

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Chater v. Nickerson, 2012 NSSM 4

Between:

Joumana Chater

APPELLANT

- and -

Michelle L Smith Nickerson

RESPONDENT

DECISION AND ORDER

Adjudicator: David T.R. Parker

Heard: February 23, 2012

Decision: February 27, 2012

This matter came before the Small Claims Court on February 23, 2012. Both parties appeared and were heard. The Director's Order that is being appealed is dated November 14, 2011 and being file number 201103247.

It was explained to the parties that this was a trial de novo and what that meant in terms of supply evidence to the court. The procedure set out in this particular case was for the tenant/respondent to commence their case as it

did in their application to the residential tenancy board. This was followed by the case put forward by the landlord.

The Directors Order required the landlord to pay the tenant in this case the respondent \$8416.24 made up as follows: \$3300.00 for refund of rent in lieu of improper notice [\$300.00 x 11]; \$5000.00 return of security deposit and \$116.24 interest at 1% for total amount of \$8416.24. The evidence before me was much the same as before the officer of the residential tenancy board. However there were some differences or at least conclusions that I reached with respect to some of the evidence. The residential tenancy officer concluded that the cheques provided to the landlord/appellant in the amount of \$5000 represented a security deposit. Each of the cheques has a notation under the memo section of the cheque indicating security damage deposit. The first cheque for \$3000.00 is dated May 29, 2009, the second cheque is dated July 15, 2009 for \$500.00 the next cheque is dated September 14, 2009 for \$500 the next cheque is dated November 7, 2009 for \$500.00 and the final cheque that I have before me is dated January 15, 2010 for \$500.00. The landlord/appellant in her testimony said that she did accept \$5000.00 from the respondent that this was a deposit towards the purchase of the home. She stated that she received \$3000.00 in cash representing the first and last months payment of rent that is \$1200.00 for each month plus \$600.00 as a damage deposit. The other cheques were for the purchase of the home. Taking in the totality of the landlord's/appellant's testimony along with her witness I found the appellant's evidence credible and I accept this as fact. Both parties agreed in their testimony that there was a point where the tenant was planning to purchase the home but that all fell through. There

was no option to purchase agreement or purchase sale agreement or anything else to support a binding agreement between the parties however it is clear that the \$5000.00 was a deposit intended towards the purchase of the home and for which the appellant receive monies. The appellant in fact agreed that she was to return the \$5000.00 to the respondent but she insisted that respondent had damaged the home and that the respondent should pay for the damage parts of the home prior to her returning the \$5000.00.

The tenant cleaned up the property prior to her leaving however I still accept the appellant's evidence and her witness that there was damage to the property. The evidence provided to this court for repairing the property back to the state in which it was amounted to \$4350.00. There was very little evidence however on whether this repair work was also for replacement items to the property which some of it appears to be. I would discount the repair work by 25% on the betterment principal. That is that the property became better than it was from the time the tenant/respondent first entered the property. Therefore I would award the appellant \$3262.50 for costs to make repairs to the property.

With respect to the director's decision to allow refund and rent in lieu of proper notice of increase there is no evidence before me that written notice of increase was provided to the tenant. Nor for that matter was there any evidence that it was not provided to the tenant. However in this particular case the tenant accepted the increase of \$300 per month rent and paid same without complaint throughout the rental. The respondent is estopped from now saying that she did not agree to the rental increase.

As indicated earlier the landlord said the \$3000.00 cheque was for payment of the first and last months rent plus the damage deposit. There is no evidence before me that the last months rent was reduced by the \$1200.00 and the conclusion that had to be reached is that the tenant/respondent did in fact pay for the last months rent of \$1500.00. Certainly there was no complaint by the landlord/appellant that this did not happen. Therefore the \$1200.00 should be returned to the tenant as it had already been paid originally at the beginning of the lease. I would also allow security deposit interest of \$14.00.

In summation the Director's Order will be varied and the tenant/respondent should receive the following amounts from the landlord/appellant

	\$5000.00 deposit for purchase of the home
	\$1200.00 payment of last month's rent
	\$ 14.00 interest on deposit account
Less	\$3262.50 damage to home
	\$2951.50

It Is Hereby Ordered That the Appellant/Landlord pay the Respondent the following sum:
\$2951.50

Dated at Halifax this 27th day of February 2012