door, but downplayed what it would cost to have that repaired.

[6] Much of the evidence concerned the Tenant's claim that the house was severely infested with "black mould" which, she claimed, caused her and other of her family members to suffer adverse health effects, and which led to her decision to move out. The Landlord, Brian MacDonald, testified that, indeed, there had been some minor mildew growth which had developed because the Tenant had failed to operate a dehumidifier, as she had been instructed to do before she took possession. He further testified that this mildew was easily cleaned off (which he did himself, once informed about it) and that there was no evidence of harmful mould. It is significant that Mr. MacDonald is a certified expert in water damage restoration, which includes mould removal. That is his profession. I accept his evidence that there was no harmful mould growth, and that even this minor mildew was (at least) partly caused by the Tenant failing to follow directions.

[7] The mould issue is only significant to the extent that the Tenant seeks a rebate of rent for the month of February. The Landlords agreed to allow the Tenant to vacate early, and there is no claim for loss of rent other than to recover the balance owing for February. I find no basis in fact for any rebate or forgiveness of rent. The Tenant is responsible for rent for the time of her occupation. This includes unpaid rent of \$850.00, which is still owing.

[8] On the question of cleanliness and damages, I found the evidence of the Landlords totally convincing and the evidence offered by the Tenant and her witnesses less than convincing. It is possible that they simply have different

standards of cleanliness. It is also possible that the Tenant and her family became immune to the smell of cat and dog urine. In any event, I find that the Tenant left the house in an unsatisfactory condition and that this was a breach of the lease entitling the Landlords to recover damages representing the cost of bringing it back into a suitable condition.

[9] A couple of minor issues deserve comment. The Tenant left the oil tank utterly empty when she moved out, causing the heat to shut down and placing the property in jeopardy. It was the responsibility of the Tenant to supply oil. She claimed that the oil gauge was not working, so she could not tell when it needed to be refilled. I do not accept this excuse. However tight her finances, she should not have been keeping the tank so low as to create a risk of damage. The claim for a \$40.00 emergency infusion of oil is reasonable.

[10] The Tenant disputed the claim for \$215.00 to replace the French door which was broken by her or someone in her family. She produced an estimate of \$12.00 from Speedy Glass, as the cost of a new glass pane. This is, of course, meaningless. The real cost to replace a glass panel is the labour involved with cutting and grinding the glass and soldering it in place. The door would have had to be removed and transported to someone skilled in this craft. The decision to replace the door was a reasonable choice, and one which probably was the less costly option.

[11] The Landlord, Corine Thompson, complained to the Court that the Tenant deliberately set the appeal date when she knew that Ms. Thompson was scheduled to be out of the province. In the end, she had to change her airline ticket and incurred additional expense. The Tenant denied doing any such

thing. Although I sympathize with Ms. Thompson and tend to believe her, I do not have jurisdiction to award any compensation for this expense.

[12] The Residential Tenancy Officer made slight adjustments to the claims advanced by the Landlords, and in the absence of an appeal by the Landlords I will allow only the amounts ordered by the Residential Tenancy Officer, which are:

\$750.00	Bill for cleaning, reduced from \$842.22
\$500.00	Bill for painting and minor repairs reduced from \$626.20
\$215.00	cost to replace the broken French door
\$850.00	unpaid balance of February rent
\$14.00	"late fee" for chronic late rent payment
\$40.00	emergency infusion of furnace oil, after the Tenant allowed the tank to run completely dry
\$28.59	Filing fee at Residential Tenancies
(\$700.00)	credit security deposit
\$1,697.59	TOTAL OWING TO LANDLORDS

[13] In the result, I see no error by the Residential Tenancy Officer and agree entirely with his conclusions.

**Eric K. Slone, Adjudicator**