

Claim No: 422336

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

Cite as: Brooks v. Marks, 2014 NSSM 1

BETWEEN:

WANDA BROOKS

Tenant (Appellant)

- and -

ERIC MARKS

Landlord (Respondent)

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on January 21, 2014

Decision rendered on January 23, 2014

APPEARANCES

For the Tenant self-represented

For the Landlord self-represented

REASONS FOR DECISION

[1] This is a Residential Tenancies Appeal by the Tenant from the decision of a Residential Tenancy Officer dated December 5, 2013, which had allowed the Landlord's claims for back rent and a few miscellaneous charges, in the total amount (after crediting the security deposit) of \$1,303.91.

[2] The premises in question is a semi-detached home at 29-A Kennedy Drive in Dartmouth, Nova Scotia.

[3] The Tenant's basis for the appeal, as stated in her Notice of Appeal, was this:

Because of the living conditions. Landlord been asked previous times about fixing things around the house. Things were ignored. Mold, mildew, water damage - fridge/tiles uplifting. Bathroom conditions.

[4] These issues were never aired in any detail before the Residential Tenancies Officer. As stated by the Tenant, whose word I accept, the Residential Tenancy Officer refused to allow her to raise these issues because he was only prepared to deal with the specific application brought by the Landlord. She quotes the Residential Tenancy Officer as suggesting that she would have to appeal the Order of the Director, and bring her claims to the Small Claims Court.

[5] This is a refrain that I have heard several times in appeals where the Tenant appeared to have some complaints against the Landlord, which might have attracted a rent abatement or, perhaps, excused the non-payment of rent. In other cases tenants have been instructed that they will have to start a new

application to Residential Tenancies rather than bring up these issues at the same time as the Landlord's application. The common thread is that they are being refused the opportunity to be heard by the Residential Tenancy Officer, and there is a prevailing sense that they are not being treated fairly.

[6] I have a concern about how this case, and others like it, are being handled. The application form that the Tenant receives does not instruct him or her on how to raise issues about the condition of the rental premises. It basically invites the Tenant to show up and bring documents, photos and witnesses. It does not suggest that only certain types of defences will be entertained.

[7] In a case such as this, the Tenant has potential defences to the Landlord's claim of rent owing. She claims that she left at the end of October 2013 because the condition of the premises was intolerable, even uninhabitable. This type of claim would arguably excuse the payment of rent for November 2013, which represents a significant part of the relief ordered by the Residential Tenancy Officer. A second arguable claim would be for a rent abatement, which amount (if ordered) would be a legal set-off against the rent owing.

[8] This Tenant showed up at Residential Tenancies with documents and witnesses prepared to testify about the allegedly substandard conditions. Yet she was not allowed to advance her case.

[9] If it were within my authority, I would be tempted to send a case like this back to the Residential Tenancies Officer with a direction to hold a hearing on the issues that were not permitted to be aired at the initial hearing. Unfortunately, I do not appear to have this authority under the *Residential Tenancies Act*.

Merits of the appeal

[10] I must therefore consider whether the Tenant has established a right to either a rental abatement or alternatively the right to have vacated, without notice.

[11] I have listened to the evidence of the Tenant and her witnesses. I have considered the written statements of potential witnesses, which must be given limited weight since they were not present to be questioned by the Landlord. At least one of those potential witnesses, Anthony Grant, appears not to have been totally truthful in his statement, in the sense that he failed to disclose that he had actually lived in the subject premises for at least a year, and was not an independent witness. The Tenant protested that he was not actually living there, but there is evidence that he considered it his mailing address and that he was often seen there.

[12] I have also seen the many photographs which tend to show some unsavoury conditions inside the home, including photos which show what is alleged to be large patches of mold.

[13] The Landlord testified to having had a constant struggle with this Tenant, and the apparent lifestyle that involved many people coming and going and frequent partying. His view was that the Tenant did not observe a sufficient level of cleanliness and that she was not careful about things such as a leaking fridge and toilet, which caused wet conditions to develop. He testified that he concentrated his repair efforts on the exterior of the property, which he says is in excellent shape.

[14] The Landlord testified that after the Tenant left, he found the place quite filthy. He said that there was little or no mold, and that everything was able to be scrubbed clean with ordinary cleaning supplies.

[15] The Tenant called as a witness one Russell Diggs, an admitted friend, who claims to work for a restoration company and who claims to be qualified in mold and asbestos removal. He testified that there was mold and excessive moisture levels in the home.

[16] I was thoroughly unimpressed with Mr. Diggs. He did not produce any type of report. He had no credentials that he could demonstrate, and his understanding of what he was talking about appeared to be elementary, at best, and flawed, at worst.

[17] As is often the case, the problem seems to have become a personal one that got worse over time. The Landlord was unhappy with the fact that the Tenant was chronically late with her rent, and that (from his viewpoint) she was not properly looking after his property. By way of example, in 2010 she had allowed a leaky toilet to persist for months, causing damage to the bathroom floor. She attempted to claim in a Residential Tenancies application approximately \$600 in excess water costs, which claim the Residential Tenancy Officer disallowed.

[18] I do note that under the lease the Tenant is responsible for keeping the property clean and repairing any damage that she (or her occupants) may have caused. My impression is that the Tenant was unwilling to take responsibility for

what was going on in her own home, with her children and other family members.

[19] From the viewpoint of the Tenant, she was a long-standing tenant of some eleven years, and she was unhappy with the condition of her unit.

[20] Both parties could have handled this better. The Tenant could have brought in HRM bylaw officers to consider the very problems that she was complaining about, long before she decided to withhold rent. It does appear that the bylaw people were called, but came only after the Tenant had moved out and the results of that inspection do not appear to have identified mold. She could have been more diligent in looking after the home.

[21] For his part, the Landlord could probably have been more attentive to the Tenant's grievances.

[22] In the final analysis, however, I do not believe that the Tenant has made out a case for either an abatement or to be excused from the rent for November 2013.

[23] Abatements are a fairly rare remedy that compensate a Tenant for having to pay full rent when only receiving part of the value. I do not believe that she meets that threshold.

[24] As for her decision to move out without giving proper notice, this is not permitted by the *Residential Tenancies Act*. The Tenant appeared to be a reasonably intelligent and literate person, but she did little or nothing to communicate in writing with the Landlord. Had she done so, her case might

have been more credible in a variety of ways. Her chronic lateness in payment of rent leads me to suspect that she had problems other than the ones she now says drove her out of the home.

[25] In the result, I find no reason to depart from the order of the Residential Tenancy Officer and the Order of the Director is confirmed in all respects.

Eric K. Slone, Adjudicator