Claim No: SCCH No. 419713

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: C.S. v. Black, 2013 NSSM 62

BETWEEN:

Name C. S. — **Appellant/ Tenant**

Name Terry Black — **Respondent Landlord**

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

Date of Hearing: October 15 and 23, 2013

Date of Decision: November 4, 2013

C. S. - Self-Represented.

Terry Black – Self-Represented.

DECISION

This is an appeal from the Decision and Order of Residential Tenancies Officer, Sheila Briand, dated September 9, 2013. The decision provides as follows:

> "The landlord is entitled to rent of $1150.00 *(July 2013)*, damages of $1836.00, $16.95 for a power bill and $30.25 for the application fee for a balance owing of $3033.20 less the security deposit of $559.86 for a total balance of $2473.34 owing by the tenant." *(italics are mine)*.

An appeal to Small Claims Court is a *de novo* hearing meaning that a new hearing is conducted with the same or new evidence. During the second night of the hearing, in response to the tenant's evidence, the landlord withdrew most of his claim for damage except for the repair of

the door jamb when the tenant moved out, warped shingles allegedly caused by the tenant's barbecue and the cost of power for July 2013. He is also seeking rent for August 2013 and submits that I should reject the Notice to Quit – Early Termination (health reasons). The tenant appeals, seeking the damage to be limited to the cost of repairing the door jamb. It is also accepted by both parties that Ms. S. had paid rent for July 2013 and, thus, that amount should not have been included in the order of the Residential Tenancies Officer.

In summary, the matters at issue are the following:

- Liability for rent for August 2013: $1150.00.
- Cost to repair Door Jamb.
- Liability for warped shingles.
- Power bill for July 2013: $16.95.
- Application to Director of Residential Tenancies: $30.25.
- While not specifically claimed, the liability for costs of the appeal must also be considered.

For the reasons that follow, I dismiss the landlord's claim for rent for August 2013 and the claim for damage to the shingles. I allow $300 to repair the door jamb and $16.95 for power used in July, 2013. This amount shall be deducted from $559.86, being the amount of the security deposit plus interest. Ms. S. shall have her costs of the appeal set at $96.80. She is entitled to $339.71 payable from the security deposit and shall have judgment against the landlord, Terry Black, in that amount.

There were claims for sub-letting fees and lawn work performed by a third party sought by Mr. Black for which I find there was no basis proven in evidence. They are denied.

I hasten to add that while this result is markedly different from that rendered by the Residential Tenancies Officer, I attribute that to the new evidence presented and the amendment in the amount sought by the landlord. With the exception of the amount allowed for the cost of repairs and the change made necessary by the payment of July's rent, I would have reached a similar conclusion as that reached by Ms. Briand, but for this development.

The Lease

The tenant originally leased the premises, 3850A Basinview Drive, Halifax, NS, beginning on May 1, 2011 for $1100 per month. The lease was a fixed term lease that expired on May 31, 2012. After negotiations over rent and other issues, she continued to live there until a new fixed term lease was signed on August 30, 2012. That lease was set to expire on

August 31, 2013. The rent was for $1150 per month. A copy of this lease was tendered into evidence. It is the lease that is the subject of this dispute. (There is evidence of a previous lease with serious questions raised as to its terms but it is not material to this matter.)

At the time of the termination of the tenancy, I find a landlord-tenant relationship existed between the parties which was governed by the lease signed in August 2012.

It is worth noting that both leases were fixed term leases rather than year to year. This seems to have created confusion on the part of both Ms. S. and Mr. Black. In evidence, there are excerpts from e-mails where Mr. Black had referred to the amount of notice required on the part of Ms. S. to vacate the premises by the end of August. There is no need to give formal notice to vacate at the end of a fixed term. Obviously, it is better for practical or logistical reasons. Furthermore, all other legal obligations remain until the expiration of the tenancy - whether on the fixed date or some earlier date depending upon the circumstances. The tenant has until the end of the final day to vacate and there is no expectation of any subsequent rental. However, once the fixed term has expired, the tenancy simply ends.

If the tenant chooses to remain after the period of the lease and the landlord consents, any additional rental period thereafter is governed by s. 10A(2) of the *Residential Tenancies Act* and is deemed to be a month to month tenancy. The month to month tenancy ends on proper notice by either the landlord or tenant or the execution of a new lease. As noted, the month to month tenancy, such as it was, was superseded by the lease running from August 30, 2012 to August 31, 2013.

