IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Rahbar Arabani v. Bales*, 2017 NSSM 95

Claim No: SCCH 461781

BETWEEN:

SARA RAHBAR ARABANI

Appellant/ Landlord

-and –

EMILY BALES and
OLIVER POOLE

Respondents/ Tenants

The Landlord, Sara Rahbar Arabani, and the Tenants, Emily Bales and Oliver Poole, were all self represented.

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.

AMENDED DECISION

(When editing this decision, a significant portion was mistakenly omitted. Paragraphs 19-23 have been added by this decision. Other changes are underlined.)

(1) This is an appeal of the Decision and Order of Residential Tenancies Officer, Sheila Briand, dated March 14, 2017. The Landlord disputes the basis for the Tenants' claim for early termination of the lease on the grounds that Ms. Bales' physician certified that she is suffering from a significant deterioration of health resulting in her inability to continue the lease. The Landlord has also made a claim for the security deposit for alleged damage to the bathroom.

(2) All parties appeared at the hearing before Ms. Briand on February 27, 2017. In her decision, she accepted the Tenants' Notice to Quit as valid and disallowed any claim for damage.

(3) An appeal from the decision of a Residential Tenancies Officer is a new hearing based on the evidence presented before the Small Claims Court Adjudicator. The evidence presented usually consists of that presented to the Residential Tenancies Officer (in whole or in part) and any additional evidence the parties seek to adduce. An adjudicator may confirm the Order of the Residential Tenancies Officer or vary it as he or she considers just and appropriate.

The Facts

(4) The background and details of the tenancy are straightforward and largely uncontested. It is the circumstances surrounding the termination of the tenancy which are in dispute.

(5) The parties entered into a year-to-year lease commencing August 1, 2015. The rent payable was $1695 per month. A security deposit of $845.00 was paid to the Landlord by the Tenants. The tenancy ended July 31, 2016 as the result of the notice to quit for health reasons. The tenants vacated the unit on July 15. They have paid rent in full to that date.

(6) Ms. Bales prepared a Form G – Early Termination of Tenancy on June 1, 2016 and served it on the Landlord along with a Form H Physician's Certificate – Termination of Tenancy for Health Reasons dated June 1, 2016. The notice indicated the tenancy would be terminating on July 31, 2016.

(7) The premises were rented effective September 1, 2016. The landlord is seeking rent for August 2016, along with reimbursement for damage to the premises.

The Evidence

(8) Oliver Poole testified that he and Emily Bales terminated the tenancy in July 2016, pursuant to section 10C of the *Residential Tenancies Act*. He indicated they gave two months' notice. The apartment was cleaned thoroughly before they left. There was no walk-through inspection prior to their taking possession of the premises. They did not have an "out inspection" when they left. At the time they vacated the premises, the tenants sought to have the damage deposit returned but the landlord denied the request alleging damages to the premises. They were also advised the landlord had counterclaimed to cover the cost of renting the property and to cover damages. He questions the credibility of the damages as there were no comments made by the landlord concerning damage after notice was given. In many respects, he disputes the cost of cleaning and other condition issues as there was no way to know if the damage occurred prior to or after the tenancy.

(9) Mr. Poole confirmed that they gave notice on June 1, 2016 and vacated the premises prior to July 31.

(10) Sara Rahbar Arabani is the landlord of the premises who received the notice of early termination from the tenants. She disputes the tenants' claim to a significant deterioration of health on the part of Ms. Bales. Indeed, she described Ms. Bales' argument as an abuse of a government produced health form. She had early concerns regarding the doctor's signature but this was ultimately determined to be without foundation. She had other issues concerning the time in which the answer was provided by the doctor, and despite Ms. Rahbar Arabani's attempts to raise the issue periodically

during the hearing, those concerns were not considered as they do not have any bearing on this matter.

(11) At the time, construction and renovations were occurring at a nearby construction site on Bell Road by the former CBC and YMCA buildings. Ms. Bales advised Ms. Rahbar Arabani the noise from the site was loud and disruptive. Ms. Bales works night shifts at the IWK and advised Ms. Rahbar Arabani she found this intolerable during the daytime when she was trying to sleep. The landlord testified there had been no complaints by other tenants in the building with respect to noise or other issues arising from the construction.

