IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Harding v. Hammond*, 2019 NSSM 55
Claim: SCY No. 485731
Registry: Yarmouth

Between:

CYNTHIA HARDING

CLAIMANT

And

LATOYA HAMMOND and CURTIS KILEY

DEFENDANT

Adjudicator: Andrew S. Nickerson, Q.C.

Heard: October 16, 2019

Decision: October 22, 2019

Appearances: The Claimant, self-represented
The Defendant, self-represented

DECISION

Facts

[1] This is an appeal of a decision made by a Tenancies Officer on February 26, 2019. The application to the director had been filed on October 22, 2018. The Tenancies Officer had determined that she could not proceed with the appeal because she had determined that the tenancy had terminated prior to the application date. She applied section 13 (1) of the *Residential Tenancies Act.*

[2] The landlord claimed that the tenancy had not been terminated at

the date of the application. In support of this she submitted a number of texts with the respondent Latoya Hammond. As well she submitted a final disconnection notice which been left at the property by Nova Scotia Power. That notice stated that power would be disconnected on November 8, 2017.

[3] The landlord also complained that there were clean dishes beside the sink and some furniture left and provided photographs of this.

[4] The landlord testified that she had re-rented the apartment by November 15, 2017 and had allowed the new tenant occupancy for the process of cleaning the apartment by November 1, 2017.

[5] The respondent Mr. Kiley testified that he had left the property well before October 22, 2017 and produced a letter from Nova Scotia Power showing that the respondent Latoya Hammond had had power connected on October 24, 2017 at a location in Halifax.

[6] Mr. Kiley also testified that there were indeed items left in the unit they had rented and some garbage in and around the property. However , Mr. Kiley said that the condition when he moved in was worse and that much of the garbage was not his but had been left by the previous tenant. He also testified that the furniture was not his and that also had been left by the prior tenant.

[7] Mr. Kiley's mother Patti Kiley testified that she attended at the apartment in early October 2017 and assisted her son and Ms. Hammond to load their possessions onto a van or trailer and move out of the apartment. She also testified that she at that time had washed the dishes and left them in the apartment.

[8] Both parties agreed that no lease had been signed and that this was a month-to- month tenancy.

Analysis

[9] I have come to the conclusion that the Tenancies Officer did not correctly interpret the *Residential Tenancies Act*. Section 10 of the *Residential Tenancies Act* sets out the notice required to quit a tenancy. Section 10 (1) (b) provides that where a month-to- month tenancy exists the tenant must give at least one month's notice to quit before the expiration of any such month.

[10] In *Anyanwu v. Kintziger*, 2013 NSSC 218, Justice Pickup makes a distinction between premises being abandoned and a tenancy being terminated. He points out the statutory conditions in section 9 (1) of the *Residential Tenancies Act* which reads as follows:

> 6.Abandonment and Termination - If the tenant abandons the premises or terminates the tenancy otherwise than in the manner permitted, the landlord shall mitigate any damages that may be caused by the abandonment or termination to the extent that a party to a contract is required by law to mitigate damages.

[11] I heard no evidence that either of the respondents had given notice to the landlord of termination of the tenancy. I am satisfied on a balance of probabilities that the Respondents did in fact leave the premises prior to October 22, 2017. Given the language of the Act and its interpretation by Justice Pickup I conclude that on October 22, 2017 the tenancy was <u>not terminated</u>. The premises had been <u>abandoned</u> as of that date. Therefore, the Respondents were not relieved of the obligation to provide notice.

[12] My conclusion is that the Tenancy Officer erred in not proceeding to hear the merits of the matter due to her misinterpretation of the law. Since an appeal to this Court is a trial *de novo* I will rule on those merits.

[13] I find that the Respondents, in theory, could be liable for up to two months rent. That being October and November 2017. However, I also find that the landlord's duty to mitigate reduces this to a maximum of the rent for October 2017. The landlord had taken possession of the apartment by November 1, 2017. It was entirely her decision whether or not she would charge rent for the first two weeks of that month, but she cannot claim that from the Respondents.

[14] Although it is by no means certain, I am satisfied on a balance of probabilities, meaning more likely than not, given the evidence I have, that there was in fact, furniture and garbage on the premises when the respondents took possession. I am not prepared to allow the landlord's claim for cleaning.

[15] Therefore, in the final result, the landlord will have judgement in the amount of $750 being the rent for October 2017.

[16] Given that there has been divided success I award no costs.

Dated at Yarmouth this 22nd day of October, 2019.

Andrew S. Nickerson Q.C., Adjudicator