Claim No: 335834

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

Cite as: Shortt v. Jennings, 2010 NSSM 61

BETWEEN:

ALLAN E. SHORTT

Landlord (Appellant)

- and -

DAVID JENNINGS and BRENT VAN NOORD

Tenants (Respondents)

DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on September 28, 2010

Decision rendered on October 5, 2010

APPEARANCES

For the Landlord self-represented

For the Tenants self-represented

BY THE COURT:

[1] This is an appeal by the Landlord from an order of the Director dated September 9, 2010 following a hearing on August 19, 2010. In that Order the Landlord was ordered to pay to the Tenants the sum of $208.12, being the balance of the security deposit after deducting some sums due to the Landlord in the amount of $145.16.

[2] The tenancy for the unit at 7 Pleasant Ave in Dartmouth was also deemed to have been terminated on July 2, 2010, by the action taken by the Landlord on that day of changing the locks.

[3] The Landlord argues that he only changed the locks because the Tenants had abandoned their tenancy, and in an effort to mitigate his losses.

[4] The lease here was year to year, starting on October 1, 2009. It would have renewed for another year had the Tenants not indicated their desire otherwise by July 1, 2010.

[5] The evidence establishes that the Tenants were unhappy with the Landlord's failure to address a needed repair to their front door. By their own admission, the Tenants decided to "play hard ball" with the Landlord. This is reflected in a series of emails. On June 5, 2010, the Tenants wrote that they had taken action with the Residential Tenancies Board concerning the condition of the apartment, and that they were serving formal notice that they would be vacating "in a month." In fact, there was no action taken with the Board although there probably were some discussions with Board staff about their rights and remedies.

[6] The Landlord replied on June 6, denying that there were any serious problems with the condition of the apartment and reminding the Tenants that they were obligated at least to the end of September. He also mentioned that they could sublet, if they wished.

[7] The Tenants emailed on June 21 saying that they had cancelled all future postdated cheques and cautioned that if the Landlord tried to put them through they would be declined, possibly with a cost. They asked when their exit inspection would be taking place.

[8] The Landlord replied that there would be an inspection only after they had vacated the unit.

[9] The response from the Tenants was that this was “unacceptable” and that “we will be there until the unit is inspected.” They indicated that they planned to be ready to “finish” by June 30.

[10] The Landlord countered that the “out” inspection would be done after they moved out. He asked that they notify him of their intended move out date so that he could re-rent it and thus keep his claim against them as small as possible.

[11] The Tenants responded that they were “trying to be easy on you” and that they could be “out at the end of June with ease after an inspection and our damage deposit returned or we will see you in a month and a half when we are evicted.”

[12] On the facts as I find them, the Landlord learned from a neighbour that the Tenants had moved out of the apartment on June 28. On the 1st of July the Landlord posted a notice on the door that gave 24 hours notice of his intention to enter the unit. At or about the same time he discovered that the electric service to the apartment had been discontinued.

[13] On July 2, the Landlord entered the apartment and discovered that most of the Tenants' belongings had been removed. Photos were taken of the few things that remained. On that date the Landlord had the locks changed.

[14] On the evidence, although the Landlord did not know this at the time, Mr. Jennings had indeed moved out entirely, while Mr. Van Noord had moved himself and most of his belongings out, with the intention of returning to do a final cleanup and retrieve his remaining things.

[15] The Landlord also discovered when he deposited the July rent cheques (one from each of the two Tenants) that payment had been stopped.

[16] In the end, Mr. Van Noord discovered that the locks had been changed and there was some delay in getting his remaining belongings out, although he eventually did.

[17] The Landlord was successful in re-renting the premises for August 1 after doing a thorough professional cleaning of the apartment. Some property management fees were incurred to achieve this result.

[18] The first questions that I have to ask include whether the Landlord's actions were unlawful, or whether they had the effect of relieving the tenants of

any further legal responsibility once the locks were changed on July 2, as found by the Tenancies Officer.

