

IN THE HIGH COURT OF JUSTICE

Claim No.: CV2011-02679

Between

PATRICIA BURRIS

First Claimant

CLEM MARTIN

Second Claimant

And

ADRIAN MARTINEAU

First Defendant

ESTHER PETERS

Second Defendant

Before The Honourable Madam Justice Joan Charles

Date of Delivery: October 14, 2021

Appearances:

- 1. Ms. Rekha Ramjit – Attorney-at-Law for the Claimants.**
- 2. Mr. Llewyn Thompson – Attorney-at-Law for the Defendants.**

REASONS

The Claim

- 1. This is a claim brought by the Claimants against the Defendants for breach of an oral contract and trespass to property. The Claimants pleaded that they were tenants of the Defendants in respect of a bar known as “Tino’s”. It was agreed between the parties that the period of the tenancy would be for one (1) year commencing June 1, 2009 at a rental fee of five thousand**

dollars (\$5,000.00) a month. It was also agreed between the parties that the tenancy was subject to renewal for another year at a rent of seven thousand dollars (\$7,000.00) a month.

2. The parties also agreed that the Claimants would undertake necessary remedial works to the subject property, the cost of which would be credited to the Claimants on account of rent payable to the Defendants. The Claimants averred further that pursuant to the said agreement they undertook remedial works to the subject premises at a cost of fifteen thousand, three hundred and sixteen dollars and seventy-two cents (\$15,316.72); the said remedial works were itemised and the Claimants also annexed supporting bills.
3. On December 1, 2009, the Defendants affixed locks onto the subject premises thereby denying the Claimants access to the premises and to their items inside. Upon communicating with the First Defendant, the Claimants were informed that he had affixed new locks on the subject premises since the six (6) months tenancy had expired.
4. The Claimants pleaded further that as at December 1, 2009, the rent was current. The First and Second Claimants were allowed to re-enter the premises on December 5, 2009 accompanied by two police officers in order to remove their stock and other items therein. On that occasion, the Claimants noticed that stock was missing. They were prevented from removing their tools of trade and equipment from the premises. They further averred that the premises had been secured on November 30, 2009.
5. The Claimants contended that they never received a Notice to Quit from the Defendants, nor had the tenancy been determined by surrender, proceedings to recover possession, or a breach of a tenancy obligation; they asserted that the tenancy was frustrated by Landlord's breach. They therefore sought damages for unlawful trespass to their goods which they particularised as follows:
 - i. Loss of liquor to the value of eleven thousand, nine hundred and seventy dollars (\$11,970.00),
 - ii. Beer and soft drinks to the value of thirteen thousand dollars (\$13,000.00), and

iii. Other items totalling twenty-two thousand, one hundred and seventy-five dollars (\$22,175.00).

6. They sought to recover seventy-six thousand, three hundred and three dollars (\$76,303.00) for events which were cancelled as a result of the termination of the tenancy and the Defendants re-entering the premises. The Claimants also sought loss of profits of twenty thousand dollars (\$20,000.00) a month for eighteen (18) months as a result of the ejection from the premises. The First Claimant also pleaded that most of her bills and receipts remained in the possession of the Defendants.

The Defence

7. In their defence, the Defendants denied that the tenancy was unlawfully terminated. It was admitted that an oral tenancy was entered into with the Claimants but the Defendants denied that the period agreed to was that of six (6) months. It was also denied that the bar was in need of repair and that the Defendants had agreed that the Claimants should effect such repairs and deduct the cost of such repairs from the rent. It was also denied that the Claimants ever brought to the Defendants' attention any bills or receipts for repairs effected to the premises by them.
8. The Defendants also pleaded that the Claimants had agreed to remove their items from the bar upon the termination of the tenancy after six (6) months; they asserted that the Claimants were to attend the premises at 6:00a.m., on December 1, 2009 for this purpose; when the Claimants did not arrive, the First Defendant affixed a chain and a lock onto the gate in order to ensure that the Claimants did not visit the premises without the Defendants.
9. The First Defendant also averred that the Claimants were in arrears of rent in the sum of three hundred dollars (\$300.00). He denied that any stock had been missing from the premises and asserted that an inventory of the items found were taken in the presence of the police officers. At that time the Claimants did not complain or allege that items were missing from their stock. Mr. Martineau asserted that there was an issue relating to musical equipment which had been removed from the bar – when the First Claimant was able to prove her ownership it was returned to her.

