TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. 170 of 2002

BETWEEN

ACKBAR ALI

PLAINTIFF

AND

LILLY RAMNARINE

DEFENDANT

Before the Honourable Madam Justice Rajnauth-Lee

Appearances:

Miss Veena Badrie-Maharaj for the Plaintiff

Mr. Samuel Saunders for the Defendant

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J U D G M E N T

INTRODUCTION:

1. By his Statement of Claim dated and filed on the 11th April, 2002, the plaintiff claimed against the defendant damages including aggravated and exemplary damages for trespass to the premises of the plaintiff situate on the lower floor and eastern section of the building known as 151 Main Road, Chaguanas

measuring approximately 17 feet x 100 feet together with the use of the toilet facilities ("the tenanted premises").

2. It is not in dispute that by an agreement in writing dated the 8th March, 2001, ("the tenancy agreement") the plaintiff became a tenant of the defendant in respect of the tenanted premises (being a part of the downstairs portion of the defendant's premises) for the period 8th March, 2001 to the 31st December, 2004. Prior to the execution of the tenancy agreement, the plaintiff was the tenant of the defendant's husband in respect of the whole of the downstairs portion.

3. The tenancy agreement provided that the plaintiff would pay to the defendant a monthly rent of $2,500.00. The plaintiff agreed inter alia to pay the rent reserved each and every month in advance commencing on the 1st April, 2001 and thereafter on the first day of each and every calendar month, having already paid three months rent in advance as a deposit to the defendant which sum was to be repaid by the defendant at the end of the tenancy.

4. It is also not disputed that there was no actual payment of the sum of $7,500.00 described at Clause 1(a) of the tenancy agreement as "three months rent in advance as a deposit." The sum of $7,500.00 was held as a deposit under the agreement with the defendant's husband and, consensually, that sum was not refunded upon surrender of the agreement with the defendant's husband but carried over and applied as the deposit in the tenancy agreement between plaintiff and defendant.

5. On the 25th February, 2003, the plaintiff amended his Statement of Claim. The particulars of loss and damage as a consequence of theft and rain were enlarged from the original claim of some four (4) items which were set out as follows:

1. Loss of income from the 12th day of January 2002 at a daily rate from Monday to Thursday of $2,000.00 and on Fridays and Saturdays $3,500.00 per day.

2. Loss of goods valued at approximately $406,000.00.

3. Loss of a 17 piece salt and pepper set at $15.00 per set which is $255.00 total.

4. Loss of a 45 piece ice tray at $6.95 per tray which is $315.00 total.

The Item at 2 was not particularised in the original Statement of Claim. By the Amended Statement of Claim, the item at 2 was deleted and some seventy-eight (78) new items of loss and damage were added.

6. The plaintiff also set out particulars of aggravated and exemplary damages, alleging inter alia that the defendant through her servants and agents entered the tenanted premises on the 12th January, 2002 with about ten (10) men one of whom indicated that he was a bailiff. The plaintiff complains of the aggression and hostility meted out by the defendant's servants and/or agents, that his goods were placed on the roadside leaving them subject to theft and rain and that he was locked out of the tenanted premises. He also complains of the verbal abuse to which he was subjected causing him much humiliation and embarrassment.

7. The defendant does not deny that she re-entered the tenanted premises through her servants and/or agents on the 12th January, 2002, admits that the plaintiff's goods and possessions were removed therefrom and placed at the side of the main road, but denies that rain was falling at the material time. [paragraph 9 of the Defence and Counterclaim filed on the 28th June, 2002]. The defendant also denies the particulars of aggravated and exemplary damages set out by the plaintiff.

8. Further, the defendant by her Defence and Counterclaim alleged that although the plaintiff was responsible for paying one half of the electricity bill for the whole of the downstairs portion of which the tenanted premises formed part, the

plaintiff was in breach of the tenancy agreement [clause 1(g)] and failed to pay his share of the electricity bill since September, 2001.

9. The defendant also alleged at paragraph 7 of her Defence and Counterclaim that in breach of the tenancy agreement, the plaintiff failed and/or refused to pay the full amount of the rent as it fell due and was in arrears in the sum of $6,500.00 for the months of October, November and December, 2001. The defendant counter-claims for unpaid rent and electricity bills.

10. At the start of the trial, Attorney for the defendant conceded that the tenancy agreement was a fixed term tenancy and that it did not provide for the determination of the tenancy. He further conceded that the notice to quit dated the 12th December, 2001 was invalid and ineffective to determine the tenancy.

ISSUES:

11. Attorneys agreed that the main issues of fact were as follows:

(i) whether rents and any other payments were outstanding and due by the plaintiff to the defendant; and

(ii) whether the sum of $7,500.00 said to be paid on the 8th March, 2001 by the plaintiff to the defendant represented three (3) months rent in advance as the plaintiff claims or was a security deposit as the defendant claims.

