

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Sub Registry, San Fernando

H.C.A. S- 149 OF 2003

BETWEEN

**DONALD BRIDGELAL**

Plaintiff

And

**ABDUL HAFEEZ MAJID**

Defendant

**Before the Honourable Mr. Justice David Alexander**

**Appearances:**

Mr. R. Gosine for the Plaintiff.

Mr. Faraz Mohammed for the Defendant.

## **JUDGMENT**

### **INTRODUCTION**

This case arises as a result of the Plaintiff's tenancy of premises at No. 13 Ciperro Street, San Fernando ("the demised premises") owned by the Defendant Abdul Hafeez Majid.

The Plaintiff, Donald Bridgelal, is engaged in the business of the sale and repair of electrical appliances which he conducted from the demised premises trading under the name Don's Electrical.

At the commencement of the trial Mr. Rennie Gosine, Attorney-at-Law for the Plaintiff informed the Court that the only relief being pursued by him was damages for damage to the Plaintiff's equipment. However, in his written submissions dated and filed on the 5<sup>th</sup> March, 2008, Mr. Gosine further indicated that the Plaintiff was seeking only the following reliefs:-

- (1) A declaration that he was the lawful tenant of a portion of the demised premises, to wit, the downstairs portion of the east back side and basement of the building.
- (2) A declaration that he was entitled to a covenant for quiet enjoyment.
- (3) Damages for trespass to his goods.
- (4) Damages to the demised premises and/or damages for derogation from grant.

At the beginning of the trial, Mr. Faraz Mohammed, Attorney-at-Law for the Defendant also informed the Court that the Defendant was not pursuing his counterclaim for \$71,860.00 for loss and damage to the demised premises.

The Plaintiff and the Defendant were the only witnesses who testified at the trial, both having filed witness statements dated and filed on the 7<sup>th</sup> January, 2008, and the 14<sup>th</sup> December, 2007 respectively.

The Plaintiff's witness statement was tendered into evidence as exhibit "D.B.1" whilst that of the Defendant was tendered as exhibit "A.H.M.1".

### **ISSUES**

The issues which are to be decided are:

- (1) Whether the Plaintiff was the lawful tenant of the demised premises.
- (2) If so, whether he was entitled to the covenant for quiet enjoyment.
- (3) Whether the Defendant is liable for trespass to the Plaintiff's goods.
- (4) Whether the Defendant is liable in damages for damage to the demised premises and/or for derogation from grant.

## **DISPOSITION**

I am of the view that the Plaintiff was the lawful tenant of the Defendant expressedly entitled to the covenant for quiet enjoyment. I do not find however that the Plaintiff has succeeded in his claim for damages for trespass to his goods or for damages for damage to the demised premises and/or for derogation from grant.

## **ANALYSIS**

As to issues Nos. 1 and 2, the Defendant neither in his defence nor in his evidence contained in his witness statement or in cross-examination has denied the Plaintiff's tenancy of the demised premises

It is inconceivable that the Defendant would deny the existence of the said tenancy and/or the covenant for quiet enjoyment in the face of the written tenancy agreement between the parties which was tendered into evidence by consent of both parties as Court Exhibit 'A'.

The preamble to the agreement states:

THIS RENEWAL AGREEMENT made this 21<sup>st</sup> day of June in the year of Our Lord two thousand and two Between ABDUL HAFEEZ MAJID of #13 Ciperio Street in the City of San Fernando in the Island of Trinidad in the Republic of Trinidad and Tobago Company Director (hereinafter called "Landlord", which expression shall where the context so admits include his Executors, Administrators and Assigns) of the one Part and DONALD BRIDGELAL, Proprietor of DON'S ELECTRICAL of Retrench Village, San Fernando (hereinafter called "the Tenant" which expression shall where the context so admits include its Associates, Executors, Administrators and Assigns) of the Other Part.

