Claim No: 393315

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

Cite as; Lucas v. Wang, 2012 NSSM 48

BETWEEN:

KATHY LUCAS and JENNIFER SMITH

Tenants (Appellants)

- and -

TINGYU WANG

Landlord (Respondent)

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on September 4, 2012

Decision rendered on September 7, 2012

APPEARANCES

For the Tenants self-represented

For the Landlord self-represented

REASONS FOR DECISION

[1] This an appeal by the Tenants Kathy Lucas and Jennifer Smith from an order of the Director of Residential Tenancies dated May 4, 2012, which ordered them to pay the Landlord, Ms. Wang, the sum of $4,956.42, which amount took into account the security deposit and interest accrued thereon in the amount of $642.76.

[2] The Tenants did not receive actual notice of this order until several months later, and they brought an application before me to extend the time for the bringing of the appeal. On August 8, 2012, I allowed them to do so and the matter was further scheduled for September 4, 2012.

[3] The appellants are two of four individuals who are named on the lease for the subject premises at 43 Lynn Drive in Dartmouth. It appears that the two other tenants were not able to be served with the original application to the Residential Tenancy Officer, and accordingly the order only affected the two appellants. Ms. Lucas and Ms. Smith are mother and daughter, respectively.

[4] The subject premises is a multi-storey house. A lease for five years was originally signed by two individuals, April Adams and Kathy Lucas in May 2009. In February 2010, the Landlord agreed that Ms. Adams could be replaced on the lease by Jennifer Smith and the other two individuals who are not a party to this appeal. An amending lease was created which was to terminate in May 2014.

[5] There are a few other facts which are not contentious. It is agreed that in August 2011, Ms. Lucas sent an e-mail to the Landlord advising that she and the others, including her daughter, Ms. Smith, would be moving out as of November 1, 2011. The reason given in that e-mail was an allegation that the premises

contained mold which was affecting the health of both Ms. Lucas, and her grandson who suffered from asthma.

[6] According to the Landlord, this was the first allegation ever made about mold in the premises.

[7] This relatively short e-mail was answered by the Landlord, who very clearly stated that she would be cooperative in allowing the Tenants to move out, but that she would hold them responsible for any resulting period of vacancy. She also stated very clearly in the response that if the Tenants were able to find someone to take over the lease, by way of a sublease, that this would be acceptable. I mention this specifically because both of the appellants testified that they had someone willing to sublet the premises immediately upon their vacating, but that the Landlord insisted on finding her own Tenants. They raise this in response to that part of the claim which relates to lost rent for the month of November 2011. The Landlord testified that she took over the premises upon the Tenants vacating, and was not able to re-rent it until December 1 because of the poor state of cleanliness and the need to do certain repairs and repainting before the house would have been fit to be occupied.

[8] I will return to this issue later.

[9] The Residential Tenancy Officer allowed the following items:

a. $2,500 for rent, including $1,250 for October 2011, which the Tenants admit never got paid, plus $1,250 for the month of November when the house was vacant.

b. $768 for the cost of refilling the oil tank

c. $50 for the cost of two returned cheques.

d. $37.50, representing three months of late fees as per the lease.

e. $60 for the cost of changing the locks.

f. $150 toward the labour cost of repainting part of the house, plus $400 which the Landlord paid the new tenant to do a thorough cleaning of the house.

g. $1,633.68 for labour and materials related to the ripping up of the old dirty carpets, and replacing them with new flooring. This was actually 20% of what the Landlord had claimed, but the Tenancy Officer found that this was a reasonable amount in light of the advanced age of the carpets being removed.

[10] The Landlord supported these claims with her evidence, and actually sought to have more allowed for the cost of taking up carpets. However, the Landlord did not herself appeal the decision of the Director, and as such I do not believe that the court has any jurisdiction to increase the amount ordered. To allow the Landlord to claim more than she has received, without a cross-appeal, would be fundamentally unfair to the Tenants who did not come to court expecting that the order against them could be worse than it already is. Accordingly, even if I disagree with the rationale used by the Residential Tenancy Officer, in the absence of an appeal by the Landlord, I am limited to confirming what she has allowed.

