THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CLAIM NO. 166 OF 2008

ELI WILLIAMS

Claimant

V

BEVERLY BARNWELL

Defendant

APPEARANCES:

Mr. Jaundy Martin for the Claimant.
Mrs. Zhinga Horne-Edwards for the Defendant.

2011: November 29
2012: January 24

DECISION

[1] **JOSEPH, Monica J. (Ag.)**: The claimant, under an oral agreement, was a tenant of the defendant of a one bedroom apartment, (apartment). The claimant claims against the defendant for damages for trespass, breach of covenant for quiet enjoyment and damages for wrongful eviction from the apartment. The claimant claims special damages, particularizing loss totaling $1,943.00. The defendant counterclaims for damages for items damaged and others missing from the apartment.

CLAIMS

[2] The claimant was paying a monthly sum of $500.00. In a defence to counterclaim the claimant claims an additional sum of $300.00 for electricity and water consumption. He contends that he was summarily evicted in abrupt circumstances by the respondent, who entered the apartment with a large contingent of police officers, claiming she had the court's authority.

[3] The defendant denies that the claimant was unlawfully evicted. The defendant counterclaims for damages in respect of damaged, destroyed or missing fixtures, appliances and fittings in the apartment. The defendant also claims for nuisance caused by the claimant's loud disruptive, abusive behaviour while he occupied the apartment.

WRITTEN SUBMISSIONS: 15TH December and 19th December 2011.

Defendant's Issues

[4] (1) Did the claimant have a monthly tenancy with the defendant? If so, what is the period of the tenancy?

(2) Whether the tenancy came to an end at the end of April 2008 as alleged by the defendant by letter of 30th April 2008.

Claimant's issues

[5] (1) Whether the written notice given to the claimant validly terminated the claimant's periodic tenancy.

(2) Whether the defendant's action breached the implied covenant for quiet enjoyment to which the claimant is entitled.

(3) Whether the defendant's action amounts to an actionable trespass.

(4) Whether the claimant's special damages have been proved.

(5) Whether the claimant is entitled to damages for eviction/ejection.

FACTS

TENANCY AGREEMENT

[6] The parties entered into an oral agreement for the tenancy of an apartment. In his witness statement the claimant stated that he became a tenant on 18th November 2006 paying a monthly rent of $500.00. The claimant's oral evidence was that the tenancy did not commence in November 2006.

[7] I find that the tenancy was a monthly tenancy that commenced on 1st November 2006. To accommodate the claimant, who received pension payments from the United States

around the 18th of every month, it was agreed that actual payment would be made by the 18th of every month.

[8] The claimant's evidence was that he paid $800.00 monthly, $500.00 being rental and $300.00 towards electricity and water payments. He testified that if the utilities bill was less than $300.00 the excess was carried over to the next month but if more, "nothing happened". I do not believe that. I find that the rental was $500.00 and a sum of $300.00 was given for electricity and water consumption. If the bill was less then the excess was carried over to the next month and if it was more the claimant paid the excess. I accept from the defendant that when the claimant vacated the apartment the arrears of electricity, $264.01 and for water, $72.93.

APARTMENT VACATED

[9] Around January 2008 the respondent received word that her mother was due to return to the country in June 2008. She informed him that the apartment was required for her mother. I accept that the claimant had about three months' verbal notice to quit the apartment. He was due to vacate the apartment on 30th April 2008 but the defendant gave him permission to remain in the apartment until 18th May.

[10] About 5.30 p.m. on 30th April 2008, the defendant delivered to the claimant a written notice to vacate the apartment immediately. About 7:00 on the morning of 1st May 2008, the claimant and his common law wife Hazel-Ann George were in the apartment when there was a knock on the door of the apartment, to which he did not respond. The defendant using a key opened the door of the apartment. The defendant accompanied by her husband who is a police officer, and other police officers, entered the apartment.

[11] The defendant's evidence was that she evicted the claimant on the morning of 1st May 2008. I find that the claimant and his common law wife packed some personal things and left the apartment in search of a lawyer. After receiving a telephone call the claimant returned to the apartment where he saw the apartment nailed up. His personal effects were in garbage bags outside the apartment.

[12] Counsel for the claimant submitted that the defendant's conduct was an invasion of the claimant's right to undisturbed possession and enjoyment of the apartment. That conduct, counsel submitted: the defendant unlocked the apartment's door without an implied licence to enter the premises and without the claimant's express consent: the presence of the defendant and a squad of police officers to bully or otherwise threaten the claimant to leave the premises, was a challenge to the claimant's title and to his enjoyment and possession of the premises as a tenant.

