

2020

SCC NO. 496608

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Braithwaite v. Akter*, 2020 NSSM 31

BETWEEN:

DAVID A. BRAITHWAITE

APPELLANT

and

TAHLIL AKTER and ABDUL AL-QUDDUS HIMEL

RESPONDENTS

REASONS FOR DECISION

BEFORE: A. Robert Sampson, Q.C., Adjudicator

DATE OF HEARING: Hearing held by Conference Call from Sydney, Nova Scotia on Tuesday, July 7, 2020

DECISION RENDERED: November 3, 2020

APPEARANCES:

For the Appellant: Self-Represented – David A. Braithwaite (Landlord)

For the Respondent: Self-Represented – Tahlil Akter (Tenant)

Not Present – Abdul Al-Quddus Himel (Tenant)

BY THE COURT:

[1] This appeal arises from a Decision/Order of the Director under the *Residential Tenancies Act* issued on the 6th day of February 2020. That particular decision dealt with an application by the Tenants for their return of deposit which had been paid to the Appellant/Landlord in connection with their tenancy at the Landlord's premises situate at 113 Laurier Street, Sydney during the months of September and October, 2019. The hearing also dealt with a cross-claim from the Landlord seeking payment for various damages and alleged costs he was required to incur as a result of their tenancy. The Decision and Order found for the Tenants and ordered that the damage deposit be returned to the Tenants.

[2] On February 4, 2020 the Court issued an Execution Order against the Appellant/Landlord which corresponded with the Order of the Director directing that the Landlord, now Appellant, pay to the Tenants the sum of \$455.90 representing the return of the damage deposit, registration costs of the judgment and registration fees under the Personal Property Security Registry. On February 20, 2020 the Appellant applied for an extension of time to file an appeal and this request was heard by the Court and an Order issued on March 4, 2020 granting the extension. The appeal now before the Court was filed on March 5, 2020 by the Appellant stating "I can prove they did the damage" as the grounds advanced. The Court file materials confirm affidavits of service by the Appellant/Landlord upon each of the Tenants/Respondents as well as the Director. The matter was initially scheduled to be heard on March 25, 2020 however because of the onset of Covid-19 in mid-March and the protocols issued by the Court which all but shut down the hearing process for a period of time, the matter remained dormant for several months.

[3] This appeal was heard on September 9, 2020 by telephone. Prior to the hearing, the Clerk of the Court contacted each of the parties by telephone and provided notice of the hearing, conference call in number and directed that if any party wished to tender exhibits to the Court, they were to ensure that copies were provided to all parties and the Court. Exhibits were exchanged and at the outset of the call the Court confirmed that everyone had before them the same documents. The Respondent/Tenant, Tahlil Akter, was present. The Co-Respondent/Tenant, Mr. Himel, was not present. Mr. Akter advised that Mr. Himel had re-located to Toronto, Ontario and he did not have a forwarding address. The Court file confirmed that a message had been left on Mr. Himel's phone based on the number he provided to the Court but contact was not made. Mr. Akter advised the Court that he had re-located to Halifax, NS and that is where he was residing at the time of this hearing.

[4] An appeal hearing from a Residential Tenancy Order has been well accepted as a trial *de-novo*, essentially a new hearing. While the file materials from the initial hearing are passed along to the Court, together with the Director's Decision/Order, it is open to the parties to advance new evidence associated with the original claim. The Director's Order found for the Tenants and ordered the Landlord to return the damage deposit. The Director's Order further dismissed all of the monetary claims advanced by the Landlord, finding that none had been supported with any evidence of the actual monetary value alleged to have been incurred by the Landlord. The Landlord, as Appellant, appeals the Director's Decision stating "he can prove they did the damage".

[5] At the outset the Court reviewed the general procedure to be employed in hearing the claim, the role of each party and how evidence was to be received

including the opportunity of both parties to provide their “side of the story”, that each would be afforded a chance to question the other and, at the end of the evidence, each would be afforded a chance to sum up their positions based on all the evidence presented. The parties were not represented by counsel. Mr. Braithwaite presented his position as Appellant and Mr. Akter presented the Tenants’ position. The Court was then called to order and both parties were affirmed over the phone by the Court and matters proceeded. Each was advised that any comments made by them at any time throughout the proceeding would be considered information given “under oath”.

