

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

Cite as: Johnston v. McKnight, 2014 NSSM 45

BETWEEN

**Jesse Johnston**

**Claimant**

-and-

**Kayla McKnight**

**Defendant**

**Adjudicator: David TR Parker QC**

**Heard: October 2, 2014**

**Decision: October 8, 2014**

*The claimant and defendant to enter into a residential lease with a landlord and the defendant decided to leave the leased premises part way through the lease period. There is a valid agreement between the claimant and defendant to share the rent however the terms of that agreement changed, the claimant received a benefit and was unable to show she mitigated her losses. The defendant is responsible for part of the losses to the claimant.*

**DECISION and ORDER**

1. This case involves a residential tenancy lease wherein the claimant and the defendant entered into a standard form lease with Killam Properties Inc.
2. The Small Claims Court has no jurisdiction over residential tenancy matters where there is a dispute between the landlord and tenant and it is

within the ambit and orbit of the ***Residential Tenancies Act***. I refer here to section 10 subsection (d) of the ***Small Claims Court Act***.

3. However this is dispute between two tenants who agreed to enter into a lease with the landlord and in this case the defendant decided that she did not want to continue living in the lease premises with the claimant.
4. Therefore this is an agreement between the claimant and defendant to each other with respect to each of their obligations under the lease. It is clear that the claimant and defendant agreed to share equally the costs of renting the premises for one full year. The tenancy with the landlord started on September 1, 2013 and the monthly rent was \$755.00. The defendant moved out in October 2013 and paid November month's rent following notice to the claimant that she would be moving out. The claimant is claiming 9 months' rent in the amount of \$3397.50 plus cost of this action.
5. The defendant said that when she gave notice to the claimant and she would try to find someone to replace her. She also told the court that the reason she moved out was a condition with respect to the leased premises had changed when a friend of the claimant had moved into the premises. There was some dispute between the claimant and defendant as to the third-party actually moving in versus visiting however there is no dispute that the third-party was there more than just an occasional stay.
6. When we are dealing with verbal contracts such as this between the claimant and defendant it is necessary to be clear as possible on the obligations between the two parties and whether those obligations have been breached.
7. It is clear that the parties wished to room with each other during their academic year and that they would share the rent together however this changed when the third-party came into the picture and stayed in the

premises. This was not part of the original agreement. The claimant could have been very clear with her friend that visited that this was an apartment or lease premises for herself and the defendant only. By allowing the third-party to enter into the premises on weekends and sometimes during the week this changed the rules of the game as it were. The claimant did end up with the benefit of having a larger apartment and while she said she tried to sublet it or find another roommate it was not clear to me that the third-party did not stay at the leased premises more and more. There is no evidentiary support for the assertion that she, the Defendant tried to find someone else to rent it. In a court of law you have to have some foundation behind what one simply says is the case, some particulars at least. In this trial there was no support that the claimant made serious efforts to mitigate her loss. This will impact upon my decision as I will point out later.

8. Therefore because there was a breach in the original agreement between the claimant and defendant as a result of the claimant's friend or acquaintance staying in the lease premises at the request of the claimant the original agreement between the claimant and defendant no longer existed to the same extent as was originally envisaged by both parties. The claimant also decided to continue on with the lease and accept responsibility for payment. I am not sure if each of the parties gave the landlord postdated cheques as postdated cheques were required by the lease but if they did and the claimant accepted taking over the lease that would be another indicator that she assumed responsibilities for any contractual obligations the defendant might have to the claimant. However that is another issue which I cannot determine as there is no evidence on that particular point.

9. The defendant's father gave evidence that he retain the keys to the premises and refused to give them back to the claimant as she would just give the keys to the third-party. This will also impact upon my decision.
10. Notwithstanding there was a change in the terms of the contract which was not foreseen by the defendant, there still existed a change in the agreement. However by the father not relinquishing the keys to the claimant there was still acknowledgment that there was some form of an agreement or at least obligations still existing between the defendant his daughter and the claimant. The question is should the defendant be responsible for the remaining 9 months on the lease or at least her share of the remaining 9 months of the lease. The answer is she should not be responsible for the full 9 months as there is insufficient evidence before this court to show that the claimant took any reasonable steps to mitigate her loss. Further the claimant did have larger accommodations and there is always a question of how much time did her friend stayed in the apartment. Because of these issues I would reduce the claim by sixty percent and award the claimant \$1359.00 plus costs.

**It Is Therefore Ordered That** the defendant shall pay the claimant the following sums:

\$1359.00

\$ 98.60 court costs

\$ 50.00 service costs

**\$1507.60 total**

Dated at Halifax this 8 day of October 2014

