

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Dalton v. Young*, 2024 NSSM 41

Date: 20240614

Docket: 525113

Registry: Sydney

Between:

Kevin Dalton and Maureen Dalton

Appellants

v.

Brian Young

Respondent

Adjudicator: Andrea Rizzato

Heard: May 28, 2024, by Teams, in Sydney, Nova Scotia

Decision: June 14, 2024

Counsel: Both parties were self-represented

By the Court:

Facts

[1] Brian Young [the “Respondent”] was a tenant of Maureen Dalton [Mrs. Dalton] and Kevin Dalton [Mr. Dalton] collectively [the “Appellants”]. The Respondent rented the premises located in Sydney River, Nova Scotia, beginning November 1, 2021. On October 13, 2021, the parties executed a written Lease Agreement in the Standard Form P, pursuant to the *Residential Tenancies Act*, RSNS 1989, c.402 as amended [the “Act”] and the *Residential Tenancies Regulations*, N.S. Reg. 190/1989, as amended [the “Regulations”]. The tenancy was year-to-year.

[2] The Respondent paid rent in advance each month in the amount of one thousand four hundred twenty dollars (\$1,420.00) per month. He paid a security deposit in the amount of seven hundred ten dollars (\$710), being one half of his first month’s rent.

[3] I heard evidence from the parties on May 28, 2024, by video conference.

[4] The Appellants were affirmed and gave evidence on their own behalf. The Respondent was affirmed and gave evidence on his own behalf. The Respondent

also entered into evidence 16 exhibits, including several series of photographs of the apartment prior to his departure on January 22, 2023. The Respondent did not give evidence in relation to compensation for his moving or storage expenses.

[5] On January 12, 2023, Mrs. Dalton sent the Respondent a text message notifying him that a technician would be coming to his apartment to evaluate the heat pump in his unit. She went on to say that the technicians are hard to get in and asked the Respondent to make every effort to accommodate the schedule of the technician.

[6] On January 13, 2024, the Appellants attended at one of their neighbouring apartments. Mrs. Dalton, decided to knock on the Respondent's door to discuss the repair of the heat pump while Mr. Dalton attended to other matters at the neighbouring apartment. The Respondent's wife answered Mrs. Dalton's knock and allowed her into the Respondent's apartment. The Respondent was present in the apartment.

[7] Mrs. Dalton and the Respondent had a discussion. The parties differ at this point in their evidence as to how that encounter proceeded. Mrs. Dalton gave evidence that she felt intimidated and threatened by the Respondent. The

Respondent denied that he had been intimidating or threatening in any way to Mrs. Dalton.

[8] By both parties' accounts, the encounter between the parties was an unpleasant one. Mrs. Dalton left the apartment and rejoined Mr. Dalton who was still next door. Mr. Dalton gave evidence that Mrs. Dalton was very upset after the encounter with the Respondent.

[9] Subsequently, Mrs. Dalton contacted the Residential Tenancies Program ["RTP"]. She gave evidence that she asked if she could evict the Respondent based on what she had described his behavior to have been. Mrs. Dalton gave further evidence that she was told by an unnamed person at the RTP that she could evict the Respondent at that time, pursuant to s. 10(7A) of the Act. She also gave evidence that she asked if she could retain the Appellant's security deposit and was told by the same unnamed individual at the RTP that she could retain the security deposit.

[10] The Respondent was served with a Notice of Eviction, Form F, made pursuant to the Act and Regulations on January 16, 2023. The Respondent did not contest his eviction with the RTP. The Respondent left the apartment on January

22, 2023. He requested a return of his security deposit and the balance of the rent that he had paid in advance for the month.

[11] The Appellants retained the Respondent's security deposit and did not pay the prorated amount of rent for the days that the Respondent did not have occupation of the premises being January 22 to January 31, 2023 inclusive.

[12] During the hearing of this Appeal, Mrs. Dalton gave evidence that she would have returned the security deposit to the Respondent, but for the advice she alleged she had been given by the RTP that she had the right to keep it.

[13] Photographs were put into evidence by the Respondent of the condition of the apartment upon vacancy on January 22, 2023. There is no evidence of damage to the property based on those photographs.

[14] The Respondent filed an Application to Director, pursuant to s. 13 of the Act, seeking the return of his security deposit from the Appellants, compensation for his moving and storage expenses and a prorated sum for the days that he paid his rent in January, 2023 for which he did not receive lodging. The Application was filed with Service Nova Scotia on May 19, 2023.

