Claim No: 414694

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

Cite as: Classic Property Management Ltd. v. Gibson, 2013 NSSM 38

BETWEEN:

CLASSIC PROPERTY MANAGEMENT LTD.

Landlord(Appellant)

- and -

AMANDA GIBSON and CAROL GIBSON

Tenants (Respondents)

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on July 23, 2013

Decision rendered on July 30, 2013

APPEARANCES

For the Landlord	Nora Landry, owner
For the Tenants	Tim Hill, counsel

REASONS FOR DECISION

[1] This is an appeal by the Landlord from an Order of the Director of Residential Tenancies dated April 18, 2013. In that order, the Landlord's claim for a variety of items totalling $3,972.73 was reduced by approximately $1,000, with the net result (allowing for a security deposit in the amount of $459.79) that the Tenant was found to owe the Landlord $2,512.55.

[2] The original application had sought items under the following headings:

October 2012 rent and late fees	$994.85
Water bills	$337.65
Furnace cleaning	$86.25
Garbage removal	$335.48
Repairs	$393.50
Cleaning	$300.00
painting (including ozonator rental and prep)	$1,525.00
Total	$3,972.73

[3] In her decision, the Residential Tenancy Officer accepted the above items as claimed, with the following exceptions:

a. The repair claim for $393.50 was discounted for normal wear and tear and depreciation to $255 (a difference of $138.50)

b. The painting claim was reduced for normal wear and tear and depreciation to $970 (a difference of $555)

c. The garbage removal claim of $335.48 was disallowed.

[4] The Landlord's claim for the filing fee for the application of $28.59 was allowed, with a net result as indicated above; the Tenant was found to owe the Landlord $2,512.55.

Background

[5] The subject home at 49A Celtic Drive in Dartmouth was leased to the Tenant, Amanda Gibson, by way of a standard form of lease commencing October 1, 2009. Ms. Gibson planned to reside therein with her three small children. The Landlord required a lease guarantor, and accordingly her mother, Carol Gibson, co-signed the lease. For sake of the narrative, I will refer to Amanda Gibson as the Tenant, although it is understood that any liability is joint between the two actual signers of the lease.

[6] The Tenant gave timely notice that she would be vacating the property on October 31, 2012.

[7] There is no dispute that, as at that date, she owed some back rent and water bills, as claimed. Although she nominally disagrees with the furnace cleaning charge, this is required by the lease and should be allowed.

[8] Most of the controversy that gave rise to the application concerned the condition of the premises upon the Tenant having vacated. Prior to the Tenant taking occupancy, an "in-inspection" was conducted on September 25, 2009 and the Tenant acknowledged the new paint job and generally good condition of the home. The "out-inspection" took place on November 1, 2012, which was technically one day after the tenancy had terminated, although I see no particular distinction given that little or nothing would have changed between

October 31 and November 1. However, as will be noted later in this decision, the Landlord made that distinction.

[9] Ms. Gibson was unavailable for the inspection, but sent her father in her place. On the inspection form, which is signed by the Tenant's father (and which I take as an acknowledgment), there are numerous entries noting the dirty condition of the premises, as well as various entries noting that new paint would be required. It was also noted that the Tenant had left a large pile of furniture and other garbage items at the curbside, which will be discussed further below. It was also noted that, although the Tenant had been given two sets of keys upon beginning the tenancy, she only returned one set.

[10] The Landlord filed in support of its application extensive photographs showing the dirty condition of the home and also indicating where certain things had been damaged or were missing.

[11] The Tenant testified at the hearing that she had cleaned the home prior to leaving, and she disputed that a new paint job would be required in order to make the home presentable for a new Tenant. Given the fact that her father, with her authority, acknowledged the extensive dirty condition of the premises, and given also the persuasive photographic evidence, I cannot give any credence to the Tenant on this point. The property manager who testified, Mildred Penney, is very experienced and it was her testimony that the condition of the walls was so damaged by crayon and other marks (obviously having been made by one of the Tenant's children) that, on the advice of the painter, a full paint job was deemed to have been necessary. It was also Ms. Penney's testimony that the Landlord customarily paints its houses and apartments on a five-year cycle, and that it would not have invested in the paint job prematurely

unless it had believed it necessary. In the result, it is only claiming two-fifths of the cost of the paint job, recognizing that it would've had to be done in any event two years from now.

