

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Durling, Jessome v. Cinar*, 2023 NSSM 97

ON APPEAL FROM AN ORDER OF THE
DIRECTOR OF RESIDENTIAL TENANCIES

Date: 20231113
Docket: 526646
Registry: Halifax

Between:

Joan Durling and Wally Jessome

Appellant (tenant)

- and -

Ali Cinar

Respondent (landlord)

REASONS FOR DECISION AND ORDER

Adjudicator: Eric K. Slone

Heard: via zoom in Halifax, Nova Scotia on November 6, 2023

Appearances: For the Appellants,
Kali Robertson, counsel

For the Respondent,
Sarah Gray, counsel

By the Court:

[1] This is an appeal by the tenants from a decision of the Director of Residential Tenancies dated August 31, 2023 which ordered the tenants to pay to the landlord the net sum of \$2,500.00 consisting of unpaid rent of \$3,200.00 minus a \$700.00 security deposit.

[2] The landlord counterclaimed. He had alluded to damage claims before the Residential Tenancies Officer, but no order was made in connection with those alleged damages because of a lack of documentation at that time. The Residential Tenancies Officer left it open for the landlord to bring such claim to Residential Tenancies later. He did not bring any further claim to Residential Tenancies. However, in keeping with current practice, once the matter was headed toward this court on appeal, in the interest of expediency both parties were afforded a full opportunity to pursue all of their claims and counterclaims. As such, the issue of damage to the unit was fully litigated.

[3] This matter concerned a lengthy, nine-year tenancy of a condominium unit owned by the landlord. It was a matter of serious contention earlier this year when the landlord sought to terminate the tenancy and obtain possession of the unit for occupancy by a family member, namely his son. The tenants did not accept this, and the matter was contested in a separate Residential Tenancy file and Small Claims appeal. That matter was not appealed further, and must be considered

resolved. As such is not before me, although it helps to explain why an otherwise peaceful and friendly tenancy became so contentious.

[4] There are some issues that are not in contention. The tenants chose not to pay their rent for the months of May and June 2023, once it became clear that the landlord would be entitled to possession as of June 30. The tenants offered no legitimate excuse for stopping payment, and they showed what I would consider to be very poor judgment in stopping the payment of rent. The predictable result was an escalation of the dispute. I will say no more about that and simply factor in the debt of \$3,200.00 into this decision.

[5] There are really only two live issues. One of them is the size of the security deposit. The other issue is what allowance, if any, should be awarded for damage to the unit.

The security deposit

[6] The tenants say that the security deposit was \$1,400.00, and they seek credit for that amount. The landlord says that the security deposit is actually only \$700.00. It is rare to see a case where the parties cannot agree on how much money was paid for a security deposit, but this is a bit unusual in that the deposit was given some nine years ago and records are harder to come by. To decide this issue, I have available to me some surviving documents as well as the testimony of all parties.

[7] The tenants produced photocopies of a void cheque in the amount of \$700.00, dated March 15, 2014, and a duplicate (carbon copy) cheque in the amount of \$1,400.00 on the same date with a notation that it is a deposit. What seems not in dispute is that the tenants assumed when meeting with the landlord to sign the initial lease that the damage deposit would be one half of the monthly rent of \$1,400.00, and came prepared to pay that amount. The landlord was insisting on a full month's rent as a damage deposit, and a second cheque had to be written on the spot for the larger amount. (I will put aside the question of whether it was lawful to demand a full month's rent as a damage deposit, as this does not affect the result.)

[8] The tenants insist that the \$1,400.00 cheque was deposited by the landlord, although no bank records appear to be available to substantiate that. The landlord insists that he took the cheque for \$1,400.00, but did not cash it. Rather, he says, it sat in the file along with a set of postdated rent cheques.

[9] Approximately eight months later, the tenants gave the landlord notice that they wished to convert their lease into a month to month lease upon the expiry of the first year. There is a document that shows the tenants transferring \$700.00 to the landlord by way of e-transfer on March 19, 2015, which was a few days after the one-year mark.

