Claim No: SCCH No. 419301

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Grover v. Sulley Property and Investments Ltd., 2013 NSSM 59

BETWEEN:

Name	Aaron Grover and Souraya Grover	Appellants/ Tenants
Name	Sulley Property and Investments Limited	Respondent/ Landlord

Editorial Notice

Addresses and phone numbers have been removed from this electronic version of the judgment.

Date of Hearing: October 15, 2013

Aaron Grover and Souraya Grover - Self-Represented

Patrick Sulley for the Landlord, Sulley Property and Investments Limited

AMENDED DECISION

This is an appeal from the Decision and Order of Residential Tenancies Officer, Roberta Wilson, dated August 28, 2013. The decision provides as follows:

> "The tenants owe the landlord $895.00 for the July 2013 rent and rent of $433 for the period of August 1-15, 2013 for a total of $1328.00 less the security deposit of $447.50 leaving a balance owing of $880.50.
> NOTE: The tenant testified that they have their own issues regarding the tenancy. The tenants have up to one year from the termination date of the tenancy to file an Application to Director if they wish to do so."

At the conclusion of the hearing, I delivered an oral decision varying the order of the Residential Tenancies Officer. Specifically, I allowed an abatement of $200.00 for the breach of Statutory

Condition 1, due to the on-going conditions of the premises and certain work which was not completed by the landlord. I indicated that I would file written reasons. Regrettably, I noted an error in the Tenancies Officer's decision only once I began writing this decision. This will result in a further reduction in the amount ordered. Specifically, I disallow the rent for the period of August 1st – August 15th as it is inconsistent with ss. 10(6D) and (6E) of the *Residential Tenancies Act* governing the termination of a tenancy for non-payment of rent. I have addressed this issue further in this decision.

The Lease

The parties entered into a year to year lease for the premises known as 205 – 35 Montgomery Court, Halifax, Nova Scotia. In the lease, the landlord is identified as "SPI Ltd". The original application was filed by "Sulley Properties". At all times, the landlord was Sulley Property and Investments Limited. I order the style of cause amended accordingly.

The lease commenced on May 15, 2013, although payments were due on the first day of each month. Both parties are in agreement that rent was due and payable on the first of each month. There appears to be no issue with respect to the effect this timing has on the quantum of rent paid to date. I find a Landlord – Tenant relationship existed between the Grovers and Sulley Property and Investments Limited, and they were parties to a year-to-year lease.

The Evidence of the Parties

Aaron Grover and Suraya Grover gave evidence and made submissions on their own behalf. They appealed the order of the Residential Tenancies Officer on the grounds, in effect, that she failed to take into account the various deficiencies in the unit to which they sought to testify at the hearing. The matter proceeded as a *de novo* hearing.

At the commencement of the hearing, I indicated that I knew of no reason why a breach of statutory conditions could not be addressed at the hearing before the Residential Tenancies Officer, in response to a claim for rental arrears. I should note that both parties are in agreement to addressing the issue at this time and at various times, each has expressed an interest in moving forward. With that in mind, I considered the motion for an abatement of rent on the grounds of a breach of the statutory conditions. To do otherwise would result in a needless delay.

Mr. Grover testified that he viewed the premises in May 2013. At the time, he and his wife had been married for less than a year and Mrs. Grover was very late in her pregnancy with their son, who was born during the time they lived there. When he viewed the premises prior to moving in, the previous tenant's belongings were still in it even though he had moved out. They could not conduct an "in-inspection" until they moved in on or about June 1, 2013. Barbara Landry, who is identified in the lease as the property manager, dealt with the Grovers initially and was present during the inspection. The tenants identified several concerns they wanted remedied. Specifically, the carpets in the bedrooms were marked with ink and bleach stains, the tub and tile were black, the cupboards had not been cleaned out and there was small garbage in various

places, such as pen tops in the radiator. He also noted floorboards lifting. The most significant deficiency was the railing on the stairwell which continued to fall from its brackets.

Mr. Grover spoke with Wayne Harnish, who is identified on the lease as the superintendent. Mr. Harnish indicated to the tenants that the black substance on the tub and tile was mould. He did not indicate the basis for this decision or why it was not mildew or some other growth. He testified that Mr. Harnish tore up the flooring and poured bleach over the black parts to kill it. He then replaced the floor tile.

Mr. Harnish agreed to replace the stained carpeting and ordered laminate flooring to be installed. Mr. Grover assisted him by picking up the materials and delivering them to the unit. He could not access the second floor of his unit for three days due to the installation.