[12] The main items in contention between the parties concerned not just the paint job, but also the Landlord's decision, at a cost of $175.00, to have an ozonator running in the home for three days to address what it regarded as an unusual and troubling odour. The Tenant denied that there was any odour. Ms. Penney claimed that the odour was strong enough that it was decided to use the ozonator.

[13] On this issue, I prefer the evidence of the Landlord. It is consistent with human experience that someone, such as the Tenant, may become accustomed to a gradually developing odour and may not notice it, especially if it persists for some time. I accept that the Landlord made a good-faith assessment that the odour would be off putting to a prospective Tenant. Although no one was able to pinpoint the source of the odour, given the generally dirty state of the home, it may well have been a combination of things.

Garbage removal

[14] One of the items claimed by the Landlord, which was denied by the Residential Tenancy Officer, was $335.48 for garbage removal. The facts are these. On the day she moved out, the Tenant left a large pile of garbage, most of which appears to be old furniture, at the side of the road. As she explained at the hearing, she assumed (wrongly) that municipal garbage trucks would simply remove this stuff without any special arrangements. When the Tenant's father appeared at the out-inspection, he was informed by Ms. Penney that

arrangements would have to be made to remove this material, or the Landlord would likely receive a notice from the municipality's by-law enforcement people requiring that it be removed with the cost to be charged to the Landlord. According to the evidence of Ms. Penney, the Tenant's father stated that he would speak to his daughter about it. According to Ms. Penney, there was no commitment on his part to remove the material.

[15] In fact, a notice dated November 2, 2012 was received from HRM bylaw services, ordering the Landlord to remove the material within twenty-four hours, failing which the municipality would remove it and charge the cost back to the Landlord. That same day, the Landlord hired someone to load up the garbage, and haul it to the dump at a cost of $355.48. The Landlord concedes that once it received the notice from the municipality, it made no effort to contact Ms. Gibson and give her a last opportunity to remove it.

[16] For reasons which are not clear, the Residential Tenancy Officer made a finding that Ms. Gibson's father had not only been speaking to the Landlord on November 1 but that "the Landlord was aware that he was going to remove this garbage on November 2, 2012." The Residential Tenancy Officer further found that Ms. Gibson's father attended on November 2 expecting to pick up the garbage, but that it was already gone.

[17] Ms. Gibson's father did not testify before the Residential Tenancy Officer, nor at the hearing before me. As such, any evidence that might have been given concerning his statements or activities could only have been in the nature of hearsay. Although hearsay is not inadmissible in these proceedings, rarely will a court prefer a hearsay account to direct testimony by another witness whose credibility has not been discounted. In this case, I believe the best

evidence is that of Ms. Penney who says that Ms. Gibson's father only stated that he would talk to his daughter. According to Ms. Penney, he did not undertake to remove garbage. As such, without a clear indication that the problem would be attended to, the Landlord took the step of paying someone to remove it. I see no reason to question the Landlord's good faith.

[18] I am somewhat troubled by the fact that no effort was made to contact Ms. Gibson before doing so. The explanation by the Landlord that there was no obligation to do so, given that the tenancy had ended, is rather weak. It would have been, at least, a common courtesy. However, I do not believe the failure to contact Ms. Gibson is sufficient to disentitle the Landlord to recover this cost from the Tenant. The Landlord was likely concerned that the cost of having the municipality remove the material could have been much more expensive, and it simply took the expedient step of getting it done asap. I disagree with the Residential Tenancy Officer on this point, and am prepared to allow this item to be recovered.