[10] The parties have different versions of what happened at this time:

- a. The tenants insist that nothing happened, and that their \$1,400.00 deposit was retained by the landlord. They say that if the e-transfer was sent, the landlord never accepted the transfer. They question (at least implicitly) the legitimacy of the email sent by the INTERAC system.
- b. The landlord says that he agreed to reduce the deposit from \$1,400.00 to \$700.00, and that he agreed to tear up the uncashed cheque for \$1,400.00 and accepted the \$700.00 e-transfer.

[11] Neither party produced bank records that could perhaps settle this issue. Based on what is before me, the more credible story is the landlord's. It is the version that is consistent with the documents and which makes complete sense.

[12] I find that the security deposit was \$700.00.

Damages

[13] The landlord has presented a claim for damages in the amount of \$1,225.00.

The specifics are described in a document he created:

- A door ripped off the hinges with a hole punched through the centre of the door;
- Damage to the door frame, broken hinges and door handle;

- Damage to the window and window trim, likely from leaving the window open during adverse weather conditions;
- Carpets stained and dirty;
- Missing toilet seat in the bathroom;
- A panel missing from the shower door in the bathroom;
- Bathroom door was missing and later found in the storage room in the basement (for unknown reasons);
- Blinds removed from some of the windows; and
- A Bistro set (a small table and two chairs) that was initially in the Unit (offered for the use of the tenants at their request) was missing.

[14] The costs associated with these claims are described as follows:

Item	Cost Estimate
New Door, hinges, handle	\$450.00
Paint for new door, fixing of door frame (labour included)	\$150.00
New toilet seat	\$25.00
New window and window trim	\$200.00
Shower curtain (to replace the shower door with missing panels)	\$25.00
Carpet cleaner (rented machine, cleaning supplies, labour included)	\$150.00
Bistro set (taken by the tenants)	\$125.00
Blinds	\$100.00
Total for damage / missing items	\$1,225.00

[15] The tenants dispute most of these items.

[16] I remain unconvinced with respect to some of these claims.

[17] I accept the tenants' evidence that the damage to the window and trim was caused by leaky windows, which had been known to the condominium corporation for some time and which was their responsibility to repair.

[18] I find that carpet cleaning is not compensable, but is rather covered by ordinary wear and tear after nine years.

[19] I accept that the so-called Bistro set, if it ever existed, was not subject to being accounted for. The evidence to support such claim is inadequate.

[20] I accept that the door identified by the landlord as requiring replacement is salvageable, with some repair needed.

[21] It appears to be the case that a few items are missing, or damaged to some degree.

[22] Assessing damages after a lengthy period of occupancy is not always an exact science. In my estimation, it is best compensated on a global basis with a global allowance which I set at \$400.00. This recognizes that the landlord can repair what they need to repair in as efficient a manner as is possible.

General damage claims

[23] Both parties claimed amounts for general damages.

[24] The tenants say that the landlord engaged in harassing behaviour in his attempts to get access to the unit to inspect its condition, necessitating the intervention of police officers.

[25] The landlord was less specific about which aspects of the tenants' behaviour might attract such damages.

[26] I believe that both the landlord and the tenants consider themselves to have been poorly treated. My sense is that both sets of parties were not on their best behaviour once the relationship became disputatious. But I am not convinced that any of the parties crossed the line into unlawful behaviour. This was a stressful time for all concerned.

[27] Residential Tenancies is not a tribunal that has jurisdiction to impose financial penalties for harassing behaviour, unless it can be tied into a breach of the lease. There are cases where the only redress for breaches of the lease would be general damages, but this is not such a case. See e.g. *Armco Capital Inc. v. Saunders*, 2021 NSSM 10.

[28] I see enough fault on both sides to say that no general damages should be awarded.

Conclusion

[29] The landlord is entitled to \$3,200.00 for arrears of rent and \$400.00 for damages, and must account for \$700.00 for the damage deposit, for a net owing by the tenants to the landlord of \$2,900.00.

[30] Given that success was divided, I am not awarding costs to either party.

Order

[31] This court orders that the Order of the Director of Residential Tenancies dated August 31, 2023 is varied to provide that the tenants pay to the landlord the sum of \$2,900.00.

Eric K. Slone, Small Claims Court Adjudicator