The Evidence of the Parties

Before reviewing the evidence of the parties, it is impossible not to take notice of the considerable animosity and mistrust that has developed between the two parties. In Court, both impressed me as reasonable and courteous individuals. However, it is quite clear due to the difficult tenancy, they had both become unable to manage their relationship. Thus, much of their actions, their opinions of the others' actions and subsequent responses are all the product of this animosity. Of course, that prompted the cycle to continue as these actions and reactions served only to further fuel their animosity and mistrust. This clouded their evidence which I found to be exaggerated at times, albeit in different ways and for different reasons. It also affected their credibility as witnesses.

It is also important to note that I have read all of the exhibits and considered the testimony of both parties in rendering this decision, even if they may not all be referenced in these reasons.

C. S. testified that the premises were one of two units at 3850 Basinview Drive in Halifax. Initially, she leased the unit for a fixed term commencing May 1, 2011 until April 30, 2012. The rent was $1100 per month. She attempted to negotiate a month-to-month lease while continuing to live in the premises. The landlord refused and eventually, a second fixed term lease was

signed effective August 30, 2012 to expire August 31, 2013. The rent was increased to $1150 per month.

Ms. S. continued to live in the premises from that point forward and decided to move in 2013. She sought an early exit from the lease in June 2013. In her correspondence to Mr. Black, her message suggests she had found another rental property. In fact, she had purchased a property in her own name. Mr. Black made this an issue of her credibility. Her destination after vacating the premises, whether due to a new rental or purchase is not relevant. Either way, her obligations continued under the lease until the end of the fixed term.

She left in mid-June and paid Mr. Black rent for July 2013. She served him with a Notice of Early Termination of Tenancy for health reasons supported by her family physician, Dr. Harris Crooks. She returned in July to clean the apartment. She had made arrangements for a final inspection with Mr. Black to take place on July 31 but it did not occur. It was reset for August 1, 2013. She and her partner, T.M., met at the premises but were refused entrance by Mr. Black. A final inspection was never conducted. At the hearing before the Residential Tenancies Officer, Mr. Black successfully claimed for a number of repairs of damage which was not noted on the initial inspection at the commencement of the tenancy.

At the hearing before me, Ms. S. tendered into evidence photographs provided to her by Heather Todd, who now resides in Calgary. Ms. Todd was Mr. Black's tenant at 3850A Basinview Drive immediately prior to Ms. S.'s tenancy. Those photographs revealed several of the damages for which Mr. Black was awarded compensation by the Residential Tenancies Officer, actually existed when Ms. Todd lived there. As a result, Mr. Black amended his claim for damages to only the cost to repair the door jamb and the warping shingles.

T.M. gave evidence about the condition of the apartment, serving Mr. Black with the notice to quit and Mr. Black's refusal to allow Ms. S. entrance on August 1. Both parties acknowledge that to be the case and I do so find.

Terry Black is the landlord in this matter and has title to the property at 3850 Basinview Drive, Halifax, NS. He testified that Ms. S. was a tenant from May 1/11 to May 30/12 and advised her that the rent was going to increase by $50 if she wished to continue to live there. They renegotiated the rent with a fixed term to run from August 30, 2012 to August 31, 2013. In the earlier tenancy, Ms. S. had made a successful application for repairs to the bathroom. The parties had corresponded repeatedly about subletting the unit. Ms. S. had found two tenants who met with Mr. Black. One prospective tenant had a young son and she was concerned about him climbing the balcony. The other had found a more suitable place for them elsewhere. He testified to difficulties with Ms. S.'s handling of the mowing duties for the common lawn. Mr. S. testified to suffering memory lapses due to a concussion sustained playing hockey as his explanation for not remembering the damage to the premises.

Under cross-examination, he denied adopting a belligerent or threatening tone. The parties did exchange e-mails and text messages several of which were tendered into evidence. There is nothing in any of the correspondence which I find could be reasonably interpreted as threatening. Indeed, if anything, they are indicative of frustration and a very difficult business relationship.

The Law and Findings

I have summarized above several of the salient points of evidence which are addressed in the findings below. There was other evidence of damage and other issues which are not relevant for the determination of the claims on appeal. I have considered all of the testimony and documentary evidence tendered by both parties. I have summarized below my findings concerning the matters at issue listed at the beginning of this decision.

August 2013 Rent

Ms. S. served Mr. Black a Notice to Quit – Early Termination (health reasons) signed by her family physician, Dr. Harris Crooks. Dr. Crooks signed the accompanying Physician's Certificate, indicating that her deterioration of health "has resulted in the inability of the tenant to continue the lease."

