

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

CLAIM NO. ANUHCV 2010/ 0007

BETWEEN:

ASHLEY BENTA

Claimant

AND

MARTIN HICKS

Defendant

Appearances:

Ms. Kathleen Bennett for the Claimant

Mr. Cosbert Cumberbatch for the Defendant

2012: November 26
December 13

JUDGMENT

- [1] **REMY J.:** The Claimant in this dispute is the owner/landlord of property situate at Shirley Road, Skerrits Pasture, St. John's, Antigua (the premises). The Defendant is his tenant. The undisputed facts in this case are relatively simple. Pursuant to an oral contract, the Defendant entered into occupation of the premises in September 2007. The agreed monthly rental was \$800.00. The Defendant was also responsible for paying the utilities, namely electricity and water. The Defendant remained in occupation until September 2009.

[2] In his Statement of Claim, the Claimant pleaded that, upon leaving the premises, the Defendant was in arrears of rent in the sum of \$4,950.00, for the period April 2009 to September 2009, together with \$150.00 outstanding for the month of March 2009. He further stated that the Defendant left the premises owing arrears of utilities, namely water and electricity and that the Claimant left the yard of the premises in a bad condition. The Claimant claims the sum of \$1287.13 for arrears of electricity, the sum of \$456.88 for arrears of water, and the sum of \$1,500.00 for cleaning the yard. He also claims interest and costs.

[3] The Defendant disputes the claim. In his Defence and Counterclaim filed on 2nd March 2010, the Defendant pleads that on the 23rd April 2009, the Claimant, through the Antigua Public Utilities Authority (APUA) had the water and electricity services disconnected from the house thus interrupting the Defendant's quiet enjoyment and forcing him to fetch water in containers and purchase candles and batteries. He pleads further that the Claimant continued to have the water and electricity remain disconnected until he (the Defendant) left the premises in September 2009. He avers that, as a result, he incurred losses of approximately \$300.00 in perishable goods when the electricity was disconnected. The Defendant denies leaving the yard in a state that merited or required the Claimant to pay \$1500.00 to clean it. The Defendant counterclaimed for the following:-

- i). Damages for breach of contract
- ii). Damages for breach of covenant of quiet enjoyment
- iii). Costs of perishable goods \$300.0
- iv). Costs of water, electricity and batteries \$2,500.00

[4] By Notice of Discontinuance filed on 4th May 2010, The Defendant discontinued entirely the said Counterclaim.

[5] In his Reply filed on 17th May 2010, the Claimant pleaded that at no time did he instruct APUA to disconnect the water and electricity to the rented premises. He re-iterated that he had to pay \$1500.00 to clean the rented premises.

[6] The parties attended a Mediation Session on the 28th July 2011. At that session, the Claimant and the Defendant settled the issue of the outstanding water bill and the Defendant accepted the sum of \$456.88 as the sum outstanding as arrears for the water bill.

[7] At the commencement of the trial, Counsel for the Claimant and the Defendant informed the Court that the parties had arrived at a settlement with respect to the outstanding rental owed to the Claimant and that they had agreed that the sum of \$4,150.00 was due to the Claimant by the Defendant for arrears of rental. Counsel also confirmed that the sum of \$456.88 had been accepted as the sum outstanding by the Defendant for arrears of the water bill. This left outstanding for the trial, the issue of the arrears of electricity and the sum due for cleaning the yard.

[8] At the trial, the Claimant gave evidence on his own behalf and called no witnesses; a Witness Statement by Mr. Eugene Pelle had been filed on behalf of the Claimant; however Mr. Pelle was unavailable to give evidence at the trial. His Witness Statement was therefore struck off. The Defendant gave evidence on his own behalf and called no witnesses.

ISSUES

[9] The issues before the Court are:-

- a) Whether the Defendant is in arrears of electricity, and if so, what amount is due and owing to the Claimant for such arrears.

b) Whether the Defendant left the premises in a state that required the Claimant to pay \$1,500.00 to clean it.

[10] I will now deal with Issue # 1 - namely, WHETHER THE DEFENDANT IS IN ARREARS OF ELECTRICITY, AND IF SO, WHAT AMOUNT IS DUE AND OWING TO THE CLAIMANT FOR SUCH ARREARS.

[11] In his Witness Statement, the Claimant stated that in addition to paying the monthly rental of \$800.00, the Defendant was responsible for paying all the utility bills and for maintaining the yard. He stated that he is aware that, throughout the tenancy, the Defendant's utilities, in particular his electricity, were disconnected by APUA on several occasions because of "mounting arrears." He states that he wrote to the Defendant on more than one occasion asking him to make arrangements to put the utility bills in his name in order to save him (the Claimant) future embarrassment, as the bills were in his name. The Defendant never put the bills in his name.

