

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *A. Keating Investments Limited v. MacLean*, 2017 NSSM 87

SCC SN No. 456912

BETWEEN:

A. KEATING INVESTMENTS LIMITED/ALLAN KEATING

APPELLANT

and

SAMUEL MACLEAN and VICTORIA ROBINSON

RESPONDENTS

Editorial Note: The electronic version of this judgment has been edited for grammar, punctuation and like errors, and addresses and phone numbers have been removed.

REASONS FOR DECISION

BEFORE: A. Robert Sampson, Q.C., Adjudicator
DATE OF HEARING: Hearing held at Sydney, Nova Scotia on June 7, 2017
DECISION RENDERED: July 7, 2017

APPEARANCES:

For the Appellant (Landlord): Allan Keating
For the Respondents (Tenants): Victoria Robinson

BY THE COURT:

1. This matter was presented before me on June 7, 2017. Allan Keating was present representing the Landlord/Appellant and Victoria Robinson was present as one of the named Tenants/Respondents. It is worthy to note that Ms. Robinson advised the court that Samuel MacLean had passed away several weeks prior to the hearing date. No information was provided with respect to the status of his estate or whether a personal representative had been appointed. Further, no objection was advanced in request for a postponement of this hearing in light of this turn of events.

2. This particular hearing is a continuation of the original appeal advanced by the Appellant arising from the original Order of the Director under the *Residential Tenancies Act* (NS), R.S., c. 401 (the "Act"). The court, operating under its jurisdiction provided under Section 17(d) of the Act, agreed to hear the full particulars of the original application under the authority of the Act with the following Order that the Director could have otherwise made. The particulars of the initial hearing by the court are set forth in a written decision dated the 5th day of April 2017, a copy of which was previously provided to both the Appellant and the Respondents.

3. The original order of the Director was made the 26th day of October 2016. The summary of the Director's decision identified the particulars of the tenancy, namely the Landlord and Tenant, the commencement date of the tenancy being December 1, 2011 and the issues presented before the Director – namely the Landlord seeking termination of a tenancy and payment of money for damages and rental arrears as well as seeking to retain a security deposit that was originally paid and identified to be \$425.00.

4. At the outset of the hearing, both the representative of the Landlord, Allan Keating, and Victoria Robinson were sworn before the court. The ensuing process of the hearing was explained to both parties with the understanding that the Landlord would present his case first and the Tenant, Ms. Robinson, would be provided an opportunity to question any witnesses presented as well as any evidence presented by the Landlord himself and thereafter present any defence evidence to the matters in dispute.

5. The first witness for the Landlord was Monica Forbes who resides on Westmount Road, Sydney, Nova Scotia. She had been employed by the Landlord for a number of years generally supervising rental units, collecting rents and completing the daily accounting. Evidence was provided that because of a technology glitch in connection with the Landlord changing over his accounting system, they were not able to produce the normal accounting records that would be associated with a tenant. In this regard, a letter from Lantz Electronics Limited (Exhibit 2) was presented to the court confirming the Landlord's computer was under repair.

6. Ms. Forbes presented a document marked Exhibit 1. This document set forth the overall terms of relief being sought from the Tenants/Respondents. It indicated unpaid rent for the period May to August 2016 at a rate of \$850.00 per month and totaling \$3,400.00. Ms. Forbes also presented a standard form lease which was filled in identifying A. Keating Investments Ltd. as the Landlord and Victoria Robinson and Samuel MacLean as the Tenants. This document was tendered as Exhibit 3. It confirmed the commencement of the tenancy being December 1, 2011 on a year-to-year basis at a monthly rate of \$850.00 together with a security deposit to be paid in the amount of \$425.00. The form presented and executed by the parties represented the standard form of lease as provided under the Act. Ms. Forbes executed the lease on behalf of the Landlord.

7. Most of the evidence in relation to the Landlord's claim surrounded clean-up work that was required to be carried out to the premises after they had learned that the Tenant had left and they re-gained possession.

8. The scheduled provided under Exhibit 1 identified, in addition to the unpaid rent as aforesaid, three principal areas of expense as follows:

- (i) Removal of personal items – total labour – 13 man hours – total cost \$664.00;
- (ii) Wash down of walls, floors and ceilings – total labour – 45.5 man hours – total cost \$1,920.61;
- (iii) Clean out of cupboards, fridge, stove, bathrooms, etc. – total labour – 31.5 man hours – total cost \$1,275.00.

9. Ms. Forbes indicated that she knew both Tenants and, while they had been late in paying rent from time to time, they often managed to catch up, until the spring of 2016 when they fell into arrears totaling four months. She further confirmed that when the tenancy was originally entered into, she recalls providing to them a copy of the *Act* and indicated that was her standard practice.

