Claim No: SCCH No. 442146

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Finley v. Gaston Chagnon Property Ltd., 2015 NSSM 43

BETWEEN:

Name Karen Finley — **Appellant/ Tenant**

Name Gaston Chagnon Property Limited — **Respondent/ Landlord**

(Edited for grammar, punctuation and readibility)

Editorial Notice: Addresses and phone numbers have been removed.

DECISION

Karen Finley appeared on her own behalf; Pauline Chagnon represented the Landlord, Gaston Chagnon Property Limited.

This is an appeal of the Decision and Order of Residential Tenancies Officer, Sheila Briand, dated August 6, 2015.

An appeal from the decision of a Residential Tenancies Officer is not merely a review of the decision for correctness in law or procedure. It is a *de novo* hearing, meaning a new hearing based on the evidence presented before the Small Claims Court Adjudicator. The evidence presented usually consists of that presented to the Residential Tenancies Officer and, possibly, any additional evidence the parties seek to adduce.

The Facts

The parties entered into a year to year lease of Unit 402, 39 Towerview Drive, Halifax, Nova Scotia ("the premises"), commencing August 1, 2006. The Tenant vacated the premises without notice on May 31, 2014. The premises were eventually rented on October 1, 2014. The Tenant fell into arrears on at least two occasions during the tenancy. One application involved a mediated settlement followed by a subsequent application to enforce arrears which was appealed

to the Small Claims Court in 2014. This matter is the second appeal to the Small Claims Court dealing with rental arrears.

The Landlord applied to the Director of Residential Tenancies alleging rental arrears for a period greater than what was eventually found by the Residential Tenancies Officer. The Residential Tenancies Officer, Sheila Briand, found the Tenant owed the Landlord rent from June 20, 2014 – September 30, 2014, or $2207.11 inclusive of the application fee.

The Tenant disputes this amount alleging that the tenancy was switched to a month to month lease after the first year pursuant to s. 10A (3) of the *Residential Tenancies Act*. Further, she claims to be entitled to a rental abatement due to the state of the premises for several months prior to her leaving.

The Evidence

Pauline Chagnon testified that Ms. Finley continued to be in arrears for an extended period of time after the decision of Adjudicator Stephen Johnston dated September 22, 2014. There was some disagreement as to the amount owing when the Landlord made their original application before the Tenancy Officer. The original amount of the application was $3473.00. However, as Ms. Briand found, the previous Director's order applied up to and including June 19, 2014. She reduced the amount to be awarded to $2175.96 plus $31.15 for the time from June 20 – September 30, 2014. Ms. Chagnon concurs with this finding and does not seek to have it varied. Ms. Finley agrees with the starting point to calculate the arrears as June 20 but, obviously, disputes the quantum.

Ms. Chagnon testified that she does not have any record of notice received by the Tenant to vacate the premises or to seek to have the term of the lease switched to month to month. She testified to giving the Tenant notice to vacate and provided a letter dated May 7, 2014 prepared by her son, Vincent Chagnon on behalf of the Landlord, requiring Ms. Finley to pay arrears by May 22, 2014 or "face eviction proceedings".

Ms. Finley seeks to have the arrears reduced to $273.33, representing the amount outstanding in June 2014. She also seeks costs of $99.70. She submits that she delivered a notice to the late Mr. Chagnon dated April 1, 2007 seeking to have the tenancy changed to month to month effective August 1. 2007. A copy of this letter is in evidence. She has also provided photographs of the premises which show cracks in the wall and ceilings and brown stains on the ceiling. The latter issue was apparently from water on the ceilings.

Findings

I find this appeal addresses rental arrears from June 20, 2014 – September 30, 2014. Neither party disputes this. As my colleague, Adjudicator Johnston, found in September 2014, I find the

Landlord's records were incomplete for previous months and at times unreliable. However, there is no issue as to the time when Ms. Finley vacated the premises or the date the premises were subsequently rented.

