

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

CLAIM NO. ANUHCV2009/0362

BETWEEN:

RUPERT ANTHONY

CLAIMANT

And

PATRICE BROWNE
WILLETTE BENN

DEFENDANTS

Appearances:

Kathleen A. Bennett of Lake & Kentish for the Claimant

Alincia Williams-Grant for the Defendant

2010: July, 12
2010: October, 12

JUDGMENT

1. **Harris, J.:** This is a claim by the land Lord against his tenant for (i) rent for from January 2009 to June 2009- breach for the sum of \$3600.00 (ii) cost of repairs to the premises for \$3,100.00 and arrears of water rates of \$2,493.25.
2. The Defendants rented a house from the claimant at a rent of \$600.00 per month ^{ex} inclusive of water charges and paid a deposit of one months rent. The defendants agreed with the claimant to make and did make certain improvements to the house to make it more habitable. The improvements commenced before they moved into the rented premises in August 2008 and concluded shortly thereafter.

3. The defendants also purchased a lock and key for the rented premises as the claimant did not provide any at the commencement of the tenancy. The claimant agreed to deduct the cost of the lock from the first months rent and did do so.
4. In or about January 6th 2009 and without notice to the defendant, the claimant gave instructions to the APUA to disconnect the electricity services from the rented premises. The defendants at the time were in occupation and lawful possession of the rented premises. The defendants were not in arrears of rent and paid up the electricity bills. Despite repeated requests the claimant refused to cause the services to be reconnected. The claimant's actions in causing the electricity to be disconnected without cause was designed to cause the defendants to vacate the rented premises and was unlawful.
5. The claimant breached the terms of the tenancy, specifically the implied term for peaceful and quiet possession and enjoyment without interruption. His action amounted to an eviction and effectively terminated the tenancy.
6. Due to the claimants breach the defendants were forced to seek alternative accommodation.

Defendants' Statement of Facts and Issues¹

7. The Defendants submit the following as the issues to be determined by the Court:-
 1. Whether the Claimant acted wrongful and/ or unlawfully interfered with the rights of the Defendants as tenants in causing the electricity supply to the rented premises to be disconnected.
 2. Whether the Claimant was in breach of the implied covenant against interruption of the Defendants' peaceful and quiet enjoyment/possession the rented premises.

¹ See pp 70 of the Core trial Bundle; This is a reproduction of the Defendants pre-trial memorandum

3. Whether the Claimant by his actions evicted the Defendants and terminated the tenancy with the Defendants.
4. Whether the Claimant was aware that the Defendants vacated the rented premises or about the 13th of February 2009.
5. Whether the Defendant are responsible for any rent to the Claimant after January 6th 2009; and if so for what period.
6. Whether the Defendants caused any damage to the rented premises on their leaving on the 13th of February 2009.
7. Whether the costs of water supplied to the house was included in the rent.
8. Whether the water bill submitted by the Claimant relates to the Defendants' period of occupation of the rented premises, or to the rented premises at all; and if so what portion, if any are the Defendants responsible for.
9. Whether the Defendants are entitled to the return of the deposit.

THE DEFENDANT'S FACTUAL AND LEGAL CONTENTIONS ²

8. The Defendants contend that:-

1. The Claimant unlawfully and wrongfully substantially interfered with the rights of the Defendants as tenants in occupation and possession of the rented premises.
2. The Claimant as landlord breached the implied covenant to allow the Defendant to peaceably and quietly enjoy the rented premises without any interruptions from the Claimant.
3. The Claimant by his actions evicted the Defendants and effectively terminated the tenancy.

² See pp 70 of the Core trial bundle; This is a reproduction of the defendants pre-trial memorandum.

4. The Claimant is not entitled to any of the relief's set out in his Statement of Claim.

ADMISSIONS³

9. The Defendants submits the following as admissions made by the Claimant:-
 1. The Defendants were tenants of the Claimant at a monthly rent of \$600.00.
 2. The Defendant did pay the Claimant a security deposit of \$600.00 which he still holds.
 3. The Claimant caused the electricity to be disconnected.
 4. That the Claimant did cut down the clothes line.
 5. That the Claimant was aware that the Defendants vacated the house before the 25th February 2009.