10. The rental premises were a stand-alone house situate at [address removed], Sydney, Nova Scotia (the “House”). The evidence confirmed that in addition to the two named Tenants, Ms. Robinson’s two daughters also resided in the House, at least for a period of time.

11. Ms. Forbes confirmed that, after the Landlord took possession of the House, two of their men worked over a two-week period dealing with the clean-up. She herself did not see the House and therefore was unable to comment directly on its condition. The evidence confirmed that the House was approximately 1,000 square feet in size. Ms. Forbes further confirmed that there was no list compiled as to any of the items that were removed from the House identified as personal property and she could not speak to anything in this regard.

12. The Landlord presented witness Kevin Joseph Frye as one of the workers who attended at the House on behalf of the Landlord to complete the work carried out. He confirmed that the House was “pretty dirty” and in disarray. He indicated he took out a deep freeze from the basement level which had an odor but he couldn’t recall if there was food left in it. He confirmed there was trash all over the House which they had removed. He also confirmed that there were parts of computers throughout the House which they were required to take to the recycling depot on Keltic Drive. He confirmed that all of the walls had to be washed with TSP as a result of the smell of smoke, as well as the floors and the bathroom. He indicated the fridge and stove had to be cleaned and all of the radiators had to be scrubbed out.

13. The second worker who gave evidence on behalf of the Landlord was Derek Cathcart. He confirmed that it was an older house and on the main floor included a kitchen, living room, hallway, two bedrooms and a bathroom. He also confirmed his recollection that most of the electronic parts left behind were in the basement of the House and that the majority of the cleaning done was on the main floor except for removal of some garbage in the basement.

14. His recollection of the personal items removed included computer parts, a deep freeze located in the basement, small coffee table and/or computer stand which to him appeared broken and miscellaneous garbage. He confirmed that he worked in the House for the better part of two weeks at five days per week and during that period he does not recall at any time anyone coming around, in particular the Tenants, to make inquiries or to retrieve any property.

15. Mr. Cathcart confirmed that they had used a one-ton truck owned by his employer and in his view the House was “destroyed” and very filthy and smelled badly. He confirmed that they had to discard any curtains and couldn’t specifically identify where the smell was coming from. He indicated that there was a number of every-day household items left in and around the kitchen and bathroom, a lot of computer parts, CD’s and satellite dishes, etc., situate on both levels of the House. He indicated that he was involved with cleaning the fridge and didn’t recall if there were any food items left in the fridge. He indicated that he spent three to four hours just cleaning the fridge alone and a further day and one-half just hauling everything out of the House. He recalls he made more than one trip to the dump using a one-ton truck supplied by the Landlord. He further confirmed that he used a variety of cleaners and was provided coveralls, gloves, etc., to use in connection with cleaning. It was his recollection that he and Mr. Frye spent the better part of a week and one-half, maybe more, dealing with the overall cleanup and restoration of the House.

16. Mr. Keating did not provide any evidence relating to the condition of the house.

17. The Respondent, Ms. Robinson, gave evidence. She confirmed that she and her sister moved everything out. She advised they did not touch the electronics nor the deep freeze because it was too heavy. She also recalled that there was a computer desk and entertainment stand left there which she meant to retrieve but did not have an opportunity to go back to the House.

18. Ms. Robinson confirmed that upon moving out she and her sister cleaned the House including the bathroom, fridge, stove and walls. She acknowledged that they smoked in the House and at no time were they ever advised by the Landlord that they could not smoke in the House.

19. She also noted that from the period October 2014 to December 2015 (14 months) they had no electricity in the kitchen and living room as something was wrong with the electrical panel. She indicated she told the Landlord about this on a number of occasions because they were being required to use extension cords which was presenting a very difficult situation for Mr. MacLean who was confined to a wheelchair. She indicated it was finally fixed in December 2015.

20. She confirmed that, in June 2016, Monica (Ms. Forbes) telephoned her indicating that they were going to put the House on the market. The Landlord did offer them the opportunity to “rent-to-own”, however, the Tenant decided that wasn’t something they wanted. The Tenant confirmed that she and her partner resided in the House together with two daughters,

one 25 years old and one 18 years old. She indicated that her partner, Mr. MacLean, had no access to the lower floor nor did he ever have any involvement with computers. She indicated it was her recollection that the various computer parts and monitors that were present on the lower floor only were all there when they took occupancy of the House. She indicated that their primary use was the main floor and that absolutely nothing was left on the main level of the House.

21. Regarding outstanding rent, Ms. Robinson explained that her partner, Mr. MacLean, had taken sick and as a result she was required to take time off from work. She acknowledged that she probably owed the \$3,400.00 in back rent but that it would not have accumulated four months straight as she always attempted to make partial payments.