(12) Ms. Rahbar Arabani indicated that her employee, “Ken”, made arrangements to bring prospective tenants into the unit. Ms. Bales was asleep when two gentlemen were being shown the unit. This viewing was done without her consent or that of Mr. Poole.

(13) Ms. Rahbar Arabani provided a brief chronology of the events leading to the early termination.

(14) On May 1, 2016, she advised the tenants of her intention to increase the rent. On May 11, 2016, Ms. Bales indicated to the landlord that she was experiencing problems with the noise and had intended to leave. On May 30, Ms. Rahbar Arabani was advised that an ad for the apartment was placed through the medical school. On June 1, she was served with the forms providing notice to vacate which included an allegation of a serious deterioration of health on the part of Ms. Bales.

(15) With respect to the claim for damage, Ms. Rahbar Arabani indicated that the unit was professionally painted prior to the tenants moving in. Based on the tenants’ comments, she anticipated painting the unit after three years. The tenants indicated they might stay for 10 years. Neither time frame was stipulated in the lease. In any event, I am doubtful either could be enforceable.

(16) Ms. Rahbar Arabani tendered into evidence a number of photographs showing where holes were touched up. There is also a kitchen rack left on the wall which Ms. Rahbar Arabani did not want, but has not yet removed. In her opinion, the unit was not professionally cleaned and required additional work including carpet cleaning. She described the holes in the walls seen in the photographs tendered in evidence as approximately 4 to 6 cm across. There were other scratches and chips shown.

(17) She claims $100 as a replacement cost for a showerhead based on an agreement for the tenants to purchase a showerhead. In turn, she would reimburse them upon production of a receipt. The landlord paid the tenants $100 but to date she has not received a receipt. Both parties acknowledge the showerhead is in place.

(18) In her submissions, Ms. Rahbar Arabani alleged the story had changed from somebody looking for new premises and seeking to move, to a tenant experiencing a significant deterioration of health in a matter of 48 hours. She believes the tenants could have given enough notice prior to renewing the lease if the noise had been so

significant. As for the fixture in the unit, she indicated that it was not wanted or requested to be in the unit. The touch-up paint that was used was of a different shade does not match. This is clear in the photographs.

(19) In rebuttal evidence, Ms. Bales testified that she is a respiratory therapist and has been working regular shifts hours overnight. Her shifts run from 7pm to 7 am, thereby requiring her to sleep during the day. Mr. Poole is a medical student in his fourth year at Dalhousie University. Mr. Poole indicated that he is occasionally required to be on call overnight as part of his residency. However, students and residents are provided temporary overnight accommodations at the hospital when required.

(20) Ms. Bales testified she made her supervisors aware of the construction and noise issues near her home and have attempted to make accommodations. She described her health issues as disappearing since she moved.

(21) With respect to the damages, Ms. Bales indicated the cooking rack was professionally installed and no damage was caused. The rack was left for the benefit of a future tenant. She and Mr. Poole know the current tenant who lives there and that person still has the rack hanging in the same place.

The Law

Early Termination Sections 10B to 10F

(22) Section 10 of the *Residential Tenancies Act* provides the procedures for tenants and landlords to respectively terminate the tenancy or give notice to quit. Sections 10B to 10F prescribe specific situations when tenants may seek earlier termination of the tenancy and the criteria to meet them. These include income reduction, health reasons, acceptance into a nursing home or home for special care, death of a tenant or domestic violence.

(23) Section 10C states as follows:

Early termination for health reasons

10C (1) Notwithstanding Section 10, where a tenant or a family member residing in the same residential premises in a year-to-year or fixed-term tenancy has suffered a significant deterioration in health that, in the opinion of a medical practitioner, results in the inability of the tenant to continue the lease or where the residential premises are rendered inaccessible to the tenant, the tenant may terminate the tenancy by giving the owner

(a) one month's notice to quit, in the form prescribed in the regulations;

(b) a certificate of a qualified medical practitioner, in the form prescribed by regulation, evidencing the significant deterioration of health; and

(c) proof of service, in the form prescribed by regulation, of all the tenants in the same residential premises with a copy of the notice to quit.