[6] The Court is appreciative to both parties for the organized, patient and respectful manner in which they presented their position, including the documents presented to the Court. The Appellant presented principally two documents: one being Exhibit A-1 which was a written statement setting forth the essential items of complaint which led to him having to incur various costs arising from the tenancy. The second document was a receipt from Rentokil, an exterminator company showing that on February 2, 2020 they had carried out work (Gen Pest Serv) at 113 Laurier St, Sydney for the Appellant at a cost of \$600.00 plus tax for a total of \$690.00 (Exhibit A-2). The Tenant/Respondent, Mr. Akter, exhibited several documents as follows:

1. Copy of email dated November 28, 2019 to the Residential Tenancy Board in connection with the original complaint. This document set forth a summary of the history of his and his roommates tenancy experience with the Landlord (Exhibit R-1);
2. Copy of document entitled “rules of the house” (Exhibit R-2);
3. Photo of house at 113 Laurier Street, Sydney (Exhibit R-3);

4. Photo of backyard at 113 Laurier Street with food truck in driveway (Exhibit R-4);
5. Copy of receipt to Tahlil Akter from Landlord for \$310.00 rent and \$150.00 damage deposit (Exhibit R-5);
6. Photo of bedspread in Tenants' room at Laurier Street (Exhibit R-6);
7. Copy of Notice to Tenant - lock door (Exhibit R-7);
8. Copy of Notice to Tenant - clean up kitchen, etc. (Exhibit R-8);
9. Copy of Notice to Tenant - use of washing machine (Exhibit R-9);
10. Copy of Notice to Tenant - clean bathroom, sink, toilet (Exhibit R-10).

[7] Based on the pleadings of the parties and accompanying documents together with the evidence received by the Court, this matter is somewhat of a classic Landlord-Tenant dispute. The evidence confirms that there was no written lease between the parties. The Landlord/Appellant testified that he is 73 years of age and on pension. He was widowed approximately ten (10) years prior and resided alone in the upper floor of the residence at 113 Laurier Street, Sydney and never took any tenants into his own residence in the past. He confirmed that he did keep a downstairs (basement) apartment which generally was rented without issue.

[8] He stated that in early September he first met the two Respondents who he understood recently arrived from India and were attending CBU. He said that they somehow ended up staying in a nearby garage for at least one night and had asked to use his facilities. That in turn led to them inquiring whether the Appellant would rent them a room in his house, which he agreed to do. They moved in on or about September 7, 2019 and each paid \$315.00 plus a \$150.00 damage deposit. Exhibit R-5 represented a copy of the receipt given to one of the Tenants/Respondents. He testified that several days after the Tenants moved in, they started complaining to

the Landlord. The two Tenants were both residing in a relatively small bedroom with one bed only.

[9] The relationship between the Appellant and Tenants ran into conflict early on. The evidence suggests disputes arose about how restrictive the Landlord was relative to their permission and ability to use areas of the home such as the kitchen and bathroom. The Landlord began to post various signs, house rules (see Exhibit R-2) throughout the home providing direction and restrictions as to requirements imposed upon the Tenants. This appears to have given rise to more friction. The evidence confirms that the Tenants gave notice on September 30th of their intention to vacate at the end of October. Several days later there arose an incident which required the Tenants to call the police because of the threatening behavior of the Landlord. No charges were laid but the evidence suggests the police had warned the Landlord about his conduct towards the Tenants, including the racial remarks towards them. The Appellant/Landlord denied such behavior.

[10] The evidence from both parties confirmed that shortly after moving in both Tenants experienced a skin rash for some unknown reason. The parties confirmed that it was later determined that there were bed bugs in the home or at least in the bedroom being rented to the Tenants. There was much evidence given about the concerns both parties had over this and at the root was little or no evidence providing sufficient proof as to where these bed bugs originated from. It was the Landlord's position that he never knew what bed bugs were and for certain never experienced them in his home. He believed the Tenants brought them into his home, possibly as a result of sleeping on an old mattress in the garage they had stayed on for a night or two before moving in. Mr. Akter's evidence was that

neither experienced any problem with bed bugs or rashes on their skin until after they moved into the Landlord's home.

[11] The Landlord presented a receipt for having to have his home exterminated for bed bugs. The receipt, identified as Exhibit A-2, confirms that the work was carried out on February 2, 2020 at a cost of \$690.00. The Landlord further testified that he was required to throw out a queen size mattress which he estimated the replacement cost to be approximately \$800.00 as well as a double mattress which he estimated the replacement cost to be approximately \$460.00. No receipts or independent estimates were provided for either. He further testified that the Tenants had not cleaned their room, bathroom, etc., before vacating at the end of October and this in turn required the Landlord to pay \$40.00 for someone to clean. Again no receipts were provided.