22. She identified Exhibit 3 and confirmed it appeared to be the lease that was signed in 2011. She indicated that her partner, Mr. MacLean, had passed away on May 22, 2017.

23. She questioned the Landlord about a number of the charges set forth in Exhibit 1 and indicated that she didn't agree with most of the charges including truck rental and tipping fees. However, no evidence was tendered suggesting that the identified items were not removed or the work as stated by the Landlord was not carried out. She had known that she left the freezer behind and left one set of curtains that were still hanging.

24. Janet Hatcher provided evidence on behalf of the Tenant. Ms. Hatcher resides on Gabarus Highway and is a sister of Ms. Robinson. She indicated that she was the one who assisted Ms. Robinson in moving from the House. She confirmed there was no household garbage, nothing left in the cupboards, there were no electronics lying around on the main floor. She was unable to comment about the deep freeze. She indicated that she herself cleaned various parts of the main floor of the House which took her upwards of four hours and included the bathroom. She indicated on August 1st, the day they moved out, she had her daughter (19 years old) and son (12 years old) with her and her husband, Gary, had attended in the evening to assist in moving Ms. Robinson out of the House and finishing up the cleaning which took them close to midnight. Her recollection was that, when they left, for certain the upstairs of the House, where the principal bedrooms, kitchen and living room were located, were completely empty. She indicated that she herself had not gone down to the basement and therefore was unable to comment as to what, if anything, was left there. She further indicated that she personally cleaned the fridge and there was nothing left in it and she washed down the cabinets in and out. She did not recall cleaning the oven but stated that the floors were wiped with a mop, as were the walls, so that a ladder would not have to be used.

25. She confirmed that the bathroom floor and ceiling were washed in the same manner. Finally, she confirmed that she had personally washed one of the bedroom floors which was vinyl. The rest of the floors in the living room were hardwood and the floor in the kitchen was vinyl.

26. Turning to the particulars of the claim and the evidence presented, a summary of which is previously set forth herein, as it relates to the unpaid rent, I am satisfied that at the time in which the tenancy was terminated there remained rent owing in the amount of \$3,400.00. I further note in this regard that, while it is unfortunate that Ms. Robinson's work schedule changed and as a result her income was reduced, because of the health condition of her partner, Mr. MacLean, this likely formed the foundation of falling into arrears. The evidence appears to suggest that from the origin of the tenancy in 2011 until 2016, they otherwise were good tenants who paid their rent in full and generally on time.

27. Therefore, the thrust of this dispute surrounds the Landlord's claim for the cost of cleaning and removal of personal items. Based on the evidence given, clearly there is a direct conflict between the Landlord and the Tenant as to whether there were any personal items left. The Tenant acknowledged that the freezer and computer stand (possibly broken) did remain but otherwise everything else had been taken by the Tenant.

28. At this juncture, it is worthy to note that if in fact the Landlord identified and did remove personal items owned by the Tenant, they did not comply with the provisions of both the Act and the Regulations. Sections 23 & 24 of the Regulations provide the process which a landlord must carry out, if there is abandoned personal property left in a residential premises and outlines the method and manner in which abandoned personal property is to be disposed of. Much of it depends on the nature of the property and its value. The Regulations clearly identify the process to be followed if the property is of a value of \$500.00 or less or greater than \$500.00. When questioned, the Landlord indicated that they did not prepare any inventory as required or seek direction from the Director as to how this personal property was to be dealt with.

29. My sense from the evidence of the Tenant was that the only items of personal property were as aforesaid, a deep freeze and a computer table that may or may not have been broken. It is clear that she did not place any substantial value on these items nor did she make any effort to retrieve them.

30. With reference to the original lease noted under paragraph 11, an inspection report was not attached. However, I assume the Tenants would have viewed the House before entering into the lease arrangements and therefore must have been satisfied that the House was in suitable form. There is no reference in the standard form lease nor is there any evidence before me as to rules supplied by the Landlord regarding smoking. The Tenant openly admitted that they had regularly smoked in the House and never believed it to be an issue.

31. Therefore, having regard to the statutory provisions under the Act, regardless of whether the lease references the same or not, there are corresponding obligations both on the Landlord to keep the premises in a good state of repair and fit for habitation during the tenancy (Section 1 of Statutory Conditions) and a similar obligation on the Tenant (Section 4 of Statutory Conditions) to be responsible for the ordinary cleanliness of the interior of the premises and for

repair of any damage caused by willful or neglectful acts of the Tenant or any person whom the Tenant permits on the premises.

