THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2012-01268

BETWEEN

TIMOTHY HOLDER

JAMES HOLDER **Claimants**

AND

SHARON MOHAMMED **Defendant**

Before the Honourable Mr Justice Boodoosingh

Appearances:

Mr. J. Holder for the Claimants
Mr. S. Trotter for the Defendant

Dated: 16 March 2016

REASONS (Edited Oral Judgment)

1. This Claim arises from a tenancy arrangement between the parties. Originally, the second Claimant had tenanted property from the Defendant. Eventually, this

tenancy came to an end and was taken over by the first Claimant and on that property the first Claimant conducted the services of a church. The property is located at Mt. Hope and the arrangement was for a rental payment of $3,000.00 per month. The claim arises from the end of that arrangement and subsequently the fact that items which were kept on the premises were taken to a warehouse and kept in storage.

2. There were different issues which arose for consideration. The first was the question of the notice to quit. The law on this has been set out at Professor Kodiligne's book on **Property Law** at page 56 of the First Edition. The law is that a notice to quit may not be served personally. Service on a person at the premises such as a servant or someone left in control of the premises would be sufficient. However, arrangements can be made for service by leaving the documents with the tenant. The critical issue is that the notice is for the requisite period and that it is brought to the attention of the tenant.

3. The evidence of the Defendant was that it was left at the premises when she did not locate the Claimant and that further, the evidence of the Defendant was that she telephoned him and informed him that a notice was given. I accepted her evidence that she did telephone him and inform him of the notice shortly after it was left. In the circumstances, the issue arose as to whether this was sufficient and I hold on this point that the notice given was sufficient in the circumstances.

4. The second matter for consideration was, what was the nature of the tenancy? The Defendant had a written agreement first with Mr James Holder, the second Claimant, and she had no written agreement with the first Claimant. The arrangements with the second Claimant had ended. What therefore would have followed is that the best that the arrangement had to be at that point was a month

to month tenancy. I accepted that the arrangement was in fact a month to month one and not a yearly tenancy and in those circumstances one month's notice would be adequate.

5. In the circumstances, I find that the notice was adequate in its form and in the time given to the Claimant to quit the premises based on the evidence. What is of significant concern, however, is what happened to the goods when they were removed. The evidence of the Defendant is after making attempts to have the goods removed and have the Claimant do so, she took steps to have them stored in a warehouse which belonged to her husband. The Claimant has alleged that these items were damaged while in storage. The question that arose, was whether the storing of the goods at the warehouse was an act of distraining for rent owed, or whether it was storage of the items. The Defendant's evidence was that there was need for vacant possession because the premises were to be sold and vacant possession had to be given to the new owner. She gave evidence that the rent owing was not a serious concern to her. In fact, the rent was being owed for August and September of 2010. The Claimant's evidence is that the rent was tendered but it was not accepted.

6. In those circumstances, I find that the arrangement was one for storage of the goods, following their removal from the premises and I do not find that this was a situation of distraining for rent. It follows from this that the storage was in the nature of a bailment. In such a case, the Defendant's responsibility was not to be negligent or reckless in respect of the storage of the goods.

7. From her evidence in cross examination it does not appear that the Defendant knew much about the conditions of storage. The storage facility was one owned by her husband and she incurred no cost in keeping the goods. Certainly, there

has been no claim for the cost of storage. She at least had an obligation to ensure that the premises were reasonably fit for storage and the items were placed in a manner that they would not be damaged.

8. The evidence of the first Claimant is that several items were damaged and the items which were retrieved valued just over $25,000.00 and the value of the items damage beyond repair was $58,590.00.

9. There is some evidence that at the time of retrieval the place where the items were kept was water soaked and that certain items were rusted and damaged. This, in my view, at least showed some recklessness about the conditions under which the goods were stored and that the Defendant exercised no care in respect of them.