[12] The Claimant states that on or about 7th March 2009, he discovered that the Defendant was "sourcing electricity" from the Claimant's adjacent property by using an extension "drop" cord. He wrote to the Defendant warning him to refrain from doing so. As a result of the Defendant's repeated arrears of rent, the Claimant served the Defendant with a Notice to Quit dated 9th July 2009. The Defendant did not vacate the premises until September 2009 by which time he was in arrears of rent in the sum of \$4,950.00. The Claimant states that he went to APUA after the Defendant vacated the premises to find out if there were arrears of water and electricity. With respect to the electricity, he was told that there were arrears on the electricity bill in the sum of \$1,287.13. The Claimant paid all the arrears. The Claimant states that throughout the tenancy, the Defendant was always in arrears.

[13] The Defendant stated that on 16th April 2009 the Claimant got APUA to disconnect all services. He states that the said services were not disconnected by APUA for non-payment by him or for being delinquent, but that the Claimant instructed APUA to

disconnect them. He stated that for the whole period of April to September 2009, his utilities were disconnected in breach of the tenancy agreement and he had to obtain water and light the best way he could. He was not able to obtain another house to rent before September 2009 when he left the Claimant's house. He last paid rent of \$800.00 on the 6th April 2009; this was for April 2009. The Claimant disconnected the services on the 16th April 2009.

[14] In his Closing Submissions filed on the 6th December 2012, Learned Counsel for the Defendant Mr. Cosbert Cumberbatch contends that the Claimant produced an APUA print-out "showing figures markedly different from those obtained by APUA by the Defendant." Further, contends Learned Counsel, the Defendant produced in evidence an APUA print out showing arrears due as of 11th May 2009. Learned Counsel also states that "it will be recalled that it is uncontroverted that the Defendant stated that the electricity and water services were permanently disconnected in April 2009 and were never reconnected while he occupied the house.' Learned Counsel submits that any bill of 11th May 2009 would have shown arrears due in April 2009 and the records that were produced by the Claimant are "no more reliable or authentic than those submitted by the Defendant." Moreover, submits Learned Counsel, no one from APUA was called to explain the discrepancies.

[15] In her Closing Submissions filed on 4th December 2012, Learned Counsel for the Claimant, Ms. Kathleen Bennett contends that when the Defendant was taken through the APUA Document History (Exhibit MH1 of the Trial Bundle, page 61), the Defendant acknowledged that there was consumption of 26 units of electricity in June 2009; 59 units consumed as at 12th August 2009 and 639 units consumed as at 1st September 2009. Ms. Bennett submits that the Defendant did have electricity after April 2009, and that the record from APUA clearly shows that the Defendant did use the electricity on the rented premises between April 2009 and September 2009.

[16] I agree with Learned Counsel's submission. Further, after perusing the pleadings and the evidence before the Court, and after observing the demeanour of the Claimant and

the Defendant at the trial, I accept the evidence of the Claimant over that of the Defendant. I found the Claimant to be credible and forthright; I was not similarly impressed with the Defendant. I accept the Claimant's evidence that when the Defendant vacated the premises, he went to APUA and settled the outstanding arrears of \$1,287.13. The Claimant has produced documentary evidence to substantiate the amount owed.

[17] The Defendant testified that as at the 11th day of May 2009, the outstanding arrears of electricity was \$253.56. The Defendant however, did not vacate the premises on 11th May 2009. He vacated the premises in September 2009. He does not deny that this is so. He does not deny that he was responsible for paying the electricity bill during the period of his tenancy. His contention is that the Claimant instructed or advised APUA to disconnect the electricity services to the premises. However, the Defendant has not produced one shred of evidence to support his allegation that the Claimant instructed or advised APUA to disconnect the electricity supply to the premises, other than his say-so. Further, as stated above, I do not accept the Defendant's evidence.

[18] Based on the evidence before it, the Court is of the view that the Claimant has proved, on a balance of probabilities, that the Defendant does owe the sum of \$1,287.13 for arrears on the electricity bill which the Claimant paid.

ISSUE # 2 - WHETHER THE DEFENDANT LEFT THE PREMISES IN A STATE THAT REQUIRED THE CLAIMANT HAVING TO SPEND \$1500.00 TO CLEAN IT?

[19] In his Witness Statement, the Claimant averred that after the Defendant vacated the premises he observed that the yard had been allowed to become overgrown with bushes; he had to pay a total of \$1,500.00 to clean the yard. It is the evidence of the Claimant under cross-examination that the yard was in a bad state. He had to get a backhoe to take out the trees at the back that was growing to nearly the height of the house. He testified that there was also a heap of rubbish which had to be removed.

[20] Under further cross-examination, the Claimant denied the suggestion of Learned Counsel Mr. Cumberbatch that the whole area was given to the Defendant in "a very bushy and unkempt state in the first place." He further denied that the sum of \$1,500.00 claimed was "blown up and exaggerated."

[21] The Defendant, in his Witness Statement stated that the house was in a state of disrepair when he rented it and the Claimant had promised to install new doors and changed some galvanize to stop the house from leaking when it rained. The Defendant has produced no cogent evidence of the alleged state of disrepair of the premises at the time when he first went into occupation.