[15] The hearing was scheduled for June 23, 2023. On May 23, 2023, the Respondent provided notice of the hearing of the Application to Director to the

Appellants to the email address provided by them for service of notices in the Lease Agreement. Mrs. Dalton claims that they did not receive the Notice of Hearing.

[16] Mrs. Dalton did acknowledge in her evidence that she received email from the Respondent on June 6, 2023, which included evidence for the upcoming Residential Tenancies Hearing at the same email address that the Respondent sent the Notice of Hearing.

[17] The Residential Tenancies Hearing took place on June 23, 2023. The Appellants did not appear for the hearing. The Respondent gave evidence at the Hearing. Based on the evidence presented, Julie Tapp, Residential Tenancy Officer, gave a decision, dated June 27, 2023, in favour of the Respondent. She ordered that the Appellants were required to pay the Respondent the amount of one thousand one hundred sixty-eight dollars and six cents (\$1,168.06), which included the security deposit and a prorated amount of rent for the days from January 22 to January 31, 2023.

[18] The Appellants filed this Appeal with the Small Claims Court on July 5, 2023. The Appellants served the Respondent and the Residential Tenancies Director [the “Director”] with the Notice of Appeal.

Issues

- a. Should the Respondent's security deposit be returned by the Appellants?
- b. Should the Appellants be required to pay to the Respondent a prorated amount for rent which he paid in advance and for which he did not receive lodging?
- c. Should the Appellants be required to pay any of the Respondent's moving and storage expenses?

Position of the Parties

Appellant's Position

[19] The Appellants argued that they should not be required to pay the Respondent anything because of the way in which he behaved toward Mrs. Dalton on January 13, 2023. They argue that they had justification in evicting the Respondent due to his behavior in accordance with s. 10(7A) of the Act. As such, the Appellants argue that given their alleged legal justification in evicting the Respondent, they are not required to refund any money paid by the Respondent to them as a security deposit or in rent.

Respondent's Position

[20] The Respondent argues that he did not act inappropriately toward Mrs. Dalton on January 13, 2023. He argues that the Appellants did not have

justification for his eviction. However, he did not challenge the eviction, and instead decided to leave the premises forthwith as requested by the Appellants.

The Respondent argues that he complied with the Appellants' request to vacate the premises at a significant cost and inconvenience to him.

[21] The Respondent argues that he left the apartment in good condition and had not violated the terms of the Agreement in any way, and therefore, is entitled to the return of this security deposit.

[22] Further, the Respondent argues that his rent was paid in advance for the month of January, 2023. He was required to vacate the premises before the end of the month for which he paid, and therefore, the rent for the days from January 22 to January 31, 2023, inclusive should be returned to him.

[23] The Respondent claimed in his initial claim to the Director that he should also be compensated for the cost of moving and storage of his belongings while he sought out alternate accommodations.

Framework for analysis

[24] The Act sets out the powers of the Small Claims Court on appeal from a decision of the Director at s. 17C of the Act, which is as follows:

Appeal to Small Claims Court

17C (1) Except as otherwise provided in this Act, any party to an order of the Director may appeal to the Small Claims Court.

(2) An appeal may be commenced by filing with the Small Claims Court, within ten days of the making of the order, a notice of appeal in the form prescribed by regulations made pursuant to the Small Claims Court Act accompanied by the fee prescribed by regulations made pursuant to the Small Claims Court Act.

(3) The appellant shall serve each party to the order and the Director with the notice of appeal and the notice of hearing.

(3A) Service of all documents may be by personal service or such other manner of service or substituted service permitted pursuant to the Small Claims Court Act.

(4) The Small Claims Court shall conduct the hearing in respect of a matter for which a notice of appeal is filed.

(5) The Small Claims Court shall determine its own practice and procedure but shall give full opportunity for the parties to present evidence and make submissions.

(6) The Small Claims Court may conduct a hearing orally, including by telephone.

(7) Evidence may be given before the Small Claims Court in any manner that the Small Claims Court considers appropriate and the Small Claims Court is not bound by rules of law respecting evidence applicable to judicial proceedings.

(8) The evidence at a hearing shall not be recorded.

[25] An appeal from the decision of the Director to the Small Claims Court is a *de novo* hearing. Thus, I am not bound by the decision of the Director.

[26] I do, however, have the same powers as the Director in making my decision pursuant to s. 17D of the Act.