10. However, two principles limit what the first Claimant can recover with respect of what arises from the bailment in respect of the goods. The first principle of law is that there is a duty by the Claimant to mitigate his damages. The goods were in storage from November of 2010. The onus was on the Claimant to seek to mitigate his loss. The evidence of the Defendant, which I accepted, was that the Defendant was willing to give the Claimant access to the goods. I do not accept the Claimant's version that the Defendant detained them for rent. Rent had in fact been tendered and refused. It is logical to suppose therefore that the goods were not being detained for arrears of rent when rent was in fact tendered and refused. It is clear that the Defendant wanted possession of the premises.

11. The first Claimant also accepted in evidence that he had a place to store the goods. The question arises why did he not seek to retrieve the goods and why was he not more proactive about it?

12. On the evidence presented, I find that the Claimant made no serious attempt to collect the goods until 2013, well after the claim was filed.

13. The second matter which limits damages, is the first Claimant's lack of adequate proof of losses. A witness, Mr. Williams, was called to give evidence of damage to certain electronic items. He gave no evidence of how he came up with the pricing of the items. He also could not say which items would have been damaged due to the default of the Defendant. There was evidence that the storage area was wet. Mr. Williams gave evidence of the items being moist. He cannot say how long after the water had come in. He cannot place when the damage occurred. Next, I found his evidence deficient in details in terms of his method of assessment and he lacked the necessary objectivity for any significant weight to be attached to the evidence. We also do not know the condition of the specific items before they were put into storage.

14. From the first Claimant's witness statement he set out an inventory of items including things such as a welcome mat. He set out what items were retrieved, which were not retrieved and so on, and he set prices on these. There is no basis for most of the items which were set out in respect of the inventory as to how these figures were arrived at. At best they could be considered to be in the nature of estimates.

15. Special damages when claimed must in law be specifically pleaded and proved. The most that can be done is to give nominal damages assuming that some damage would have occurred to some of the items because of the conditions in which some of the items were found.

16. I should note, for example, that in respect of the items which were set out as being damaged, there were rough estimates given. There was also no evidence as to the extent to which these items were damaged and whether they could have been retrieved.

17. The other point that arose from that is the significant time which passed between when the items first got into storage and when they were retrieved. As I have indicated, the principle of mitigation of damages impacts on this matter.

18. There was also a claim by the first Claimant for a loss of his pastor allowance and subsistence of $5,000.00 per month for eighteen months. This clearly did not arise from the termination of the tenancy arrangement. The evidence of the first Claimant in any event is that he carried on his church at his home afterwards and the pastor allowance does not reasonably flow from the conduct of the Defendant. So that aspect of the claim is not proved. A point was raised that the items were the property of the church and therefore the first Claimant could not have brought the claim.

19. It is clear from the evidence, however, that the first Claimant was the custodian of the items and it also seems to be case that the church and the first Claimant as Pastor of the church was synonymous. In those circumstances, I found it

appropriate that the first Claimant as custodian of the items could bring the claim on behalf of the church.

20. The second Claimant, however, suffered no loss and he clearly had no locus at the time when this claim was brought. It is not clear as to why the second Claimant brought a claim. In respect of the damages suffered by the first Claimant I consider that nominal damages are to be awarded. Given all the circumstances of this case, an appropriate award in the Court's view would be the sum of $15,000.00.

21. Rent was of course tendered and not accepted and that is not in dispute. The Defendant would therefore be entitled on the counterclaim to the rents due and mesne profits until the items were removed but not to any award of interest. In respect of the Defendant's counterclaim, therefore, there would be judgement in respect of the rent. In respect of the claim, there is judgement for the first Claimant against the Defendant.

22. The Defendant must pay the Claimant nominal damages in the sum of $15,000.00, with interest at 3% per annum from the date of the claim form to the date of judgment. There is also judgment for the Defendant against the first Claimant. The first Claimant must pay the Defendant the sum of $9,000.00 since rent was tendered and not accepted I would make no order in respect of interest.

23. Given the outcome, each of these parties would bear their own costs of the claim. As noted, the second Claimant had no legal interest in these proceedings. His evidence was also largely irrelevant as far as the claim was concerned. The second Claimant's claim is therefore dismissed. Given that the claims were

ventilated together with the same representation I would order that each party would bear their own costs in respect of the claim of the second Claimant.

24. There is a stay of execution of twenty-eight days.

Ronnie Boodoosingh
Judge