Claim No: 416595

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

Cite as: Hebert v. West, 2013 NSSM 42

BETWEEN:

CATHY HEBERT

Tenant (Appellant)

- and -

JOANNE WEST

Landlord (Respondent)

REASONS FOR DECISION

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 Landlord self-represented

REASONS FOR DECISION

[1] This is an appeal from an Order of the Director of Residential Tenancies dated June 6, 2013. In that order, the Tenant was ordered to pay the Landlord the sum of $1,590.25, and was also ordered to give up vacant possession of the house at 45 Marvin St. in Dartmouth on Friday, June 14, 2013.

[2] The Tenant did not attend that hearing before the Residential Tenancy Officer. Accordingly, the hearing before me was the first chance that the Tenant had to present her evidence.

[3] The subject premises was leased on a month-to-month tenancy effective October 1, 2012 at a monthly rent of $750. There was no security deposit.

[4] The Landlord brought the application to the Director of Residential Tenancies on the basis that:

a. Rent had not been paid, and

b. The Tenant had done considerable damage to the property, mostly to the exterior.

[5] It appears that the Landlord and Tenant had considerably different opinions about the extent to which the Tenant was given permission to do some improvements to the property. According to the Landlord, she gave the Tenant permission to do some interior painting and floor replacement, and later to widen the driveway to accommodate the Tenant's vehicle. There was also a discussion at the outset about removing a pre-existing wheelchair ramp and cleaning out the basement. According to the evidence, the basement was not

used as living space but only as storage. In fact, there was no direct access to the basement from the home until the Tenant unilaterally constructed one, without any permission from the Landlord.

[6] It is not necessary for purposes of this decision to recite everything that appears to have gone wrong during this relatively short tenancy. Within mere days of the Tenant moving in, complaints were made to Halifax Regional Municipality which resulted in orders to remedy dangerous or unsightly premises on three occasions. The reason for two of the three orders concerned debris placed on the property as a result of the Tenant's activity. The third had to do with a derelict vehicle that the Tenant had parked on the property.

[7] The Tenant took it upon herself to excavate a trench in the backyard, which she says was to stop water from entering the basement of the property. I do not doubt this explanation, but she neither complained about the water in the basement to the Landlord, nor sought permission to effect this rather crude remedy.

[8] As the relationship between the parties deteriorated, on April 27, 2013 the Landlord served a notice on the Tenant giving her three months to vacate the premises on the basis of the various municipal violations and damage done to the landscaping of the property. It should also be mentioned that, despite permission to widen the driveway, the Tenant did so in a most unattractive and crude manner.

[9] The Landlord was under the impression that she had a legal right to terminate the tenancy on three months notice. She was apparently unaware of recent changes to the Residential Tenancies Act that gave Tenants a form of

tenure in such tenancies. Nevertheless, the Tenant used this notice as a pretext to stop paying rent. As such, on May 13, 2013 the Landlord filed her application with the Director of Residential Tenancies. At that time, the rent arrears stood at $1,100.00, and a further $350.00 was allowed for rent for the first half of June until the termination date ordered by the Residential Tenancy Officer. The Landlord was also permitted a further $460.00 to reimburse her for an amount that she was required to pay to have the debris removed in compliance with the municipal order, plus a further $30.25 for the filing fee of her application. As noted, the total compensation to the Landlord was $1,590.25.

[10] The Tenant claims that she is owed money by the Landlord. At the hearing, she presented an invoice in the total amount of $3,229.00 for work that she claims to have done on the Landlord's behalf. There are various components to this alleged work. I will comment upon each of them in turn.

"Hauled away sections of ramp deck: $954.00"

[11] According to my view of the evidence, there was a discussion about hauling away the wheelchair ramp. In fact, the Landlord was prepared to do it herself. There was no agreement that the Tenant could have it hauled away at the Landlord's expense. I reject this claim.

"Fixed leak in bathroom: $75.00"

[12] There was very little evidence about this alleged leak. It is my finding that the Tenant never made known to the Landlord that there was a leak, and had she done so the Landlord would have had an opportunity to investigate and

repair it. I'm not prepared to order the Landlord to pay this money when it had no opportunity to do so using its own resources.

> **"Painted kitchen, living room and two bedrooms. Relocated bathroom door. $350.00"**

[13] On my view of the facts, there was an understanding that the Tenant had permission to do these things, but not at the Landlord's expense. There is no basis to make the Landlord pay for these things.

> **"Cleaned up musty basement, took out old and mildewed insulation, prior Tenant's rotten items and hauled to the dump. $350.00"**

[14] Again, it's my finding that there was no specific agreement that the Landlord would reimburse the Tenant for whatever it chose to do in this basement, which, as indicated was not living space.

> **"Put in second parking spot and purchased gravel: $1,500.00"**

[15] There is also no basis for this claim. The Tenant had permission to widen the driveway at her own expense, not to charge the Landlord for it. Moreover, if anything, the crude and unattractive widening will cost the Landlord money to remedy.

[16] The Tenant made much in her defence of her suspicion that the Landlord is only trying to remove her so that she can redevelop the property as a duplex. The Landlord denies that this is her intention at this time. Even if it were, the Tenant's right to remain in the premises would have been secure if she had kept her rent up to date and treated the property with respect. It is my finding that

she has done neither. She has abused the property and is seriously in arrears of rent. This is ample reason to uphold the Director's order terminating the tenancy.

[17] As is common in these matters, by the time the appeal was heard and this order issued, the termination date set out in the original order - June 14 - is long past. It is unjust simply to confirm the order and thereby give the Tenant a rent free period. As such, I must set a new termination date and re-calculate the amount of rent payable. I believe the Residential Tenancy Officer made an inadvertent error when he ordered $350.00 for the first half of June. That would have been correct have the rent been $700.00, but the rent was actually $750.00. As such, I would increase the amount by $400.00 for the balance of June, and I am setting the new termination date as Wednesday, July 10, 2013 at 11:59 p.m. The additional rent for that ten days is $250.00.

[18] As such, the amount ordered by the Residential Tenancy Officer is varied upward by $650.00, to a total of $2,240.25, and the new termination date is set at July 10, 2013, as set out above.

[19] As noted to the Landlord at the hearing, once the Tenant has vacated, she is at liberty to commence a further application with the Director of Residential Tenancies for any damages which she believes ought to be charged to the Tenant. Because no such claim was made before the Residential Tenancy Officer initially, and indeed, because such damage may not even have occurred by that time, then this court has no jurisdiction to consider such a claim.

Eric K. Slone, Adjudicator