

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Brimicombe v. Ding*, 2024 NSSM 17

ON APPEAL FROM AN ORDER OF THE DIRECTOR OF RESIDENTIAL
TENANCIES

Date: 20240412

Claim: SCT530751

Registry: Truro

Between:

Jeffrey Brimicombe

Appellant

and

Yan Ding and Ruochen (Eric) Sun

Respondents

Adjudicator: Julien S. Matte

Heard: April 12, 2024 (via teleconference)

Appearances: Jeffrey Brimicombe, self-represented Appellant
Yan Ding, self-represented for the Respondents

By the Court:

[1] The Appellant lost everything. A historical flood destroyed all his possessions and the basement suite where he lived. The difficult circumstances became worse when he was unable to maintain his employment due to reasons that he blames on the flood. The Appellant blames the Respondent who he says failed to fix the exterior door which he claims allowed the flood waters to invade the apartment. Further, the Respondent says that the decision to leave a window open as they were escaping the flood, a flood that rose from inches to feet within just a few hours. Further the Appellant theorizes that the basement lacked a backwater valve causing sewage to come through the drains and cause damage.

[2] Both parties agree that the damage was extensive. The basement had to be gutted down to the studs and rebuilt. Luckily for the Respondents, their insurance company took care of the bill. The Appellant, however, let his tenant insurance lapse and all his possessions were lost. Throughout the period of restoration from July to November 2023, both parties expected the Respondent to move back in. However, circumstances changed.

[3] In the fall of 2023, the Respondent learned that they were expecting their first child. Ms. Ding testified that the pregnancy was unplanned. Unplanned because Mr. Sun has been battling cancer for years, an illness that is at an advanced stage. Given Mr. Sun's health, the possibility of a child seems remote. Ms. Ding is expecting soon.

[4] In November 2023, the Respondents received more good news. Mr. Sun's parents received Permanent Residency Status and have now moved to Canada.

The Respondents submit that they need the basement suite in their home for Mr. Sun's parents. As a result, the Respondents met with the Appellant and offered him two thousand dollars including the return of the damage deposit to officially end the tenancy. During the hearing, the Respondent accepted that they used \$220 in power after flood but before the account was transferred to them. They offer this additional amount.

[5] The Appellant was unhappy with the form presented to him to end the tenancy. The Respondent says that had he understood that Form C was an indication that he was voluntarily ending the tenancy, he would not have signed it. The Appellant also claims that the money he accepted including the damage deposit was in compensation for the power account.

[6] Whether the Appellant signed a Form C or a Form J is not determinative. The only issue to be determined is whether the Respondents have any obligation pursuant to the *Act* to the Appellant to rent him the basement of their home.

[7] In July 2023, a historical flood destroyed the premises at issue. The lease between the parties was frustrated by an Act of God. Neither party was obliged to enter into a new lease once the premises was restored. Had the Respondents decided to turn the basement into a family room, there would have been no premises to lease and no recourse for the Appellant.

[8] However, since the parties both testified their intention to reenter into a tenancy once the basement was restored, and the Appellant relied on that representation, the Court will accept that the lease continued for the purposes of considering section 10(8)(f)(i) of the *Act* which allows a tenancy to be terminated where:

the landlord in good faith requires possession of the residential premises for the purpose of residence by himself or a member of his family

[9] Ms. Ding testified as supported by documentation that her in-laws were arriving in Canada before March 21 and needed to stay with them. Given that Mr. Sun's parents are moving from China, their son is battling the advanced stages of cancer, and they are about to welcome a grandchild, it difficult to imagine circumstances better tailored to this provision of the *Act*.

[10] Further, without any legal obligation, the Respondent gave the Appellant over \$1500 dollars as a good faith gesture. The Respondents have demonstrated significant good faith in seeking continued possession of their basement suite.

Summary

[11] A flood destroyed the basement premises rented by the Appellant in turn frustrating the lease between the parties. The Appellant's failure to carry tenant insurance is the sole cause of his damages, not the gaps in the door or a faulty valve. If the lease was not frustrated by the flood, then the Respondents have met the requirements of the *Act* to confirm vacant possession and allow Mr. Sun's parents to move in.

[12] Any outstanding power bill was covered by the Respondent's generous gift to the Appellant.

Order

[13] For the above reasons, the Order of the Director dated January 30, 2024 is affirmed.

[14] The Appeal is dismissed.

Julien S. Matte, Small Claims Court Adjudicator