

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
ON APPEAL FROM AN ORDER OF THE
DIRECTOR OF RESIDENTIAL TENANCIES
Citation: Mintus v. Stewart, 2018 NSSM 23**

BETWEEN:

C. BRIAN MINTUS

Landlord (Appellant)

- and -

BRANDON STEWART and CHELSEA PELLEGRINI

Tenants (Respondents)

REASONS FOR DECISION AND ORDER

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on April 17, 2018

Decision rendered on April 30, 2018

APPEARANCES

For the Landlord self-represented

For the Tenants self-represented

REASONS FOR DECISION

[1] This is an appeal by the Landlord from a decision of the Director of Residential Tenancies dated March 27, 2018. That order dismissed all of the claims of the Landlord, who did not choose to attend the hearing at Residential Tenancies notwithstanding the fact that it was his application. The Residential Tenancy Officer had no choice but to dismiss his application.

[2] While this fact is perhaps not strictly relevant to the task that I must perform, the Landlord appears to have deliberately boycotted the hearing before the Director in the apparent view that he would just come to this Court on appeal. I find that to be a rather disrespectful attitude, and it deprives the court of the benefit of having had a preliminary consideration of the merits.

[3] Notwithstanding, since this is a hearing *de novo*, I must consider it entirely on its merits.

[4] The Landlord seeks two main items of relief. He is seeking one month of rent in the amount of \$1,200.00 as well as the sum of \$1,638.40 for damages that he says the Tenants caused to the premises and which he discovered upon their leaving. His application to Residential Tenancies was filed on March 2, 2018.

[5] This was a relatively short-term tenancy. It began on October 1, 2017, and by early 2018 the Tenants were in arrears of rent. On February 1, 2018, the Landlord gave the Tenants two months to vacate. Although they had their own grievances against the Landlord, the Tenants did not contest the eviction but were, in fact, making arrangements to vacate by the end of March, as required. According to the Landlord, the Tenants simply vacated in mid-March without

paying the \$1,200.00 rent for March. They also caused damages, he says, which included admitted damage to the exterior door at the rear, and additional items including the replacement of a carpet, painting of some of the unit and general cleaning.

[6] This evidence does not fit nicely with the fact that the Landlord commenced his Residential Tenancies application on the 2nd of March which was before the Tenants vacated, and thus before the Landlord retook possession.

[7] The Tenants testified and presented another side to the story. They admitted damaging the door in a fit of frustration by Mr. Stewart, and this item is not seriously contested. As for the other damages, they question why the Landlord felt obliged to change a carpet when it likely could have been cleaned. Apparently, there was a spot where it had been stained by their young child's faeces, although Ms. Pellegrini says she tried to clean it.

[8] Ms. Pellegrini testified that she spent several hours cleaning the unit and left it in as clean a condition as she found it. This would appear to have been after the Landlord filed his application with Residential Tenancies.

[9] She admitted that they had fallen behind in their rent, due to circumstances beyond their control, but the reason for not paying the March rent was that, she says, the Landlord turned off the heat and electricity to the premises on about the 1st or 2nd of March with the result that they were forced to move out a few days later just several days into the month of March.

[10] The Landlord denied cutting off services, although he did not directly answer the question about electric power. He admitted that there had been some problems with the furnace, but he says that these were unintentional and that he

in fact did necessary repairs to the furnace when advised that there was a problem.

[11] It was obvious to this Adjudicator that these parties became embroiled in a deep conflict in a short period of time and came to hold very negative views of the other which coloured their perceptions. I did not find any of them to be dispassionate or reliable in their testimony. As such, this creates credibility problems for all of the witnesses, and I am forced to look at the inherent probabilities as carrying more weight than the verbal statements.

[12] Given all that, I found the Tenants to be more credible on the question of why they moved out in early March. They appeared sincere in their testimony that they had intended to stay until the end of March, and that it was extremely inconvenient for them to have to move out as they did, under circumstances forced by an absence of heat or power.

[13] I also find that the Landlord has exaggerated the damages. The cost for the new door is justified, and some amount to compensate for the stains on the carpet and perhaps some other cleaning.

[14] Accordingly, I disallow the claim for rent for the month of March, on the basis that the Tenants did not get the benefit of occupancy.

[15] I allow the Landlord the global sum of \$600.00 toward his damages. This is the precise amount of the security deposit, and subject to the Landlord retaining the security deposit, the balance of the claim is dismissed, and the order of the Director of Residential Tenancies is varied accordingly.

ORDER

[16] It is accordingly ordered that the order of the Director of Residential Tenancies dated March 27, 2018 is varied to provide that the Landlord shall retain the \$600.00 security deposit, and the balance of the claim for rent and damages is dismissed.

Eric K. Slone, Adjudicator