[19] The applicable provisions of the *Residential Tenancies Act* can be found in s. 5A and in the Statutory Conditions:

> 5A A landlord shall not bar a tenant from free access to the residential premises during the term of the tenancy.
>
> **Statutory conditions**
>
> 6. 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.
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> 7. Entry of Premises - Except in the case of an emergency, the landlord shall not enter the premises without the consent of the tenant unless
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> (a) notice of termination of the tenancy has been given and the entry is at a reasonable hour for the purpose of exhibiting the premises to prospective tenants or purchasers; or
>
> (b) the entry is during daylight hours and written notice of the time of the entry has been given to the tenant at least twenty-four hours in advance of the entry.
>
> 8. Entry Doors - Except by mutual consent, the landlord or the tenant shall not during occupancy by the tenant under the tenancy alter or cause to be altered the lock or locking system on any door that gives entry to the premises.

[20] These sections must be read together to produce a reasonable interpretation. The Landlord has a duty to mitigate the losses that are otherwise chargeable to the Tenants. This duty may be more important in a particular instance than the duty not to change the locks or deny access. That prohibition applies - and will be rigorously enforced - where there is an active tenancy and

where the act of changing the locks is coercive or punitive on the part of the Landlord. If the Landlord is acting under a reasonable belief that the Tenants have abandoned the lease and are no longer occupying the unit, changing the locks may be a necessary component of securing the premises and getting it ready for someone else's occupancy.

[21] The fact that one of the Tenants had left behind some of his belongings and that it may have inconvenienced him slightly, does not trump the Landlord's right and duty to secure an abandoned apartment and mitigate the loss.

[22] On the evidence, it is clear to me that these Tenants objectively communicated that they were planning to vacate and in fact that they substantially did so, before the end of June. While it is true that one man's trash may be someone else's treasure, the items left behind by Mr. Van Noord did not appear to be of such value or importance that they evidenced an intention to retain the tenancy. The Tenants further signalled their plans by having the power disconnected.

[23] Their demand for an inspection and for the return of their deposit before moving out was unreasonable. The point of any such inspection was to measure how well the Tenants were leaving the premises, which is not something that could have been measured until they had indeed left. By way of just one example, the very act of moving furniture is one of the major causes of damage.

[24] The threat to stay put, having stopped payment on their rent cheques, until the Landlord brought them to a hearing to be evicted, does them no credit whatsoever. With due respect, these "hard ball" tactics were misplaced and ineffective.

[25] I am not in a good position to judge whether the issues with the front door were as serious as the Tenants contend, but the Tenants could have brought this issue before the Residential Tenancies Board months before the events of June 2010, and there could have been a hearing focussed on that issue.

[26] In the end, I find that the Residential Tenancy Officer was incorrect in her finding that the Tenants did not abandon the premises, and that his changing of the locks was unlawful, which findings largely drove the result that she reached to the effect that the Landlord terminated the tenancy on July 2.

[27] I am satisfied that the Tenants remained financially responsible for rent for the months of July, August and September, and that it was only through the Landlord's mitigation effort that the August and September rents were recoved through another tenancy. I find that the Landlord is also entitled to recover reasonable mitigation expenses, which include:

a. $138.00 for professional carpet cleaning
b. $70.00 to change the lock
c. $700.00 as a finders fee for the new tenant

[28] I am rejecting some of the costs claimed by O'Neill Business Services, which consist of taking photos of the apartment, serving notices of the hearing on the Tenants, and for 8 hours of cleaning @ $30 per hour. The latter charge is problematic given that the Tenants were prepared to clean the apartment but were prevented from doing so by the Landlord.

[29] In the result, the Landlord is entitled to $700.00 for one month's rent, $100.00 for the returned cheques, $700.00 to find the new tenant, $138.00 for carpet cleaning and $70.00 to change the lock, for a total of $1,708.00, from which must be deducted the $350.00 security deposit plus the $3.28 interest earned thereon, for a net owing by the Tenants to the Landlord of $1,354.72.

Eric K. Slone, Adjudicator