THE CLAIMANT'S FACTUAL AND LEGAL CONTENTIONS⁴

10. The Claimant rented his property at Johnson's Point, St. Mary's Antigua to the Defendants at \$600.00 per month.
11. The Defendants entered into occupation of the rented house and remained in occupation until 15th February 2009. Without notice to the Claimant the Defendants abandoned the rented house and failed and/or refused to return the keys to the Claimant, and thus remained in possession of the rented premises.
12. When the Claimant took possession of the rented premises in June 2009, he discovered that the said premises were damaged and that there were outstanding utility bills for the period during which the Defendants were in occupation.
13. The Defendants have not paid any part of the rent since January 2009.
14. As a result of the Defendants' actions the Claimant has suffered loss and damage.

³ See pp 72 of the Core trial bundle; This is taken from the defendant's submissions and the pre-trial memorandum.

⁴ See pp 115 of the Core Trial Bundle. This is a substantial reproduction of an aspect of the claimant's statement of claim and pre-trial memorandum.

Particulars of Loss and Damage:

Rent due from January 2009 to June 2009 when the Claimant took possession of the rented premises at \$600.00 per month	\$3,600.00
Costs of repairs for damages to rented premises whilst the Defendants were in occupation	\$3,100.00
Arrears of utilities (water) up to February 2009	\$2,493.25

Accordingly the claimant submitted that the Defendants are liable for the same.

ADMISSIONS BY THE CLAIMANT⁵

15. The Defendants rented the house from the Claimant at a monthly rent of \$600.00.
16. The Defendants were responsible for the electricity charges.
17. The Claimant disconnected the electricity.
18. The Claimant cut down the clothes line.
19. The Defendants were reimbursed for the lock they purchased for the door of the house.

FINDINGS/CONCLUSION

20. The tenor of the evidence suggests that the premises were not in the best of condition when the defendants entered into occupation. It is not contested that the premises did not have a working lock on the front door. This supports the finding as to the apparent poor state of repair. The defendant, entered into occupation with full knowledge of the state of disrepair of the house. In fact, he testified that he had an agreement with the landlord/claimant to carry out certain remedial works in the house and the purchase and installation of the door lock, for which he was to be reimbursed for by a deduction from the rent. The claimant's response to this is not entirely definitive or robust, but there is no claim by the defendant for outstanding reimbursements for that work.

⁵ See pp 115 of the Core Trial Bundle.

21. **I do not accept that the rent included water.** The 2nd defendant's contention that the water rate was included in the rent is tied up with his account of the make shift arrangement for the provision of water to the house by the use of a hose from other premises. However, the 1st defendant did not give evidence of this arrangement which in my view must have been very visible to the defendants and no doubt (if it did exist), I would imagine, unacceptable to them during their tenure. I would have expected consistency from both defendants on this matter. Further, the small rent of \$600.00 does not readily allow for the absorption of the water rate by a landlord. It is more likely than not that the water rate was not part of the rent. I find for the claimant on this issue.
22. The issue concerning the water rate does not end here. A bill of some EC\$2493.25 for water consumption was tendered as that which represented the arrears of the defendants consumption. The amount appears very large and outside of the possible range that common experience would permit. There is no evidence from the claimant or the defendants that prove any activity or lifestyle of the defendants that would provide a basis for that size water bill. Further, the bill is not in the name of the defendants. Further still, the bill appears to extend over a period which the defendants were not in actual occupation. The cross examination and the examination of the bill itself produced inherent inconsistencies that considerably weakened the veracity of the evidence against the defendants on this issue. On a balance of probabilities, this bill and associated claim does not represent the defendant's water consumption on the premises and their liability to the claimant. Put another way, it does not come up to proof.
23. It cannot be doubted that the defendants consumed water. They owned a washing machine at the very least and in any event they never suggested otherwise. In the absence of evidence of actual quantum of consumption, the defendants are still liable to pay at the very least a nominal sum calculated on the basis of common experience. On the basis of what is publicly disseminated by the APUA and well known as the average house hold consumption of \$100.00 a month spread over 7 months occupation, results in the figure of EC\$700.00. I award the sum of EC\$700.00 to the claimant for the claim for arrears of water consumption.