10. The First Defendant further pleaded that there was no need for him to give formal notice of termination of the tenancy because it was always agreed that this was a six (6) months' tenancy due to expire on November 30, 2009. He asserted that they were verbally reminded on October 30, 2009 that the tenancy will be coming to an end in one (1) months' time and that they did not indicate that they wished to stay beyond November 30, 2009.

11. The Defendants filed a counterclaim in which they sought the sum of twenty-one thousand, three hundred dollars (\$21,300.00) including damages and interest. However no particulars, including bills and receipts were provided in support of these claims. As a result, I dismissed the counterclaim. The Defendants had also been put to strict proof of their claims that the Claimants were in arrears of rent; I noted that no evidence was ever adduced by the Defendants in support of this claim.

Evidence

12. I decided this case by taking into account the pleaded cases of the Claimants and Defendants, the evidence adduced by both parties, as well as any documents disclosed by the parties in support of their respective cases. ¹**Horace Reid v Charles Dowling and Percival Bain**. I also assessed the inherent plausibility of the respective cases.

13. The First Claimant gave a witness statement and was cross-examined. She testified that at the end of April 2009, she and her common-law husband, which is the Second Claimant, had discussions with the Defendants about renting the bar, "Tino's", for a period of one (1) year from June 1, 2009 to May 31, 2010 for a monthly rental of five thousand dollars (\$5,000.00).

14. She also testified that she had been formerly employed by the First Defendant and had worked at Tino's as manager; as a result, all parties were familiar with each other. Ms. Burris related that on June 1, 2009 she moved into the premises, by moving in her stock and she began to operate

¹ 1989 UKPC 24

the business on that day. On June 2, 2009 the rent of five thousand dollars (\$5,000.00) was paid to the First Defendant.

15. The Claimants also testified that an inspection of the premises was carried out on the first day by them. There were repairs to be effected and these repairs were brought to the attention of the First Defendant and it was agreed that the costs of these repairs were to be deducted from the rent. They agreed that repairs had to be effected to the urinal, that the air condition units, as well as the chiller, had to be serviced and plumbing and repair works to the toilet area.
16. Ms. Burris denied that they were ever in arrears of rent or that they had ever agreed to a six (6) months' tenancy. This witness repeated that the First Defendant placed locks on the gates on December 1, 2009 without having delivered a Notice to Quit or instituted proceedings for recovery of possessions for the demised premises. It was also denied that the Claimants agreed to ever give up the tenancy.
17. During cross-examination by counsel for the Defendants, she testified that discussions leading up to the oral tenancy took place at Mr. Martineau's home where all the parties were present. She also asserted that a written agreement was to have been prepared by the Defendants' attorney but this was not done. Ms. Burris stated that rent was usually collected at the business place by the Second Defendant.
18. The First Claimant also revealed that the parties were friends but that this was a business arrangement. She also indicated that she had previously worked at these premises for Mr. Martineau as a waitress and manager.
19. The First Claimant further testified that throughout the tenancy she kept asking the Defendants for the refund of her monies which had been expended on the premises but she never received the sum from the Defendants. She stated that on the day in question, December 1, 2009, she was due at the premises at 6:00a.m., because that was the time that the business place was usually opened; however she arrived late and observed the chain and padlock on the fence. She

said that immediately upon entry of the premises with the police she noticed that items were missing. It was drawn to the attention of the police officers who said that they were there as peacekeepers and that they were not getting involved in that altercation. The police also advised her to contact her lawyer. She denied returning to the premises to collect musical equipment and also asserted that the T&TEC bill was not payable by the Claimants; that was not part of the agreement.