He testified that the guardrail to the main stairwell was not attached to the brackets and continued to fall several times a day. This continued throughout the tenancy even while Mrs. Grover was pregnant and after their son was born on June 17. He described several incidents where the rail was supposed to have been repaired but it was merely placed on the brackets, thus, it continued to fall. He described his dealings with Mr. Harnish and Ms. Landry as uncooperative, evasive and at times, rude. As a result, he subsequently refused access to the premises to Mr. Harnish to make further repairs and placed a stop payment on the July rent cheque.

Under cross-examination, he confirmed that he refused Wayne Harnish access to the premises. He indicated that the superintendent agreed to paint the walls prior to the Grovers' moving in, but it was clear from the presence of pre-existing stickers and nail holes on the walls that it had not been painted.

Patrick Sulley is the owner of Sulley Properties and gave evidence on its behalf. In his response to the appeal, he is seeking his rental arrears, damage deposit and his application fee to the Residential Tenancies Director. He had no objection to this Court addressing the issue of alleged deficiencies at this time.

He testified that the Grovers paid their first month's rent in cash and the balance in post-dated cheques. They received a cheque for July and he was advised by his bank that a stop payment had been made on it. As a result, he proceeded with this application on July 22nd.

He testified that he spoke with Wayne Harnish, the superintendent, about the concerns raised by the Grovers. He authorized Harnish to proceed with replacing the laminate floor. He did not know anything about the black substance in the bathroom. He described their unit as one of 28 units in the building. He produced photographs showing where the repairs were affected. He has not had any complaints with the current tenants of this unit. He testified that there were stains in the refrigerator and stove which existed prior to their occupancy as was the black stain in the

bathroom. He was unaware of any concerns with respect to the cupboard. He described the loose boards and rail as occurring after the cheque was returned with the payment stopped. He denied there was any garbage laying around. He was not aware of any issues with the cupboard.

He tendered many photographs into evidence showing the items of damage, to which I have addressed below.

When cross-examined, he testified that he did not actually see the rail or the cupboard. He relied on the advice of Mr. Harnish or Ms. Landry. Neither Wayne Harnish nor Barbara Landry gave evidence in these proceedings.

The Law and Findings

I have had the opportunity to listen to and observe the evidence presented by Mr. and Mrs. Grover and Mr. Sulley. I find both tenants to be truthful and forthcoming witnesses. While Mr. Sulley is a truthful witness, he was not present for the most relevant part of the incident, the dealings between Harnish, Landry and the Grovers. For whatever reason, neither Mr. Harnish nor Ms. Landry were called to testify. Ms. Landry was present in Court the night of the hearing. Thus, where there are discrepancies with respect to what took place between the Landlord and the Tenants, I favour the evidence of Mr. and Mrs. Grover.

The *Residential Tenancies Act* is the governing law in these matters. It prescribes the procedure to order a tenant to vacate the premises when a tenant is in arrears of rent and to address any deficiencies or damages. I have categorized the findings for each issue:

Rental Arrears

I find the Tenants placed a stop payment on their rent cheque for July 2013 and vacated the premises on or before July 31, 2013. The landlord filed an Application to the Director seeking vacant possession of the premises and arrears of rent on July 22, 2013. Before reviewing my findings under this section, I must state that the decision to withhold rent was not a proper one. The correct action would have been to make application to the Director to order any problems rectified. If it had been bad enough, they could have vacated the premises and sought relief before the Director. I have no difficulty in awarding $895.00 for July's rent.

Sections 10(3A) – 10(5) provide as follows:

(3A) A landlord shall not give to the tenant a notice to quit residential premises except in accordance with this section.
(4) A notice to quit residential premises shall be in writing and shall contain the signature of the person giving the notice or his agent, a description of the residential premises and the day on which the tenancy terminates.
(5) A notice to quit must be in the form prescribed by regulation.

A landlord has different obligations for giving notice to quit to their tenants depending upon the reasons. These are set out in s. 10 of the Act and ss. 4-4J of the Residential Tenancies Regulations. The form referred to in s. 10(5) can be found in s. 4A of the Regulations and Form D, *Landlord's Notice to Quit for Rental Arrears*. There was no Form D tendered into evidence.

Further, a proceeding under this section requires the filing of a Form K, *Application to Director – Rental Arrears*, rather than the Form J currently on file. This difference is not a mere formality. While the forms are similar in effect, Form K and Form D describe the tenants' rights under a *Landlord's Notice to Quit for Rental Arrears*. That form describes for affected tenants their specific right to restore the rental claim and eliminate any arrears within 15 days of service.