[22] In his Closing Submissions, Learned Counsel for the Defendant submits that "the relationship of the Landlord and the Tenant is based on the contract of tenancy and certain implied conditions and mutual obligations. The obligations include paying the rent, keeping the premises in a habitable state and paying the outgoings.' Learned Counsel therefore seems to concede that the Defendant in the case at bar had an obligation to keep the premises in a "habitable state". Learned Counsel goes on to state that "the Defendant had denied leaving the premises in the poor state the Claimant alleged they were in at the time the Defendant vacated them."

[23] It is interesting that, notwithstanding the above submission of Learned Counsel, the Defendant himself does not deny in his Amended Defence and Counterclaim that the yard was left in a bad or a poor state. What the Defendant denied was that he left the yard "in a state that merited or required the Claimant to pay \$1,500.00 to clean it." In fact, as noted by Learned Counsel Ms. Bennett in her Submissions, under cross-examination, the Defendant was shown the pictures of the yard put before the Court by the Claimant. When shown the first picture, (page 84 of the Trial Bundle), the Defendant acknowledged that it was his wife in the picture and that himself and his wife were living in the premises when the picture was taken. The Defendant also stated that the said picture shows the state of the yard whilst he was living there, and that the yard was left in that condition when he vacated it.

[24] I accept the evidence of the Claimant that he took the pictures of the condition of the yard; I also accept his evidence that the yard was overgrown when the Defendant vacated the premises. Learned Counsel for the Defendant has submitted that "the Claimant produced photographs showing an untidy yard but he was unable to show exactly when the photographs were taken or who took them." As stated above, the Defendant himself testified under cross-examination that the condition of the yard as shown in the photographs is the same condition that the yard was in when he vacated the premises. I find that, in light of that admission, the Defendant's evidence as contained in his Witness Statement, namely that he "left the premises in a proper state", cannot stand, as the photographs clearly showed that the yard was overgrown.

[25] Learned Counsel for the Defendant seems to take issue with the fact that the Claimant "merely said that he had to pay \$1,500.00 to clean the yard". He states further that "the Claimant admitted that the yard is a small area, no more than 48ft by 24ft. It is no more that (sic) what he calls a house spot." He contends that having regard to what the Claimant said was the area of the lot, the sum of \$1,500.00 "would seem unreasonable."

[26] It is undisputed that the Claimant did not produce any witness to verify the amount of \$1,500.00 claimed by him for cleaning the yard. He has however, attached receipts to his Witness Statement for the said sum. Under cross-examination, the Claimant testified that because of the state of the yard, he had to take out the trees at the back of the house that were growing to nearly the height of the house and that there was a heap of rubbish that had to be removed as well. The Claimant also stated that the trees had grown so large in the two years that the Defendant lived on the premises that he had to get a backhoe to dig them out.

[27] In her Submissions, Learned Counsel for the Claimant invites the Court to look at pages 82 to 87 of the Trial Bundle which the Claimant says reflect the condition in which the Defendant left the yard. It is evident from those photographs – which formed part of the Claimant's Documents – and were not objected to by the Defendant, that the yard was

indeed unkempt and extremely overgrown; bush was everywhere and growing very tall.

[28] As stated earlier, the Court found the Claimant to be a reliable and credible witness and accepts his evidence with respect to the condition of the yard and to the amount which he paid for cleaning it, namely the sum of \$1,500.00. Further, the Court does not consider the said sum to be "unreasonable", or "exaggerated".

CONCLUSION

[29] In the instant case, as in every civil case, the Claimant bears the burden of proving his case on a balance of probabilities. In his Closing Submissions, Mr. Cumberbatch contends that "the Claimant has not proven that he is owed \$1500.00 for cleaning the yard or \$1,287.13 for electricity or \$456.86 for water." It is to be noted that, although Mr. Cumberbatch makes mention of the arrears of water, that issue has already been disposed of at mediation (see paragraph 6 above) and therefore the Court makes no adjudication on that issue. In the view of the Court, the Claimant Ashley Benta has met the burden of proof required for proving his case. Based on the evidence before it, the Court is of the view that the Claimant has proved that the Defendant vacated the premises owing electricity in the sum of \$1,287.13 as claimed. He has also proved, on a balance of probabilities, that the Defendant is liable for the cost of cleaning the yard in the sum of \$1500.00. As stated in paragraphs 6 and 7 above, the parties had previously agreed on the following sums:-

- a) \$4,150.00 for arrears of rent

- b) \$456.88 for arrears on the water bill

The parties had also previously agreed to Costs in the sum of \$1,500.00.

[30] My Order is as follows:-

1. Judgment for the Claimant as follows:-
 - a) The Defendant to pay to the Claimant arrears of rent in the sum of \$4,150.00
 - b) The Defendant to pay to the Claimant the sum of \$1,287.13 being the amount owed for arrears of electricity
 - c) The Defendant to pay to the Claimant the sum of \$456.88 being the amount owed for arrears of water;
 - d) The Defendant to pay to the Claimant the sum of \$1,500.00 for cleaning the yard;
2. The Defendant to pay to the Claimant interest on the sums above (totaling \$7394.01) at the rate of 5% per annum from the date of Judgment to the date of payment.
3. The Defendant to pay costs to the Claimant in the agreed sum of \$1500.00


JENNIFER A. REMY
Resident High Court Judge
Antigua and Barbuda