The Certificates do not provide room for explanation, a fact about which I commented at the hearing. Ms. S. was quite forthcoming that the reason for the diagnosis was due to stress and anxiety caused by the tenancy. She provided a letter from Dr. Crooks where he reviewed Ms. S.'s claims and diagnosed "situational stress and insomnia related to issues with her landlord".

"This prior history and the current communications were causing her much situational stress interfering with her sleep and affecting her activities of daily living."

He later adds:

"Her everyday functioning was becoming affected, so at this time, I filled out the required forms to break her lease agreement."

Dr. Crooks' report makes reference to Ms. S.'s claims or her version of events. As indicated, I do not use these statements as evidence of the actual sequence of events.

In giving notice to quit for health reasons under s. 10C of the *Residential Tenancies Act*, the requirements are fairly straightforward. A tenant need only have his or her doctor prepared to make one of several available diagnoses, sign the certificate and then serve the landlord in the appropriate time. Upon service of the Notice and Medical Certificate and the passage of the time for vacancy required by the *Act*, the tenancy is terminated. I find all of these conditions to have taken place. Presumably, a landlord can dispute this if the accuracy of the diagnosis is at issue. However, medical evidence sufficient to disprove the findings would be necessary as well. There is nothing in evidence to refute Dr. Crooks' medical findings. Indeed, there is support for them. The claim for rent for August, 2013 is dismissed.

Warped Siding

Mr. Black tendered several photographs into evidence showing a warped piece of siding near the back deck. He alleges this was caused by Ms. S.'s barbecue. Ms. S. testified that it was pre-existing. Nothing is mentioned in the incoming inspection.

In light of the claim for damage in the pictures provided in evidence by Mr. Black, which were completely discredited by the photographs supplied by Heather Todd, I have difficulty finding any credibility in this portion of the claim. I find on the balance of probabilities that the damage to the siding was caused by some other factor prior to Ms. S.'s tenancy. I dismiss this claim.

Door Jamb

Mr. Black tendered into evidence photographs showing damage to a door jamb in the unit which Ms. S. acknowledges was caused by herself and T.M. when they moved her couch. In support of the repair, he tendered an estimate from Basinview Repairs $600 plus HST of $90.

The work is described as:

"Fill and paint steel door. Replace closing cylinder and latch on storm door. Replace siding damaged by barbecue."

It is only the replacement of the closing cylinder and latch which is required. The claim for damage to the door has been withdrawn by Mr. Black (which I would have dismissed in any event) and I have rejected any claim for damage to the siding. I am left to estimate the approximate cost of repairing the jamb and cylinder. Mr. Black testified that the total estimate is based on a rate of $45 per hour which I find to be reasonable. There is no breakdown of the time for each part of the quote. I fix the amount payable at $300 inclusive of HST.

Power Bill

When Ms. S. moved out of the premises, she contacted Nova Scotia Power and had the power bill redirected to Mr. Black. In his initial claim before Ms. Briand, Mr. Black sought an amount for power in excess of the bill for July and August. As Ms. Briand has done, I reject any claim for August's rent as Ms. S. had vacated the premises and was not permitted to return. She did not use any power during that month.

Ms. S. testified that she continued to check on the unit after moving out in June. She attended to the premises in July to clean them. Indeed, she has satisfied me that she was diligent in these efforts. However, I find it was necessary for her to have power hooked up for her use during her cleaning and viewing efforts in July. She ought to be responsible for payment. I allow the landlord $16.95.

Application Fees and Court Costs

In awarding costs, the general rule is that costs follow the event, meaning a successful party is to be awarded costs. I find Ms. S. was successful in her appeal, while Mr. Black was only partially successful in his application and much of it was later withdrawn or reversed. I disallow Mr. Black's claim for the Application Fee. I award Ms. S. $96.80 as costs for her successful appeal.

Conclusion

In conclusion, I order the following relief:

The landlord, Terry Black, shall return the balance of the security deposit of $559.86 plus costs of $96.80 less any amount owed by the tenant.

The tenant, C. S., shall pay to the landlord, $300.00 for repair of the door jamb and $16.95 for power for July, 2013. This payment shall be by way of a set off against the amount awarded from the security deposit and costs.

In summary:

Security Deposit/Costs:	$656.66
Less: Repairs to Door Jamb and Power:	($316.95)
Total Judgment	$339.71

Order accordingly.

Dated at Halifax, NS,
on November 6, 2013;

Gregg W. Knudsen, Adjudicator

Original: Court File
Copy: Appellant/Tenant(s)
Copy: Respondent/Landlord(s)