[12] The Appellant gave evidence of a "stove fire" that occurred during the tenancy and caused by the Tenants. He stated that this fire effectively burned the internal wires and the stove was required to be replaced. The Appellant's evidence was that he was able to secure a used stove from a friend at a cost of \$100.00. No receipt was provided, however, Mr. Akter's evidence did confirm that this stove fire did occur while they were cooking. Mr. Akter stated that the stove was old and not all the burners were working during their stay. He further testified that the fan associated with the stove did not work and that it appeared to him that the stove was never cleaned and that is what lead to the fire. He acknowledged that there was damage caused to the stove as result of the fire.

[13] Finally, the Landlord provided testimony about the keys he had provided to the Tenants and the fact that he became aware that an extra set had been made by

one of the Tenants against his direction. He stated that after the Tenants moved out, he found a set of keys on the back step and from this concluded that they must have been misplaced by either of the Tenants and a new copy made. This caused the Landlord to be upset and he took the position that he would have to change the locks on his home at a cost of approximately \$190.00. No verification of this estimated cost was provided to the Court.

[14] The evidence of Mr. Akter was that they were not aware of any bed bug situation during their tenancy. Mr. Akter questioned the Landlord as to why he had not taken any action and he confirmed that he had not been aware until sometime after they left his home. Mr. Akter further testified that they vacated the home on October 27, 2019 at which time they asked for the return of their deposit. He confirmed that the Landlord's initial response was that he would give it to them at the end of the month (October). Mr. Akter visited the Landlord again on November 1st requesting their deposit and was told to call him the following week. Nothing else was said by way of any complaint. Mr. Akter contacted the Landlord again on November 7th at which time the Landlord complained about not having been given the original keys back. Mr. Akter testified that he did not wish to get into a heated argument with the Landlord but felt strongly that they were entitled to their deposit back (\$300.00). The evidence from the Director's file confirms that the original complaint was filed on November 22, 2019.

DECISION

[15] The Court has reviewed all of the exhibits presented together with the evidence of both parties. What is clear is that friction arose between the Landlord and Tenants during a relatively short-term stay at the Landlord's home situate on Laurier Street, Sydney. There was a great deal of evidence from both parties as to

the respective conduct of each during the tenancy. At the root of this claim is simply whether the Tenants are entitled to return of their damage deposit as measured against any evidence that confirms that the Landlord's premises suffered damage at the hands of the Tenants during their tenancy and thus would be entitled to be compensated.

[16] I find, similar to the conclusions found by the Director in his original Order, that while one particular aspect of damage was acknowledged by the Tenants with regard to the stove fire, beyond that the Landlord has offered little or no evidence of his actual out-of-pocket expenses alleged to have been incurred. The one receipt that was tendered which relates to an exterminator expense which arose in February 2020, some four months after the Tenants left, only offers proof that at that point in time his home was experiencing this problem. Otherwise, there is virtually no evidence which allows me to reach any conclusion, on balance, as to where or who originated this problem and more directly whether it can be attributed to the Tenants. That burden rested with the Landlord/Appellant and has not been satisfied.

[17] I further find that the expense claimed for the beds directly relates to the alleged bed bug situation and, therefore, not being able to attach this problem to the Tenants, I cannot attach this expense claim in spite of the fact that there was no evidence supporting the monetary amount. As for the cleaning, the evidence of Mr. Akter was less certain as to whether his roommate completed certain cleaning of the bathroom as he said he would. Therefore, I am prepared to accept the Landlord's evidence of having spent \$40.00 for the cleaning expense. I am also prepared to accept the evidence of the Landlord, as confirmed by the Tenants, that there had been a stove fire while the Tenants were cooking which caused extensive

damage to the stove which required it to be replaced. The Landlord's evidence was that he replaced it with a used stove at a cost of \$100.00. As for the "keys" issue, based on the evidence from the Landlord, in the end he ended up with two sets of keys and there was no evidence to suggest that there were any more sets or any missing. Therefore, I do not accept the evidence of the Landlord suggesting he would be required to replace his home locks.

[18] Therefore, based on the foregoing I find that the Appellant/Landlord is entitled to deduct the sum of \$140.00 (stove and cleaning) from the original damage deposit paid by the Tenants and I order that he immediately return the balance of the original judgment to the Tenants equally. That amount is calculated to be the following:

➤ Amount of Judgment/Execution Order	\$466.90
➤ Less damages awarded to Landlord	-\$100.00
➤ (stove replacement)	
➤ Less cleaning cost	-\$ <u>40.00</u>
➤ Balance of damage deposit to be paid	
➤ to Tenants/Respondents	\$326.90

I hereby Order that the Appellant shall pay to the Respondents equally the sum of \$326.90.

DATED at Sydney, Nova Scotia this 3rd day of November, 2020.

A. ROBERT SAMPSON, Q.C.

Adjudicator