24. **The claimant claims for damage to his property** in the sum of EC\$3,100.00. The evidence is and accepted by the court, that the building was an old wooden and ply house on which the doors and kitchen cupboards had not been replaced in decades. I am satisfied that in January when the defendants found the doors removed from the hinges, they were not the ones who removed it. There is insufficient evidence and indeed, rationale, in support of any suggestion that the defendants were so responsible. The evidence is that the building remained in this condition with the doors removed and lying on the ground in full view for close to 4 months. I do not accept that the claimant was not aware of this state of affairs and the open access to the house by all and sundry during this period. The proof of the cost of repairs, materials and actual work done is deficient in detail suggestive of actual work carried out. The nature of this aspect of the claim is one for which the claimant would have had all the information available to him and as such demands of the fullest proof. The item "electrical" for instance, is woefully devoid of detail. The defendant would not have had the information from the pleadings and evidence for him to even know what damage specifically the claimant was referring to. Neither does the court. Further, the defendant claims to have himself had to do remedial works on aspects of the electricals of the premises. Further, having regard to the allowances to be made for fair wear and tear and the absence of reliable evidence of the prior condition of the parts of the building for which repair is claimed together with the defendants evidence on the state of the building and their denial of responsibility, I find this aspect of the claim unproved.

25. **The claimant claims for arrears of rent from January 2009 to June 2009.** This issue turns on the resolution of the question of what did the acts of the claimant amount in January and February of 2009. The defendants argue that the claimant's disconnection of electricity was an act that brought the tenancy to an end. Counsel for the claimant contends that the disconnection may have suspended the defendant's liability to rent but in law would not have brought the tenancy to an end. Further contends the claimant the defendant never did, by an unequivocal act, bring the tenancy to and end.

26. I am unable to grasp the fine point that the claimant makes here. In the year 2009, where there is no outstanding electricity bill, what other purpose would the disconnection and continued refusal to reconnect amount to but the determination of the tenancy. It cannot be suggested that the defendants are to continue residing in the premises rent free indefinitely. I accept the evidence of the defendants of their indication to the landlord that they were vacating the premises. He could not have construed their words and actions in any other way. He could not have expected anyone in 2009 and with options for alternative accommodation, to remain in premises without electricity. Whereas the words and actions deployed by the defendants to indicate – unequivocally in my view – to the defendant their vacating of the premises, may be unclear to person of other cultures, I believe it clear that any Antiguan would have understood exactly what had taken place here⁶. Further to all this, the claimant admitted having cut down the clothes line servicing the premises occupied by the defendants, in effect, because he knew that the defendants had left the premises. He said: “As the house had been vacated by the defendants, I did not know who was hanging clothes on the clothes line and so I cut it down”.⁷ (emphasis mine) Further still, there is the evidence of the doorless building, a structural defect, which the claimant did nothing to rectify. This would have been an obligation on the landlord/claimant.

27. In all of this the defendants have not been blameless. I accept that it was a condition of the tenancy that the electricity account was not to lapse into arrears. There is no evidence that the breach of this condition would result in the indefinite suspension of the electricity service notwithstanding the payment of the arrears. It is more likely and commercially plausible, to result in a right to terminate the tenancy. On the evidence, it appears that on two occasions the defendant's did allow arrears to accrue and subsequently paid it off to the apparent satisfaction of the APUA. Pursuant to this condition of the lease the claimant sought to terminate the tenancy by squeezing the defendants out with as immediate effect as he could muster. This was achieved. He could have properly and lawfully achieved it by serving the defendants with a notice to quit. He did not do so. However, the defendants have not counterclaimed for this breach.

⁶ There is nothing in my view between the defendant's evidence that the key was left in the door and that the key was left in the building receptively

⁷ See para 9 of his witness statement at pp 47 of the Core Bundle.

28. I am satisfied that the claimant was aware and satisfied by the latest, the 25th of February 2009, that the defendants had accepted his repudiatory acts and vacated the premises as testified to by the defendants. Alternatively, I find that if the defendants had on their own terminated the tenancy on the 15th of February 2009, then, for the latest, as of the last day of February 2009, the claimant ought to have taken steps to have mitigated his "Loss".

29. I award the claimant one (1) month's rent on this aspect of the claim.

ORDER

30. FOR THE REASONS PROVIDED ABOVE, IT IS HEREBY ORDERED AS FOLLOWS:

- i. Judgment for the Claimant in the sum of EC\$1300.00
- ii. Interest pursuant to the Eastern Caribbean Supreme Court Act at 5% per annum
- iii. Costs to the claimant on the Prescribed Costs scale.

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DAVID C HARRIS
HIGH COURT JUDGE
ANTIGUA and BARBUDA