[11] The Tenants presented a version of the facts that was wildly at odds with what I heard from the Landlord. Unfortunately, this forces me to make a finding of credibility. I found the Landlord to be well prepared in her presentation, which

she backed up as far as possible with documents. The Tenants, on the other hand, merely resorted to loud denials and shows of disbelief and amazement at what they were hearing. They came utterly unprepared. This alone made it difficult for me to credit the Tenants with any credibility.

[12] Beyond that, the Landlord's presentation simply had the ring of truth. She testified about how, for example, the premises smelled of cat urine which had penetrated the carpets and stained the floor below. The Tenants did not deny that they had a cat, or perhaps more than one cat, but insisted that theirs was a well-behaved cat that always went in its litter box. Simply put, I believe the Landlord and give no weight to the Tenants' denials. This applies across the board to all of the issues.

[13] In making such a finding, I am not commenting on the character of the Tenants or whether or not they are good people. It does appear that one or both of them have serious health problems, and that more likely than not they were focussed more on their self-interest than on the situation that they were leaving behind. This is the innocent explanation that I will work with.

[14] On the question of whether or not the Tenants are responsible for November rent, I accept the written evidence of the Landlord's offer to allow the Tenants to sublet. The Landlord testified that she was <u>never</u> presented with a possible sublease, and this evidence I also accept. The fact that it took a month to get the place in shape for a new Tenant is not surprising. Moreover, it is not a huge price to pay for breaking a lease that still had more than two years to run.

[15] The balance of the claims allowed by the Residential Tenancy Officer appear fully justified on the facts. There is no question that there were bounced

cheques, resulting in bank charges, and that late fees are appropriately charged for the months when the rent was paid late. I accept that the Landlord had to change the locks because she was only presented with very few keys upon the Tenants vacating. I also accept that the Tenants left the oil tank nearly empty.

[16] The claims for painting and cleaning the premises are allowable on the basis that Tenants have an obligation to leave the premises in good condition, and I accept the evidence of the Landlord that these were necessary expenses. The Landlord painted a fairly colourful verbal picture of how things were left. I would've preferred to see some photographs, but not everyone has the presence of mind or anticipates that the situation will result in litigation. In contrast, however, I gave no credibility to the Tenants claim that they left the premises neat and tidy. I suppose there is an element of subjectivity in the sense that one person's clean may be another one's dirty. However, the Tenants simply did not impress me with their evidence.

[17] On the question of the cost of removing the dirty carpet and restoring the floor, I believe the Tenancy Officer found a reasonable solution when she only allowed 20% of the cost claimed. It was her finding, with which I agree, that 15-year-old carpets would have been due to be replaced anyway, if not immediately then shortly thereafter. As such, a great deal of this expense would have been incurred in any event.

[18] I do not wish to leave this decision without commenting on the question of mold. The Tenants testified that there was mold on the basement carpet, as well as in a bathroom. When the Landlord took over the premises, she had it inspected by someone with some expertise, who concluded that the only mold in the house was in the bathroom cabinet on the fourth level, and that this mold

was easily removed. The source of the mold was thought to have been the improper storage of wet items such as rags and buckets, combined with the failure to use the ventilation fan in that bathroom.

[19] An allegation that a premises is moldy is a fairly serious one. It is well-known that molds can lead to serious health conditions. Had the Tenants been seriously concerned, I would have expected them to make their complaints loud and clear, and for experts to be consulted about remediation. I am not suggesting that the Tenants ought to have gone out and spent money on experts, but rather that they could have called the Halifax Regional Municipality by-law department or even possibly the provincial Department of Health, and availed themselves of the services offered by those agencies. Furthermore, the Landlord could have been given an opportunity to bring in her own experts.

[20] That is not what happened here. The Tenants simply stated that they were going to leave, and the Landlord accepted that they could do so as long as they covered her losses. I also note that the Tenants were having difficulty paying the rent, having bounced several cheques, and it leaves me wondering whether the real reasons for vacating were not more economical than environmental.

[21] In the result, I do not find that the Tenants have done anything to displace the order of the director, which is confirmed in all respects.

Eric K. Slone, Adjudicator