

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA  
ON APPEAL FROM AN ORDER OF THE  
DIRECTOR OF RESIDENTIAL TENANCIES  
Citation: *Skerry v Tom*, 2018 NSSM 5**

BETWEEN:

RODNEY SKERRY and SHAWNA CANNING

Tenants (Appellants)

- and -

HO TOM

Landlord (Respondent)

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**REASONS FOR DECISION AND ORDER**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on February 6, 2018

Decision rendered on February 7, 2018

**APPEARANCES**

For the Tenants                      self-represented

For the Landlord                      self-represented

## REASONS FOR DECISION

[1] This is an appeal by the Tenants from a decision of the Director of Residential Tenancies dated December 20, 2017, which ordered them to pay to the Landlord the sum of \$2,951.15, and also ordered them to surrender vacant possession of the subject premises at 55½ Glenwood Avenue, in Dartmouth, Nova Scotia as of December 31, 2017.

[2] The Residential Tenancy Officer concluded that the Tenants were, at that time, in arrears of rent for the months of October, November and December 2017. The award took into account some late payment charges, as well as the security deposit.

[3] The Tenants did not vacate on December 31, but rather appealed the decision and appeared before me in Small Claims Court on February 6, 2018. They have accordingly spent the month of January in the premises, and are now into the month of February.

[4] The basis of the appeal is not a dispute over the rent owing. Rather the Tenants are unhappy with what they believe has been the conduct of the Landlord. Specifically, they accuse him of having cut off their heat and their electricity on several occasions, although in each case heat or power was soon restored. They have also reported the Landlord to the Municipality for various breaches, the details of which were not communicated to me. They say that the Landlord is "a slumlord" and that he should not be entitled to rent for any month during which he was in breach of his obligations.

[5] The Landlord denies having cut off the heat or power to the premises, although he says that there have been some malfunctions of the furnace which were attended to in a timely fashion.

[6] He also admits having scheduled a power turnoff by Nova Scotia Power for early January, because he believed that the Tenants would have vacated pursuant to the order of Residential Tenancies. At the time, he did not know that the Tenants were planning to appeal the decision. Nova Scotia Power set him straight to the effect that they would not disconnect power unless the Tenants had been evicted by the Sheriff.

[7] The history of this matter is that the Tenants rented the subject premises as of August 1, 2017, and by September 1<sup>st</sup>, when the second month's rent would have been due, they were already in default. The September cheque bounced, and was not made whole until sometime in October. As such, they have paid two months rent out of the six plus months that they have been in occupancy. During the fall of 2017, they were both working, although they claim that they both later lost their jobs because of the Landlord's behaviour.

[8] It is a fair inference that the Tenants simply could not afford this property, and they cannot blame the Landlord for having fallen behind so early on in the tenancy.

[9] Their accusation that it was the behaviour of this Landlord that cost them both their jobs is, with respect, not credible. Mr. Skerry says that he lost his job because he "brought his personal life to the workplace," meaning that his anger toward the Landlord spilled over into his work environment and caused his employer to let him go. I have no trouble accepting that this Tenant has anger management issues, but blaming the Landlord for his problems is simply not

justified. Ms. Canning says that she lost her job because she had to miss work on several occasions, staying home so that the Landlord could show the property to other prospective Tenants. She further says that on those occasions, the Landlord did not even bother to show up.

[10] I do not feel that I got a complete or fair story from the Tenants, and again I find it hard to believe that the Landlord bears any responsibility for Ms. Canning having lost her employment.

[11] The Tenants say that they are both waiting for their employment insurance to kick in and until then they have no money to pay rent.

[12] I am unable to find on the evidence that the Landlord deliberately attempted to sabotage the heat or electricity. Certainly, I would not condone such actions, but nor would I excuse the Tenants from paying rent for an entire month due to being without heat for a matter of hours or minutes. I have no authority, and nor would a Residential Tenancy Officer, to grant an entire month's abatement as some type of financial penalty against the Landlord. Those remedies are not within my jurisdiction.

[13] Again, I do not believe that the evidence justifies a finding that the Landlord deliberately attempted to deny service.

[14] The Tenants are in arrears for four months of rent, plus rent for February. I believe that the correct result would be to give the Tenants up to the end of February to vacate, and I accordingly will vary the decision of the Residential Tenancy Officer to provide vacant possession by 11:59 p.m., Wednesday, the 28<sup>th</sup> of February 2018.

[15] By my calculations the Tenants owe five full months of rent at \$1,200.00 per month, plus \$120.00 in late charges that the Residential Tenancy Officer awarded. The Tenants shall also be responsible for the application fee at Residential Tenancies in the amount of \$31.15. From this total I will deduct the \$800.00 security deposit leaving a balance owing of \$5,351.15.

### **ORDER**

[16] The order of the Director of Residential Tenancies is hereby varied to provide as follows:

- a. The Tenants shall deliver up vacant possession of the premises at 55½ Glenwood Avenue, in Dartmouth, Nova Scotia as of 11:59 p.m. on Wednesday, February 28, 2018.
- b. The Tenants shall pay to the Landlord the sum of \$5,351.15.

**Eric K. Slone, Adjudicator**