Claim No: 394999

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

Cite as: El Rassi v. Tucker, 2012 NSSM 24

BETWEEN:

JEAN EL RASSI

Landlord (Appellant)

- and -

KENNY TUCKER

Tenant (Respondent)

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on June 12, 2012

Decision rendered on June 20, 2012

APPEARANCES

For the Tenant self-represented

For the Landlord self-represented

REASONS FOR DECISION

[1] This is an appeal by the Landlord from a decision of the Director of Residential Tenancies dated May 25, 2012. In fact, the Landlord's application had been dismissed because the Landlord did not show up for the hearing. As is often the case, the hearing in Small Claims Court is the first time that the case has been heard on its merits.

[2] The Landlord is the owner of the premises at 82 Randall Avenue in Dartmouth. One of the units was leased to the Tenant on an annual basis under a written lease dated December 23, 2010. Monthly rent was set at $950. When the Tenant moved in, the unit was in the process of being renovated and there were verbal understandings arrived at between the Tenant and the Landlord's brother, who was at the time acting on the Landlord's behalf. This involved the Tenant completing some of the work that was already in process.

[3] For purposes of this decision, it is sufficient to say that the work may not have been done entirely to the satisfaction of the Landlord, and equally so the Tenant believed that there was far more work involved than he had bargained for, in part because he believed the Landlord had used unskilled labour and things that he was supposed to finish had not been done up to a proper standard.

[4] There is no real controversy over the fact that the Tenant was chronically late in paying his rent, and by April 2012 he was in arrears to the tune of two months rent, or $1,900. He ended up vacating the property with this amount still owing. There are differences in the evidence as to those circumstances of leaving, but it really makes very little difference as the Landlord is only seeking these two months of rent, and the Tenant admits that this amount is owing.

[5] What is really at issue is that the Landlord would like to offset the $475 security deposit against damages or deficiencies that he believes the Tenant left behind. In his application he cites a number of repairs that he believes ought to be the responsibility of the Tenant, including the replacement of a bathroom door, the replacement of a stair handrail, a certain amount of painting and floor finishing. The Tenant had explanations for these things, which were passably credible, while the Landlord had virtually no backup to support the claim. As an example, in his original application he asked for $100 credit for replacing this bathroom door. His brother testified that he obtained a used door at a cost of $10 and placed it in the unit. The Tenant explained that he had had to remove the door while he was putting a ceramic floor in this laundry room/bathroom. I consider this a trivial item and would not allow anything as compensation. In fact, I do not consider that the Landlord has proved any of his damage claims against the Tenant.

[6] As such, the Landlord is entitled to rent arrears in the amount of $1,900, but must give credit to the Tenant for the $475 damage deposit. I was not supplied with actual information as to how much interest may have accrued on the damage deposit in the approximately 1½ years that the Landlord has been holding it. I will deduct a nominal $10 to reflect the likely amount of interest involved. The result is that the Tenant is ordered to pay the Landlord the difference between $1,900 and $485, namely $1,415. There is no need for any relief respecting the tenancy as the Tenant moved out some time ago.

[7] I note that upon leaving the courtroom, the Tenant advised the Landlord and the court that he had just made an assignment in bankruptcy, in which case the Landlord would be directed to include his claim in the bankruptcy proceedings, if he chooses to do so. I was not supplied with any written evidence to the effect of this bankruptcy, and as such treat it only as a possibility.

Eric K. Slone, Adjudicator