[13] Counsel further submitted that the defendant threw most of the claimant's belongings out of the apartment in garbage bags essentially evicting the claimant. The boarding up of the premises by the defendant's husband further prevented the claimant from exercising his right to possession of the apartment. Counsel urged that the breach of covenant for quiet enjoyment is the loss to the tenant resulting from it. That includes special damages for inconvenience as a result of the breach of contract and he cited cases.

[14] Counsel for the defendant urged that the law is that a defendant with title to land is entitled to immediate possession. The defendant therefore was entitled to immediate possession of the apartment. Having been given permission by the defendant to remain in the apartment beyond the end of April, the claimant was a licencee and that permission could be revoked at any time and she cited authority. I agree that the defendant became a licencee when the tenancy ended on 30th April 2008 and the claimant permitted him to remain in the apartment up to 18th May 2008. The defendant's licence could be vacated at any time.

[15] I find that, in revoking a licence, reasonable time must be given to the licencee and no more force than is reasonable to effect the vacating of the apartment may be used. I do not think that the defendant gave the claimant reasonable time (5.30 p.m. on 30th April to 7 a.m. on 1st May) to vacate the apartment. That makes the entry unlawful.

[16] Was there force used on the occupiers of the apartment? I accept the evidence of the claimant's witness Ms. George: "The policeman want to make trouble. He told me come

out the people place or he would drop me on me head. No other policeman spoke. They did not do anything. We left. They didn't rummage up the house."

[17] I do not think that what is described by Hazel-Ann amounts to aggressive behaviour that constitutes force by the police officers. I accept from that evidence that the police officers 'did not use physical force on the occupants of the house. It seems that they were hoping to encourage the claimant to vacate the apartment by a show of force rather than a use of force. That show of force in a situation where reasonable time was not allowed by the defendant for vacating the apartment, thus constituting an unlawful entry, compounds the situation. This will be taken into consideration in assessing damages payable by the defendant.

THE LAW

[18] ***McPhail v Persons names unknown*** (1973) 3AER 393, Lord Denning M.R.:

> "(i) Now I would say this at once about squatters. The owner is not obliged to go to the courts to obtain possession. He is entitled, if he so desires, to take the remedy into his own hands. He can go himself and turn them out without the aid of courts of law. This is not of course to be recommended because of the disturbance which might follow. But the legality of it is beyond question. Even though the owner himself should use force, then so long as he uses no more force than is reasonably necessary, he is not himself liable either criminally or civilly.
>
> (ii) Although the law thus enables the owner to take the remedy into his own hands, that is not a course to be encouraged. In a civilized society, the courts should themselves provide a remedy which is speedy and effective; and thus make self help unnecessary."

[19] A Practical Approach to Landlord and Tenant Fourth Edition, Simon Garner and Alexandra Frith:

> "A person occupying a house or room under a bare licence has no protection against eviction. Once that person has been told the licence has been revoked he or she will become a trespasser as soon as a 'reasonable period' has elapsed. What will be a reasonable period of time will depend upon the circumstances, and the situation of both parties will be considered."

DAMAGES

[20] I allow damages for the Claimant's unlawful eviction by the defendant of $3,000.00 taking into consideration the presence of the show of force by police officers during this unlawful eviction.

[21] After the departure of the claimant and his common-law wife, the defendant placed the claimant's remaining personal effects in plastic bags, put them outside and boarded up the apartment. It was the responsibility of the claimant to ensure that the personal effects of the claimant were stored carefully, not in garbage bags placed outside. The claimant listed the items and claimed special damages of $1,943.00, which figure I allow..

[22] The defendant claims for items damaged and missing. To claim successfully, the claimant needed to have made a proper list of the items in the apartment at the time she rented it to the claimant. I do not accept that she did this. I therefore do not allow the value of those items claimed by the defendant in the counterclaim, which is dismissed.

[23] IT IS ORDERED:

1. The defendant to pay the claimant $3,000.00 for unlawful eviction of the claimant.
2. The defendant to pay special damages of $1,943.00 to the claimant.
3. The claimant to pay to the defendant $264.01 for electricity and $72.93 for water consumption.
4. Costs of $1,000.00 to be paid by the defendant to the claimant.
5. Costs of $400.00 to be paid by the claimant to the defendant.

Monica Joseph
High Court Judge (Ag.)
13th January 2012