32. Based on the evidence I have heard, there appears to be default by both parties. In the case of the Landlord, based on the undisputed evidence of the Tenant, they were required to reside in the House for up to 14 months with what appears to be a substantial deficiency in the electricity set-up of the House, necessitating them to operate certain areas of the House, the living room and kitchen, with extension cords. This deficiency was amplified by the fact that Mr. MacLean was confined to a wheelchair and thus would have been required to maneuver on a regular basis over the extension cords used to power those areas of the House. No explanation was offered by the Landlord either disputing the deficiency itself or the period of time in which this electrical deficiency was allowed to remain nor why it was permitted to remain for such length of time. Therefore, having regard to this deficiency, in fairness to the Tenant it appears to warrant some level of adjustment in response to the Landlord's claim for outstanding rent. Therefore, I am allowing a \$1,000.00 set off against the arrears in rent being claimed.

33. While the evidence is disputed between the Landlord and Tenant as to the condition of the House upon vacating it, based on the evidence given by the independent witnesses it is clear that the House was not left in a good state of repair and required extensive cleaning and removal of miscellaneous items such as computer parts, monitor, freezer, etc.

34. I have reviewed the schedule of charges set forth in Exhibit 1 (page 2) which the Landlord is claiming. Some relate to the removal of personal items and again I repeat my earlier comments that, while the evidence supports that there were some personal items which remained (freezer, computer table), the Landlord failed to comply with his obligations under the *Act* insofar as inventorying such items that had been abandoned and seeking proper direction from the Director. While no formal claim has been advanced by the Tenant as it relates to the value of those items, it does in my view warrant a set-off towards the costs claimed for the removal of personal items (\$664.00). In this regard, I am prepared to award a \$300.00 set-off.

35. Further, I find the claim advanced under item 1 of the schedule provided by the Landlord somewhat duplicates the claim advanced under item 3 which also involves "clean out" of cupboards, fridge, stove, bathroom. This appears to include a duplication of time "cleaning out" the House if, as the Landlord's witnesses state, there were bits and pieces of personal items left in the kitchen, bathroom, etc.

36. It is worthy to note that the claim advanced by the Landlord does not including updating any parts of the home including re-painting, etc., and that it all exclusively deals with cleaning.

37. It is also worthy to note that different people have a different standard of cleaning and proper living conditions. The Landlord has been in the rental business for a number of years and has a number of units and therefore, given that he has been able to sustain himself in the

business, one can only assume that he has adopted a reasonable standard of cleanliness as it relates to premises that he offers for rent. To that end, I am satisfied that the Landlord incurred the costs as set forth under item 2 (wash down) and item 3 (clean out) as set forth in Exhibit 1 and therefore should be entitled to be reimbursed for those costs.

38. I am mindful of Ms. Hatcher's evidence that she had been present at the House on the day that her sister, Ms. Robinson, had moved out and had participated along with others in cleaning the House. The House was not large and the evidence seems to suggest that the predominant living space was on the main floor which was approximately 1,000 square feet. No doubt the fact that the Tenants chose to smoke inside the House during their approximate five years of tenancy contributed greatly to the smell of the House, the condition of the walls, cupboards, bathroom, etc., and as a result most likely in this instance, a quick wipe-down and floor sweep would simply not have been sufficient for the Tenant to have met their obligation of keeping the House clean and returning it to the Landlord in reasonably the same condition as they initially received it, barring any normal wear and tear.

39. Therefore, I find that the Landlord has proven that the Tenants had breached their statutory obligation of keeping the premises clean and as a result is entitled to be reimbursed for their costs of cleaning.

40. I order that the Tenant, Ms. Robinson, pay to the Landlord the following:

- (i) Rental arrears - \$2,400.00 (\$1,000.00 set off);
- (ii) Removal of personal items - \$364.00 (\$300.00 set off);
- (iii) Wash down of walls/floors/ceiling - \$1,920.61;
- (iv) Clean out of cupboards, fridge, stove, bathroom - \$1,275.00;
- (v) Costs of Filing Appeal - \$33.00.

Total Award - \$5,992.61

41. The Appellant will note that I have not awarded the HST claimed. It would appear on page 2 of Exhibit 1 the Landlord simply took 15% of the total of each of the three areas of claim advanced. However, most of those costs relate to actual man hours incurred where no HST would be applicable. These wages and related costs were incurred internally to the Landlord's business and any HST that may have been paid on any of the miscellaneous items purchased would represent credits to the business' HST account. As it relates to specific items purchased, because there were no individual receipts supplied and given that the numbers presented appear to be "rounded off", I am unable to determine whether the stated costs of each of the items include HST or not. In any event, all of the work was internally carried out by the Landlord to service his own property and therefore the total amount of the actual costs incurred represents the total damage claim in addition to the outstanding rental arrears against the Respondent/Tenant and should not attract HST.

DATED at Sydney, Nova Scotia this 7th day of July 2017.

A. ROBERT SAMPSON, Q.C.

Adjudicator