(2) Where a tenancy is terminated pursuant to subsection (1), the tenancy is terminated for all the tenants in the same residential premises, but the other tenants may enter a new landlord and tenant relationship with the landlord with the consent of the landlord, which consent must not be arbitrarily or unreasonably withheld.

> (3) Where other tenants reside in the same residential premises, the tenant seeking to terminate a tenancy pursuant to this Section shall serve all the tenants in the same residential premises with a copy of the notice to quit at least one month before the termination of tenancy.

(24) Section 10C requires the Notice to Quit be accompanied by a certificate from a medical practitioner confirming the tenant "has suffered a significant deterioration in health that, in the opinion of a medical practitioner, results in the inability of the tenant to continue the lease or where the residential premises are rendered inaccessible to the tenant". This section has received judicial consideration.

(25) In *GNF Investments v. Vriend*, 2016 NSSC 116, Justice Suzanne Hood endorsed Adjudicator Eric Slone's application of section 10C in *GNF Investments Ltd. v. Rossell, 2015 NSSM 54*:

> The purpose of the *Residential Tenancies Act* is to provide an efficient and cost-effective means of settling landlord/tenant disputes. There must be a balance between the health effects to the tenant of continuing the tenancy and the landlord's right to have the contract, that is the lease, continue.
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> [11] As Adjudicator Slone said in *GNF v. Rossell* at paras. 20 and 21:
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> > [20] The Residential Tenancy Officer and, by extension this Court, must strike a proper balance between the rights of the tenant (here Ms. Rossell) and those of the Landlord. The tenant is entitled to have her rights and privacy respected, and to have the opinion of her physician accepted at face value. The Landlord, on the other hand, must be entitled to question whether there is any justice in forcing it to incur the financial cost associated with an abrupt disruption of its flow of rent.
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> > [21] In my view, this balance is achieved by allowing the Landlord to raise the question: what deterioration in health have you suffered, and how are you unable to continue the tenancy, or how is my premises no longer accessible to you? These elementary questions may (and should) be asked immediately upon the landlord learning that the tenant intends to invoke s.10C, and may be renewed at the hearing before the Residential Tenancy Officer or the Small Claims Court. And these questions should be answered with enough information that would potentially satisfy a reasonable third party. Of course, there are privacy considerations, but when a tenant is potentially asking a landlord to incur significant financial costs associated with the tenant's deteriorated health, a reasonable amount of information must be provided.
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> [12] In my view, there is nothing in the legislation which would lead me to conclude that there must be some problem associated with the physical premises before s. 10C can apply. The wording of s. 10C is not to that effect.

(26) I have considered other cases as well including *Arab v. M.B.*, 2016 NSSM 51 and *Arnaout v. Ferla*, 2004 NSSM 47and other decisions of my colleagues in applying the provisions of s. 10C.

(27) Ms. Bales is a respiratory therapist who must work shifts over night. Consequently, she must attempt to sleep in the daytime. Constant noise during the day from nearby construction would certainly be disruptive. I find it probable that a lack of sleep for someone in such a position would create a deterioration of health. The doctor has signed a certificate to that effect.

(28) I agree with Adjudicator Slone that the types of inquiries one makes in such circumstances are at an "elementary level". An explanation is required from the tenant,

whether from their doctor or on their own. When those questions are answered and a doctor's certificate has been provided, the tenant is entitled to an early termination.

(29) In order to determine the answer to those questions, one must consider all of the evidence. The landlord served a notice of rent increase on May 1, 2016. A copy of this document is not in evidence. Shortly thereafter, on May 11, the tenants raised issues of noise. Until that point in time, there had been no reference to noise. The parties had been speaking several days before notice was given. On June 1, Forms G and H were wherein there was reference to a significant deterioration of health.

