

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Durling v. Seth, 2004 NSSM 37

BETWEEN:

Name Valerie (Brown) Durling Appellant

Name Ram P. Seth Respondent

DECISION

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on August 22, 2007.

Appearances:

Valerie (Brown) Durling, on her own behalf;
Raman Seth, representing the Landlord Ram Seth, his brother.

- [1] This matter came on before me on May 25, 2004. I heard the evidence of Valerie Brown, the mother of one of the young student Tenants of the Landlord and the evidence and submissions of Mr. Seth on behalf of his brother.
- [2] Having heard the evidence and having reviewed the statement of Ram Seth, entered by Mr. Seth, I made the following findings of fact:
- a. Ms. Brown signed a lease dated June 28, 2003 for the benefit of her daughter, Stephanie Graham, and accordingly was bound by the terms of the lease to "take full responsibility for all of its terms and conditions;"
 - b. the Landlord claimed outstanding rent up to the end of February 2004 in the amounts of \$225 for January and \$630 for February at the Residential Tenancies Board hearing;

- c. in early February the Landlord, Mr. Seth, spoke to Ms. Brown on the telephone and told her that her daughter could move out of the premises (there being no other tenants at that time) and that he would find somebody else;
- d. in reliance on that conversation Ms. Brown's daughter did move out of the unit giving vacant possession to the Landlord as of the end of February 2004;
- e. the Landlord, Mr. Seth, commenced advertising the apartment for rent in early February 2004;
- f. the Landlord apparently did not obtain anyone to take over the premises commencing March 1, 2004;
- g. the Landlord claimed the monthly rent for March and April (\$1,250 a month) in addition to the outstanding amounts.

[3] Having heard the evidence and having noted that the Tenant moved out in reliance upon the Landlord's statement to Ms. Brown that she (that is, her daughter) should move out by the end of February 2004, I was satisfied that notwithstanding the failure of the Tenant to provide written notice, the Landlord was estopped from insisting on such notice when the Tenant had vacated as a result of his urging that she do so.

[4] In effect, the Landlord waived the requirement of notice and accepted termination of the tenancy as of February 29, 2004.

[5] In these circumstances I was not satisfied that the Tenant had any liability for any rental payments after February 29, 2004, inasmuch as the Landlord had, in effect, accepted early termination of the lease.

[6] At the end of the hearing I made an Order that:

- a. Ms. Brown was liable for the outstanding rent as of February 29, 2004, being a total of \$855, minus the damage deposit of \$654.43, for a total of \$200.57.

[7] At the conclusion of my oral decision and Order on May 25, 2004 and having heard my comment that Mr. Seth (the Landlord) had not specifically or expressly denied

the conversation that took place between Ms. Brown and himself (choosing instead to simply rely upon the absence of any written notice, as set out in his statement filed), Mr. Raman Seth then said that he would have asked for an adjournment to permit his brother to give evidence. No such request for an adjournment had been made to me prior to the rendering of my decision.

Dated at Halifax, Nova Scotia this 31st
day of May 2004

)

)

)

)

ADJUDICATOR

W. Augustus Richardson

Original	Court File
Copy	Claimant(s)
Copy	Defendant(s)