Condition of Premises

Statutory Condition 1 under s. 9 of the *Residential Tenancies Act* provides as follows:

> **1. Condition of Premises** - The landlord shall keep the premises in a good state of repair and fit for habitation during the tenancy and shall comply with any statutory enactment or law respecting standards of health, safety or housing.

In reviewing the evidence, I am satisfied (and it has not been alleged otherwise) that the conditions depicted in the photographs were not the result of any actions or neglect by the Tenant, Ms. Finley. It is clear the premises were in need of repair. However, I am not satisfied that the cracks and stains are such that would violate the Statutory Conditions. Specifically, I find there was no evidence that the damage renders the premises unfit for habitation or in violation of any standards of health, safety or housing. They are largely cosmetic. There is no evidence from Ms. Finley as to when or if she ever brought these problems to the Landlord's attention other than at the hearings.

These are matters of appearance which ought to have been repaired eventually. They were not enough to find the premises were in anything but "a good state of repair". Thus, they do not justify an abatement of rent.

Term of the Tenancy

With respect to the request to switch the term of the lease from year to year to month to month, it is necessary to consider the relevant subsections of s. 10A of the *Residential Tenancies Act*.

"**Renewal term and daily rents**
10A (1) A lease, except for a fixed-term lease, continues for the same type of term if no notice is given pursuant to subsection (1) of Section 10 and is deemed to have been automatically renewed.....

(3) Where a tenant gives a notice to quit three months prior to the anniversary date of a year-to-year lease and requests in writing that the term be changed to a month-to-month lease, the consent of the landlord shall not be arbitrarily or unreasonably withheld.
(4) Where a tenant makes a written request pursuant to subsection (3), the landlord shall respond within thirty days of receipt thereof, otherwise consent is deemed to be granted...."

In essence, Section 10A provides that a lease will continue for the same term unless a notice to quit is given. Once a notice to quit is given, then the tenant in a year to year lease has the right to request the term be changed to a month to month term, and a landlord shall not unreasonably or arbitrarily withhold the consent. However, a notice to quit must be served concurrently with or before the request to vary the term is made.

Section 10 provides the form and time period for notices to quit. Section 10(1)(a) requires notice to quit a year to year lease to be served three months before the anniversary date. More significantly, section 10(4) provides as follows:

"A notice to quit residential premises shall be in writing and shall contain the signature of the person giving the notice or his agent, a description of the residential premises and the day on which the tenancy terminates."

The Act provides a form (Form 2 in 2007) as one way of giving notice. I find the only document served in this case was the letter requesting the term of the lease be changed from year to year to month to month. There is no evidence that a notice to quit as prescribed in s. 10 was ever served

on the Landlord. Therefore, I find a notice to quit was never served on the Landlord by the Tenant and thus, the provisions of subsection 10A(3) have not been met. Consequently, subsection 10A(1) applies. I find the tenancy was a year to year tenancy with an anniversary date of August 1 of each year.

Mitigation of Losses

Statutory Condition 6 provides as follows:

"Abandonment and Termination - If the tenant abandons the premises or terminates the tenancy otherwise than in the manner permitted the landlord shall mitigate any damages that may be caused by the abandonment or termination to the extent that a party to a contract is required by law to mitigate damages."

Ms. Chagnon provided evidence that she advertised the apartment for lease and made the repairs indicated by Ms. Finley. She advertised the rental of the premises until a new tenant was found. The subsequent rental of the premises commenced on October 1, 2014. In my view, the Landlord has adequately mitigated its losses.

Conclusion

I find the rent owed was for the period from June 20, 2014 to September 30, 2014. Further, in reviewing the law and evidence, I am unable to find any reason to further reduce the rent owed by the Tenant beyond that prescribed by the Residential Tenancies Officer. My findings are identical to those of Ms. Briand.

The appeal is dismissed. The Landlord, Gaston Chagnon Property Limited, shall have judgment against the Tenant, Karen Finley, for $2207.31 inclusive of the application fee. Each party shall bear their own costs of this appeal.

Order accordingly.

Dated at Halifax, NS,
on September 4, 2015;

Gregg W. Knudsen, Adjudicator

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