At paragraph 1 of the agreement, it is provided that:

The Landlord agrees to rent and the tenant agrees to take part of the downstairs portion, east back side and basement of the building (approximately 1200 square feet) known and assessed as No. 13 Ciperro Street in the City of San Fernando aforesaid TO HOLD the same unto and to the use of the tenant with renewal effect from the 1<sup>st</sup> day of June 2002. Thereafter an agreed monthly rental of One Thousand Five Hundred Dollars (\$1,500.00) per month on the 1<sup>st</sup> of every month for a period of TWO YEARS.

Paragraph 3 provides that:

The Landlord agrees that the tenant paying the rent aforesaid and observing and performing the several stipulations and conditions on his part to be observed and performed shall allow the term hereby created without interruption whatsoever by the Landlord or any person or persons lawfully claiming under or in trust for him.

This agreement puts beyond dispute the existence of the relationship of Landlord and tenant between the parties for the period of two years from the 1<sup>st</sup> June, 2002, and expressly provides for the covenant for quiet enjoyment.

It seems unnecessary for the Plaintiff to have pursued the first two reliefs which he claimed i.e. (1) a declaration that he was a lawful tenant and (2) a declaration that he was entitled to the covenant for quiet enjoyment. Once the existence of a tenancy is proved, the covenant for quiet enjoyment is either expressed or implied. It is an assurance against interruption in possession of the thing demised. It is an undertaking that the tenant shall have the property unfettered by the assertion of any right which interferes with its ordinary and lawful enjoyment. Hill and Redman: Law of Landlord and Tenant Vol. 1 17<sup>th</sup> edition page 206.

As to the Plaintiff's claim for damages for trespass to his goods, this third issue arises as a result of his allegation at paragraph 4(d) of the statement of claim that his appliances

and other belongings which were in the garage were placed at the front of the demised premises by the Defendant.

Trespass to goods can be broadly defined as the wrongful interference with goods. The Plaintiff's evidence with regard to this issue was not convincing to say the least and his claim for this relief therefore fails.

At paragraph 5(d) of his witness statement, the Plaintiff describes the events of the 6<sup>th</sup> January, 2003, and says inter alia "I observe some of my equipment and parts outside of the premises on the eastern side of the building. They were all wet with rainfall that had fallen during the night".

At paragraph 5(g) he relates the events of the 28<sup>th</sup> January, 2003 which includes "I climbed the gate and looked inside, the premises were empty; all my materials, parts, equipment, tools and accessories had been removed from the tenanted building. Some of these were seen out by the gate towards the road. I went through the items to see what I could have salvaged. However, most of them were either broken and/or wet as rain had fallen earlier. I was able to salvage a few items.

At paragraph 6 the Plaintiff provides a list numbered 1 to 36 of the items which were allegedly missing or damaged and at paragraph 7 he provides the value of those said items.

It is noteworthy that in his statement of claim, the Plaintiff did not plead the facts which he included at paragraph 5(g) of his written statement.

Neither in his statement of claim nor in his witness statement does he specifically identify which of his items were missing, or which were destroyed or which he was able to salvage. There is therefore insufficient evidence on which I could hold otherwise than that the Plaintiff's claim for damages for trespass to his goods fails.

As to the 4<sup>th</sup> issue whether the Defendant is liable in damages for damage to the demised premises and/or for derogation from grant I am unable to find any evidence adduced by the Plaintiff in order to substantiate these claims. These claims also fail.

### **CONCLUSION**

In pursuance of the above, I make the following orders:-

- (1) A declaration that the Plaintiff is the lawful tenant of a portion of the premises situate at No. 13 Ciperro Street, San Fernando pursuant to a tenancy agreement in writing dated the 21<sup>st</sup> day of June, 2002, and made between the Defendant and the Plaintiff in respect of All and Singular that downstairs portion of the east back side and basement of the building (approximately 1,200 square feet) and known and assessed as No. 13 Ciperro Street, in the City of San Fernando.
- (2) A declaration that the Plaintiff was entitled to peacefully hold and enjoy the use and occupation of the said tenanted premises.
- (3) There will be no order as to costs by reason that the above reliefs were unnecessarily claimed.
- (4) There will be no order as to costs with regard to the withdrawal by the Defendant of his counterclaim.

Dated this 24th day of April, 2008.

**David Alexander**  
**Judge (Ag.)**