The paint job

[19] The other major finding by the Residential Tenancy Officer that the Landlord objects to, was her reduction of the repair, priming and painting of the unit from the $1,525.00 claimed to $970.00, a difference of $555.00. The Residential Tenancy Officer characterized this as "normal wear and tear and depreciation."

[20] The Landlord actually spent $2,425.00 on the combined invoice for rental of the ozonator, repair of walls throughout as well as painting. This was broken down into three components:

Ozonator rental	$175.00
Repairs	$650.00
painting	$1,600.00
	$2,425.00

[21] The invoice from the contractor who did the work details the following with respect to the repairs: “repair walls throughout due to heavy crayon markings, stickers and surface damage, walls had to be washed and degreased before prepping for painting, prime repaired areas.”

[22] In advancing its claim, the Landlord did not claim the entire $1,600.00 for painting, but only claimed $700.00. At the hearing before me, it was acknowledged that logically the amount claimed for painting should have been $640.00, based upon having to paint the unit two years earlier than otherwise necessary. The Landlord was nonetheless penalized by the Residential Tenancy Officer by an additional $555.00, which must logically have come off either the ozonator rental or the repairs, which together totalled $825.00.

[23] In my view, there is no reason to apply any such drastic discount to these items. The ozonator rental was only necessary because of the unusual odour, which in all probability was caused by a lack of cleanliness. Most of the wall repair in preparation for painting appears to have been due to damage done by the child drawing on the walls with crayons and other degreasing due to lack of cleanliness. This is not normal wear and tear. Although the Landlord would have repainted in any event two years later, there is no reason to believe that it would have had to do such extensive repairs, nor would it necessarily have had to mitigate an unusual odour. I am prepared to accept that a small amount of

preparation might have had to have been done for the painting in 2014, and as such I am prepared to discount the repair portion from $650.00 to $450.00. As such, on this part of the claim the Landlord is entitled to $175.00 for the ozonator, $450.00 for repairs and preparation, plus $640.00 for the paint job, for a total of $1,265.00. This is $295.00 more than was allowed by the Residential Tenancy Officer.

Misc. items

[24] Another of the bills presented by the Landlord which the Tenant was ordered to pay was a total of $393.50 for various broken or missing items. Many of these are small matters. For example, the Landlord found a light fixture as well as a showerhead to be missing, which is corroborated by photographs, and replaced them. The Tenant claimed that she had removed these items, but that they were still in the unit when she vacated. The Landlord denied that they found any of these items.

[25] On this matter, again I prefer the evidence of the Landlord. Frankly, if the Tenant chose to remove a light fixture or showerhead, it behoved her to replace them before moving out, which would have taken all of two minutes. I place no weight on her contention that these items were simply in the closet. I accept that the Landlord, acting in good faith, did not find these items and felt that it was necessary to have them replaced at what amounted to a relatively trivial cost. From the total of $393.50, I am prepared to reduce this amount by $70.00, based upon concessions made by the Landlord at the hearing. There were also some questions as to whether the Tenant had caused certain damage, but on the whole I am prepared to accept the bill as rendered, reduced to $323.50.

[26] In the result, the following amounts are allowed:

item	originally claimed	now allowed
October 2012 rent and late fees	$994.85	$994.85
Water bills	$337.65	$337.65
Furnace cleaning	$86.25	$86.25
Garbage removal	$335.48	$335.48
Repairs	$393.50	$323.50
Cleaning	$300.00	$300.00
painting (including ozonator rental and prep)	$1,525.00	$1,265.00
Total	$3,972.73	$3,642.73

[27] The Landlord also claimed its cost of serving documents. Given that it has been substantially successful on this appeal, the sum of $184.00 is allowed, with the net result as follows:

Claims allowed	$3,642.73
Cost to file application to Residential Tenancies	$28.59
Less security deposit	($459.79)
plus cost of service	$184.00
	$3,395.53

[28] The order of the Director is varied to provide that the Tenants pay the Landlord the sum of $3,395.53.

Eric K. Slone, Adjudicator