It also advises the tenants that any failure to respond, either through payment of the arrears or the filing of an objection to the Residential Tenancies Director, results in a deemed acceptance of the statement that the rent is in arrears. Nevertheless, I find the tenancy was at an end as of July 31, 2013 and there are new tenants residing in the premises. As a result, while the procedure was clearly imperfect, the eviction is not a nullity. I uphold the order for vacant possession and, as previously stated, the rental arrears for July 2013 of $895.00.

August's Rent

With respect to the payment for the pro-rated rent for August, I find there is no authority to order such a payment. Had the proper procedure been adopted by the landlord, once the tenants were deemed to have been in arrears, they would have been subject to an Order from the Director. While it is not clear which section applies, the amount to be ordered is identical in ss. 10(6D) – with mediation attempted - and s. 10(6E) – when mediation was not attempted. For example, s.10(6D) prescribes that the Director of Residential Tenancies (through his or her designate, the Residential Tenancies Officer) may make one of the following orders to the tenant:

"(d) an order to vacate the residential premises;
(e) an order requiring the tenant to pay to the landlord **any rent owing for the month in which the notice to quit is given to the tenant and any rent in arrears for months previous to that month**;
(f) an order permitting the landlord to retain the tenant's security deposit and interest to be applied against **any rent found to be owing for the month in which notice to quit is given to the tenant and against any rent in arrears for months previous to that month**."
(emphasis added)

The language of the *Act* is clear. An order for arrears of rent is limited to rent for the current month and any previous months' rent. Had the Notice to Quit and subsequent hearing procedure been correctly followed, the landlord would have been limited to rent for the month of July. The landlord would not have been able to collect rent for any part of August, regardless of any findings that it had mitigated its losses. The award of $433 must be denied.

Rental Abatement

It is clear from the evidence that the Tenants experienced considerable difficulties with the condition of the premises. They had been in the premises from May to July. In order to find liability, I must find a breach of the lease. I look specifically at the Statutory Conditions:

Statutory Condition 1 provides as follows:

" The landlord shall keep the premises in a good state of repair and fit for habitation during the tenancy and shall comply with any statutory enactment or law respecting standards of health, safety or housing."

I find the following deficiencies constitute a breach of this Statutory Condition:

- *The Railing* – I accept the Tenants' evidence that Mr. Harnish would not repair the railing adequately. This created a potentially dangerous situation, particularly where it would be used more frequently during Mrs. Grover's pregnancy or when either a tenant or guest

  would carry their son upstairs. Simply placing the rail back in place without restraint created a potential danger. I reject any suggestion the landlord had no obligation to repair it once the cheque was stopped. The landlord's obligations continue until the tenancy has been ordered terminated, and does not cease for any subsequent occupants or their visitors. I would have been inclined to order a greater abatement had Mr. Harnish been allowed entry and refused to do the work or continued to perform it in that manner.

- *Presence of Black Substance in the bathroom upstairs* – I find as a fact that Mr. Harnish referred to that substance as mould. However, in light of the scant evidence, I am unwilling to make the finding that it was actually mould rather than mildew or some other substance. Nevertheless, there remains the possibility that mould could be present in the premises. Had the tenants provided evidence aside from Mr. Harnish's comments that the black area was mould, I would have been inclined to award a greater abatement.

- *Flooring* – While it is necessary to allow workers to enter the premises to make repairs, the loss of use of the tenants' upstairs for three days is unreasonable and excessive particularly where much of the work could have been addressed prior to the beginning of the tenancy.

The remaining deficiencies do not constitute a breach of this Statutory Condition. In light of the circumstances, I find this breach entitles the Grovers to an abatement of $200.

Damages

The landlord has submitted a claim for damages to the premises which I find to be ordinary wear and tear. As such, no liability can apply under the Act. I include in this finding the marks on the wall from installing the shelves, which I find to be acceptable. Further, I accept the evidence of the Grovers and find many of the damages were the items complained of prior to the start of their tenancy. I disallow these items in their entirety.

Conclusion

For the reasons stated, I order the decision of the Residential Tenancies Officer varied and direct the Tenants, Aaron and Suraya Grover, to pay the landlord, Sulley Property and Investments Limited, the sum of $247.50, calculated as follows:

Arrears of Rent (July 2013)	$895.00
Less: Abatement	($200.00)
Less: Security Deposit	($447.50)
Total Judgment	**$247.50**

As previously stated, the claim for August's rent of $433 is denied. This is an appropriate case for each party to bear their own costs.

Order accordingly.

Dated at Halifax, NS,
on October 28, 2013;

Gregg W. Knudsen, Adjudicator

Original: Court File
Copy: Appellant/Tenant(s)
Copy: Respondent/Landlord(s)