SCCH -17- 464856

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
ON APPEAL FROM AN ORDER OF THE DIRECTOR OF RESIDENTIAL TENANCIES

Citation: *GNF Investments Ltd. v. Simpson*, 2017 NSSM 43

BETWEEN:

GNF INVESTMENTS LTD.

Landlord (Appellant)

- and -

JAMES H. SIMPSON

Tenant (Respondent)

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on August 15, 2017

Decision rendered on August 18, 2017

APPEARANCES

For the Landlord	Mike Quigley, property manager
For the Tenant	self-represented

REASONS FOR DECISION

[1] This is an appeal by the Landlord from a decision of the Director of Residential Tenancies dated June 12, 2017, which had awarded the Tenant a refund of his security deposit, a month's rent, and filing costs for a total award of $1,976.15.

[2] The Landlord had sought to retain this money after the Tenant refused to take possession of an apartment that was - according to the Tenant - not sufficiently completed. The Tenant asserted that he had the right to terminate the lease he had signed.

[3] The Landlord disagreed with the Tenant's right to refuse to go ahead with the lease.

[4] I have decided that, while I do not totally agree with the reasons of the Residential Tenancy Officer, I agree with the result and affirm the order.

[5] The unit in question was part of a brand new 104-unit building at 56 Supreme Court in Halifax. The Tenant signed the lease on February 11, 2017 with intended occupancy for March 1. Rent was to be $1,295.00 per month. A security deposit was provided in the amount of $647.50.

[6] The unit was not even close to being ready for occupancy on March 1. This put the Tenant in an awkward situation as he had to be out of his old place at that time. He was permitted to store his things at a storage facility paid by the Landlord's agent. He spent that month with his girlfriend.

[7] The move in date was verbally changed to April 1. The Residential Tenancy Officer found that the Tenant accepted this date and could not rely in the failure to provide possession on March 1 as a ground for refusing the lease. I agree with that finding.

[8] According to the Tenant, and to his girlfriend who also testified, the condition of the unit was far short of what it should have been on April 1. The interior was coated in construction dust. Not all of the painting had been completed. There were loose wires hanging out of the electrical panel. The living room floor appeared damaged and would likely need to be replaced. The patio was inaccessible because it lacked railings. Not all of the appliances were in. After looking at the place on or after April 1, when he was supposedly to move in, the Tenant decided that he no longer wished to proceed with the lease and so advised the Landlord.

[9] The Residential Tenancy Officer did not accept the condition of the premises as a reason to refuse to proceed with the lease. He found that these deficiencies could have been dealt with by way of an abatement, or by "addressing the issues directly."

[10] However the Residential Tenancy Officer found that the Landlord had made an alteration to the Statutory Conditions in the lease which, according to the Residential Tenancy Officer, rendered the lease void. Specifically, Statutory Condition 5 respecting subletting had been changed to a shorter and more restrictive version than the one contained in the Residential Tenancies Act.

[11] I do not agree with the notion that an abatement would have been the best way to deal with the unit's lack of readiness. An abatement is usually appropriate when a tenancy is ongoing. But in a situation where the unit has never been

occupied, and is not fit for habitation, I believe the Tenant has a reasonable right to refuse to occupy it.

[12] The issue of the altered statutory condition deserves comment. The Landlord explained, not entirely to my satisfaction, that this was a result of an error on its part. Whether or not it was deliberate, the law does not render the entire lease void. In *GNF Investments Ltd. v. Bujold* (July 11, 2017), a recent case of Adjudicator Angela Walker of this court, this very issue was addressed. Towards the end of her decision she writes:

> I accept that the landlord purposely changed the statutory condition 5 regarding subletting premises in Schedule "A" to the standard form of lease. Section 8 of the Residential Tenancies Act states as follows [emphasis added]:
>
> > Standard form of lease
> > 8 (1) In addition to the statutory conditions, a landlord and tenant may provide in a standard form of lease for other benefits and obligations which do not conflict with this Act.
> >
> > (2) An additional benefit or obligation under subsection (1) is void unless it appears on both the landlord's and tenant's copies of the standard form of lease.
> >
> > (3) Any alteration of or deletion from provisions that a standard form of lease is required by regulation to contain is void.
> >
> > (4) On or after the first day of February, 1985, a landlord and a tenant who enter into a written tenancy agreement or renew a written tenancy agreement and who do not sign a standard form of lease are deemed to have done so and all provisions of this Act and the standard form of lease apply.
> >
> > (5) A landlord and tenant who have an oral tenancy agreement and who do not sign a standard form of lease are deemed to have done so and all provisions of this Act and the standard form of lease apply. R.S., c. 401, s. 8.
>
> It is clear from Section 8(3) that any alteration or deletion from provisions that a standard form of lease is required by regulation to contain is void.

> This section does not state that the entire lease is void. As noted in Section 9(1) regarding the statutory conditions:
>
> > Notwithstanding any lease, agreement, waiver, declaration or other statement to the contrary", where the relation of landlord and tenant exists in respect of residential premises by virtue of this Act or otherwise, there is and is deemed to be an agreement between a landlord and tenant that the following conditions apply...
>
> From there, the various statutory conditions are denoted including the condition relating to subletting premises. The legislation presumes that it is possible a lease will contain a provision that is contrary to one of the statutory conditions noted in the legislation but that in any event, the statutory condition will override any such provision.
>
> I find that statutory condition 5 overrides the version of statutory condition 5 that is attached in Schedule "A" to the lease in issue. I therefore conclude that the tenant had every right to attempt to sublet the unit.

[13] In the case here, especially since subletting was not an issue, I find that the entire lease did not become void simply because of the alteration of the statutory condition. That provision would simply have been unenforceable.

[14] The Landlord here succeeded in re-letting the unit effective June 1, 2017. It wants to be permitted to retain the rent for April that it took from the Tenant's bank account, and to keep the security deposit toward May's rent. Given my finding that the Tenant had a right to reject unfit premises, the Landlord cannot succeed in this claim. It simply should not have tried to rent out apartments that were not complete and ready for occupancy.

[15] In the end, for the reasons stated, the appeal by the Landlord is dismissed and the order of the Director of Residential Tenancies stands.

Eric K. Slone, Adjudicator