[27] The powers of the Director upon an application for a determination as to whether or not some aspect of the Act has been breached by a landlord or a tenant is set out at s. 17A of the Act, which is as follows:

17A An order made by the Director may

- (a) require a landlord or tenant to comply with a lease or an obligation pursuant to this Act;
- (b) require a landlord or tenant not to again breach a lease or an obligation pursuant to this Act;
- (c) require the landlord or tenant to make any repair or take any action to remedy a breach, and require the landlord or tenant to pay any reasonable expenses associated with the repair or action;
- (d) order compensation to be paid for any loss that has been suffered or will be suffered as a direct result of the breach;
- (e) terminate the tenancy on a date specified in the order and order the tenant to vacate the residential premises on that date;
- (f) determine the disposition of a security deposit;**
- (g) direct that the tenant pay the rent in trust to the Director pending the performance by the landlord of any act the landlord is required by law to perform, and directing the disbursement of the rent;
- (h) require the payment of money by the landlord or the tenant;**
- (i) determine the appropriate level of a rent increase;
- (ia) require a guarantor to compensate a landlord for any loss suffered or expense incurred that the Director determines is payable by the guarantor under a guarantee agreement as a result of a tenant's breach of the lease or an obligation under the Act if the Director is of the opinion that
 - (i) the contents of the guarantee agreement meet the requirements of this Act, and

- (ii) the landlord has complied with the landlord's obligations under Sections 8A to 8M and the guarantee agreement, or any non-compliance by the landlord has not placed the guarantor at a significant disadvantage;
- (j) require a landlord or tenant to comply with a mediated settlement;
- (k) award to a successful party to an application the costs of an application fee paid to the Director, but no other costs associated with the application;
- (l) set aside a notice to quit given by a landlord under subsection 10(6), (7), (7A) or (7B) or clause 10(8)(a), (b), or (c) or by a tenant under subsection 10F(1)

[28] Section 12 of the Act sets out the provisions relating to security deposits, which is as follows:

Security deposit

- 12 (1) Where a landlord obtains from a tenant any sum of money or other value that is in addition to the rent payable in respect of the residential premises the sum of money or value is deemed to be a security deposit.
- (2) No landlord shall demand, accept or receive from a tenant as a security deposit a sum of money or other value that is in excess of one half of the rent per month that is or would be required to be paid for the residential premises.
- (3) Subject to subsection (6), a security deposit or the proceeds thereof shall be held in trust by the landlord and deposited in a trust account in a chartered bank, trust company or credit union or invested in such securities as are authorized by regulation and may be applied to outstanding rent or to expenses incurred in respect of damage to residential premises that is the responsibility of the tenant.
- (4) The landlord shall credit interest to the tenant on the full amount or value of the security deposit at the rate per annum determined by the Governor in Council from time to time by regulation with respect to any period of time, whether before or after the coming into force of this subsection, while the security deposit is held by the landlord.
- (5) Subject to subsection (6), the security deposit, together with interest, shall be returned to the tenant within ten days of the date of the termination of the lease.

(6) Where the landlord seeks to apply all or part of the security deposit and interest to outstanding rent or to expense incurred in respect of any damage for which the tenant is responsible and the tenant does not consent in writing, the landlord may make an application under Section 13 in the form prescribed in the regulations.

(7) An application pursuant to subsection (6) shall be made within ten days of the date of termination of the lease and, if no application is made, the security deposit shall be returned in accordance with subsection (5).

(8) A landlord shall from time to time file such reports as may be required by the regulations of the amount of the security deposit or proceeds thereof which are held in trust.

NOTE - Subsections (9) to (12), enacted by Section 6 of Chapter 31 of the Acts of 1992, have not been proclaimed.

(13) An owner, partner or director of a company which owns or manages residential premises is personally liable for any breach of the Act or the regulations governing security deposits.

(14) Upon trusteeship, receivership, bankruptcy, sale, transfer, abandonment, foreclosure or sale of land under execution, the security deposits of the tenants held by the landlord are deemed to have been transferred to the receiver, trustee, mortgagee in possession or the new landlord and that receiver, trustee, mortgagee or landlord is responsible for the tenant's security deposits.

(15) A claim for damages from a security deposit shall not include any costs associated with ordinary wear and tear of the residential premises.

(16) Notwithstanding Section 23, any landlord who violates this Section is guilty of an offence punishable on summary conviction and upon conviction is liable to a fine of not more than five thousand dollars.