(30) The anniversary date for the tenancy was August 1. The landlord notified the tenants of the rental on May 1. A rental increase can only occur on the anniversary date. For a year to year lease, at least four months notice is required. This is prescribed under s. 11 of the *Residential Tenancies Act* and paragraph 7 of the lease. Thus, the proposed rental increase given on May 1 would not have been valid for another year. The landlord knew this and was seeking to negotiate it. The tenants had a right to refuse and presumably did so. There is no evidence before me that this issue caused animosity between the parties, such as resentment by the tenants that would hasten an early departure. While not raised, I do not find the landlord's lack of success to implement the increase to have been a cause of "sour grapes". In short, I do not find the issue of a rental increase to have been a factor in the actions or attitudes of either party.

(31) I find the tenants were satisfied with the premises initially. They were attempting to find a new tenant on May 30. I find it reasonable to conclude the construction created excess noise and was disruptive. This may not have been the only reason or factor driving their desire to leave, but it was the main reason. The remaining question is if it created a significant deterioration of health.

(32) The tenants' evidence is limited compared to other cases where s. 10C is asserted. There was no narrative from the doctor. Form H does not provide room for any, presumably in an effort to maintain privacy. Neither party subpoenaed the doctor to give evidence. I have had the chance to hear all parties' evidence. I find Ms. Bales' and Mr. Poole's evidence to be credible. I am satisfied the tenant experienced physical discomfort and other problems from lack of sleep which dissipated at their new place. It is a matter of common sense that one must be able to sleep in order to maintain health, particularly for one who works overnight in a heath related field. The tenants' evidence along with the doctor's certificate is sufficient in this instance.

(33) In considering this evidence I do not share the landlord's concern with the tenants' actions leading up to the notice, which appear equivocal, are evidence that she was not experiencing a significant deterioration of health. The tenants gave notice to vacate within two months' (six weeks actually) rather than one month as contemplated by s. 10C. They posted an ad for the premises at the Dalhousie Medical School, which they would not do if they were relying on the early termination provisions. However, in these circumstances, I do not find it fatal to their position. By that point, they had not informed themselves. There was also the risk that their claim may not have been successful. As noted previously, there was no evidence of animosity. Thus, I do not find

their actions retaliatory for the attempted rental increase.

(34) I find the tenants provided all that was required to establish a significant deterioration of health. The notice was adequate. They were entitled to leave on or before July 31, and did so. This portion of the claim is disallowed.

Damages

(35) In reviewing the evidence, I make the following findings with respect to damage:

- I find the tenants did a poor job of covering marks and scrapes left in the apartment. I find the damage itself the result of ordinary wear and tear. However, the tenants' attempts at repair significantly enhanced the problem. I allow $100 for this portion of the claim.

- The rack was not part of the unit and ought to have been removed. However, I accept the tenants' evidence that it remains installed and has not been removed by either the landlord or the current tenant. There are no plans to do so. Had the landlord actually removed the item and provided a bill for the work, I might well have awarded compensation. I assume the current tenant finds it enhances his/her enjoyment of the premises.

- With respect to the shower head, I find it was installed by the tenants with the consent of the landlord. The landlord has reimbursed the tenant. I do not know why the tenants did not provide the landlord with a receipt. Until they did so, Ms. Rahbar Arabani was within her right not to pay the tenants. The tenants were within their rights to remove it when they vacated. However, she did pay them. If I were to order reimbursement on these facts, then in order to avoid double recovery, I would order the landlord to return the shower head. That is impractical, not to mention unfair to the tenant(s) currently residing in the premises. In my opinion, the issue is concluded.

(36) Based on the foregoing, I allow $100 for damages.

Conclusion

(37) As a result of the foregoing, the appeal is allowed in part. The tenants have established their entitlement to the damage deposit less $100 awarded above. The Tenants shall have judgment for $835.00 plus the application fee before the Director of Residential Tenancies of $31.15 for a total of $776.15. Each party shall bear their own costs of this appeal.

Dated at Halifax, NS,
on July 19, 2017;

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Gregg W. Knudsen, Adjudicator

Original: Court File
Copy: Claimant(s)
Copy: Defendant(s)