20. Mr. Martineau gave a witness statement on behalf of the Defendants and was cross-examined. He repeated the facts pleaded in his defence – that the parties had agreed to a tenancy for a period of six (6) months; at the commencement of the tenancy the building was in a good state of repair and no repair was required; and he never entered into an agreement with the Claimants for them to effect repairs and have it deducted from the rent. He also indicated that the Claimants were able to recover all of their items when they re-entered the premises with the police.
21. He indicated that he had no written agreement with the previous tenant of the premises. He agreed with counsel that the business was a profitable one and that in their place he would not be willing to give up the business after six (6) months.
22. He also revealed that he had an agreement with an engineer to build a mall on the subject premises and that the income from that mall would have been far in excess of the five thousand dollars (\$5,000.00) rent that he was collecting from the Claimants. However, he asserted that the discussion in relation to the mall took place well before December 2009 prior to the time that he locked out the Claimants.
23. Mr. Martineau testified that he had to put a lock on the gate of the subject premises on December 1, 2009 because he had never had keys to the premises during the tenancy arrangement with the Claimants.

24. He also asserted that the Claimants had agreed to leave and in fact had begun packing up from the night before. This assertion was not included in his witness statement; however he stated that he had informed his lawyers of this fact and he could not say why it was not included in the witness statement and/or defence. He gave another reason for affixing the chain and the lock on the gate – safeguarding the stock. I noted that this was neither pleaded in his defence nor stated in his witness statement.

Analysis and Conclusion

25. The issue for my determination was whether there was an oral agreement for a tenancy of the premises for one (1) year renewable at the end of the current term or for a period of six (6) months. This was a question of fact to be determined from all the evidence in the case. I found the First Claimant to be a straightforward witness, consistent and she was not shaken in cross-examination.

26. The First Defendant said in cross-examination that the Claimants had agreed to give up the premises and leave at the end of November and had in fact started packing their belongings. Significantly, this important fact was neither in his witness statement nor pleaded in his defence.

27. The main issue in this case was whether the tenancy expired by effluxion of time or whether the Defendants in breach of the agreement for tenancy for a year, breached that said tenancy by unlawfully terminating it after six (6) months. Had the Claimants agreed to leave the premises thereby consensually terminating the tenancy, this would have been a complete answer to the allegation. I find it difficult to believe, as the First Defendant has asserted, that he informed his attorney of this significant fact and that was neither pleaded nor contained in his witness statement.

28. Further, if the Claimants had agreed to terminate the tenancy and had begun to pack on November 30, 2009, there would have been no need for the First Defendant to take the action that he did in locking them out, especially, given their hitherto friendly relationship which was attested to by both the Claimants and the Defendants. His testimony that he affixed a chain to the gate of the demised premises thereby debarring the Claimants, his tenants, entry, in order to

safeguard the stock in the said premises was also not credible. The Claimants were accustomed to safeguarding the stock by securing the premises after closing hours.

29. In my view, the First Defendant told this lie in order to mask his true intent, that of unlawfully bringing the tenancy to an end by preventing the Claimants from opening the premises and denying them access to their stock and equipment to operate the business. His evidence that he was in discussion with an engineer before December to tear down the premises and erect a mall which was a more profitable venture is significant and in my view and probably was an explanation for his action in unlawfully terminating the tenancy.

30. With respect to the issue of the alleged outstanding rent, I accepted the First Claimant's testimony that the money had been paid and that in fact no rent was outstanding. I also accepted her evidence that the course of dealing between the parties was that very often no rent receipts were given and that in fact very often she had to repeatedly request rent receipts.

31. In the circumstances, I gave judgment for the Claimants against the Defendants and held that:

- i. The Defendants' counterclaim is dismissed with costs;
- ii. The Defendants must pay the Claimants the prescribed costs on that counterclaim;
- iii. The Claimants are entitled to special damages for loss of their stock and equipment in the sum of seventy-six thousand, three hundred dollars (\$76,300.00); that represents the value of the items missing;
- iv. The Defendants were in breach of the tenancy agreement which was for a period of one (1) year; the Claimants are entitled to the loss of profits for the remaining six (6) months of the tenancy at a value of twenty thousand dollars (\$20,000.00) a month totalling one hundred and twenty thousand dollars (\$120,000.00);
- v. The Defendants to pay the Claimants the prescribed costs of the action; and
- vi. Damages for breach of contract to be assessed by a Master in Chambers.

JOAN CHARLES

Judge