[29] The Regulations also provide direction with regard to security deposits, including how they are collected, retained and returned at sections 5-22.

Rent refund

[30] Regarding the issue of the refund of a prorated amount of rent paid by the Respondent, the Act does not specifically provide for the repayment to a tenant by a landlord rental income which was prepaid in advance. However, the Act does give the Director, and by extension the Small Claims Court on appeal, to require the payment of money by way of compensation.

[31] Further, the equitable principles dealing with unjust enrichment are applicable in this case. The Respondent must establish that it would be an unjust enrichment of the Appellants if they were permitted to retain the rent that the Respondent paid for the period that he was not in occupation from January 22 to January 31, 2023.

[32] In order for the Court to find that there has been an unjust enrichment which should be remedied, the Respondent must establish three requirements:

1. Is there an enrichment?
2. Is there a corresponding deprivation?
3. Is there any juristic reason for the enrichment?

See Garland v. Consumers' Gas Co., 2004 SCC 25.

Findings

Security deposit

[33] With regard to the issue of the security deposit, the Respondent requested the return of his security deposit upon vacating the premises. The Appellants claim that they were entitled to keep the security deposit because of the reason for the Respondent's eviction. However, s. 12(5) of the Act requires the Appellants to return the security deposit to the Respondent within ten (10) days of the termination of the lease. The Appellants have not returned the security deposit yet, and so did not comply with the Act in this regard.

[34] Section 12(6) provides that the Appellants may have been entitled to keep some or all of the security deposit in respect of rental arrears or damage to the premises. However, there were no rental arrears. Further, Mrs. Dalton acknowledged that the premises were in good condition upon the Respondent vacating the premises.

[35] Even if there had been a claim for rental arrears or for damage to the premises by the Appellants, they still would have to have had the consent of the Respondent to retain the security deposit or apply for an order pursuant to s. 13 of the Act to retain all or a portion of the security deposit.

[36] In accordance with s. 12(7) of the Act, the application to retain the security deposit must have been made within ten (10) days of the termination of the

tenancy. The Appellants made no such application to the RTP, and therefore, were not entitled to retain any or all of the security deposit. As such, I find that the Appellants must return the security deposit in the amount of seven hundred and ten dollars (\$710.00) to the Respondent.

Rent Refund

[37] The Respondent paid his monthly rent in advance each month in the amount of one thousand four hundred twenty dollars (\$1,420.00) per month. He did in fact pay his rent for the month of January 2023. In applying the unjust enrichment analysis above, the payment of the rent by the Respondent to the Appellants constituted an enrichment of the Appellants, with a corresponding deprivation of the Respondent.

[38] The final question to determine is whether or not there is any juristic reason for the enrichment of the Appellants and the corresponding deprivation of the Respondent. I find that the answer to this third question is in the negative.

[39] The Appellants claim that they had cause to evict the Respondent without giving notice as required by the Agreement. The Respondent chose not to challenge the eviction. However, I find that his compliance with the Appellants' request to vacate the premises forthwith does not constitute an acknowledgement

that they had cause for his eviction. Rather, the Respondent gave evidence that there was a disagreement between he and Mrs. Dalton but denied that he was disruptive or threatening in such a way that would justify his eviction.

[40] The Respondent paid rent in consideration of his right to occupy the premises. He did not receive that for which he paid. The Appellants did not establish that they had a juristic reason to retain the rent for the days that the Respondent did not have occupation of the premises. As such, I find that it would be an unjust enrichment of the Appellants if they were permitted to retain the rent that the Respondent paid for the days from January 22 up to and including January 31, 2023. I therefore find that the Appellants shall pay to the Respondent a prorated amount of rent which I calculate as follows:

- $\$1,420.00 / 31 = \45.81 per diem
- $\$45.80 \times 10 \text{ days} = \458.10

Moving and storage expenses

[41] The Respondent sought the recovery of moving and storage expenses in his initial Application. However, the Respondent did not offer any evidence in

relation to this aspect of his claim at the hearing. Therefore, I do not award any compensation to the Respondent under this head.

Conclusion

[42] Based on my findings, I uphold the decision of the Director and order that the Appellants pay to the Respondent seven hundred ten dollars (\$710.00) for the security deposit and four hundred fifty-eight dollars and ten cents (\$458.10) in prorated rent.

Andrea Rizzato, Small Claims Court Adjudicator