12. Attorneys also agreed that the main issue of law was whether the defendant had a right to re-enter the tenanted premises.

13. In considering the above issues, the Court must also determine the following issues:

(a) If rents and payments for electricity were outstanding, whether the provisions to pay rent and electricity contained in the tenancy agreement were covenants or conditions.

(b) If any of the provisions was a condition, whether the defendant did everything that the law required of her in order to effect a lawful re-entry.

(c) If the Court finds for the plaintiff on the law and on the facts, the Court must determine the measure of damages, if any, to be awarded to the plaintiff.

THE EVIDENCE

14. According to the plaintiff, his wife Afrose Ali, ("Mrs Ali"), was the person responsible for the payment of rents. Between the signing of the tenancy agreement and the re-entry on the 12th January, 2002, there were some ten (10) months for which rent and electricity were to be paid. The Court proposes to examine the receipts and other documents which were tendered into evidence at the trial.

- **Exhibit 17**

15. This receipt in the sum of $2,500.00 and signed by the defendant was dated March 31st, 2001. According to Mrs. Ali, this receipt represented rent paid for the month of April, 2001. According to her evidence, she wrote the notation on the receipt "Rent for April, 2001" in order to keep her records straight.

16. The defendant, however, disagreed and insisted that this receipt represented monies paid for rent for the month of March, 2001. On the receipt, she had noted that the sum of $2,500.00 was for "One month Rent Due March 31st". Under cross-examination, the defendant admitted that the rent under the old agreement was

$3,700.00 whilst from the 1st April, 2001 the new rent of $2,500.00 became due. The Court notes that these parties had agreed to carry over and apply the deposit paid under the old agreement to the new agreement without any deduction for rent owed for the month of March, 2001 under the old agreement.

17. In the circumstances, and on a balance of probabilities, the Court accepts the evidence of Mrs. Ali that Exhibit 17 represented rent paid for the month of April, 2001 under the tenancy agreement.

- **Exhibit 18**

18. Mrs. Ali testified that this receipt dated April 30th 2001 was for rent for May, 2001. In evidence in chief, the defendant insisted that the receipt was issued for rent paid for the month of April. According to her evidence in chief, part of the rent was paid in March and part paid in April When the two (2) parts were fully paid, she issued the receipt and noted on the receipt "One Month Rent Due April 30th".

19. Under cross-examination, however the defendant said that payment for the month of April was made in May. The Court has looked at her notation on this receipt "Rent due April 30th". According to the tenancy agreement, rent was due on the 1st April, and thereafter on the first day of each and every calendar month.

20. On a balance of probabilities, the Court accepts the evidence of Mrs. Ali and finds that Exhibit 18 represented rent paid for the month of May, 2001.

- **Exhibit 24(A)**

21. Mrs. Ali testified that this receipt dated May 30th, 2001 represented rent for the month of June, 2001 and that she made that notation on the receipt. The defendant, however, testified that this receipt reflected payment for the month of

May. According to her evidence in chief, the May rent was paid on June 21st and July 7th and thereafter she issued Exhibit 24(A), noting on the receipt "one month Rent due May, 30th".

22. In cross-examination, however, the defendant said that the May rent was paid a part in May and a part in June.

23. In the circumstances and on a balance of probabilities, the Court accepts the evidence of Mrs. Ali and finds that Exhibit 24(A) was issued in respect of rent for the month of June, 2001.

- **Exhibit 24(B)**

24. This receipt is dated 30th June 2001 and is for the sum of $2,500.00. Mrs Ali testified that this receipt was issued for rent paid for the month of July, 2001. That is indeed the notation she made on the receipt.

25. The defendant, however, stated in her evidence in chief that this receipt was for rent paid for the month of June and that sum was actually paid in August. Under cross-examination, however, she stated that the monies were paid to her in pieces up to July, between mid June – 20th June, half July to 20th July.

26. In all the circumstances and on a balance of probabilities, the Court accepts the evidence of Mrs. Ali and finds that Exhibit 24(b) was issued for rent paid for the month of July, 2001.

- **Exhibit 26**

27. Mrs. Ali testified that this receipt was for rent paid for the month of August, 2001. The receipt is dated July 31st, 2001 and according to Mrs. Ali's notation was for "Rent August 2001". In her evidence in chief, the defendant complained that

rent was not paid on time for July and that July rent was paid a fraction in August and two small fractions in September. The defendant insisted that Exhibit 26 was issued for rent due for the month of July.

28. For the reasons already mentioned, the Court accepts the evidence of Mrs. Ali and finds that Exhibit 26 was issued for rent paid for the month of August, 2001.

- **Exhibit 30**

29. The receipt dated August 31st, 2001 was for the sum of $2,500.00. Mrs. Ali testified that this represented rent paid for September, 2001 and she had noted this on the receipt.

30. On the other hand, the defendant again insisted that the receipt was issued for rent for the month of August and not September. According to the defendant in her evidence in chief, this rent was paid as follows:

$700. on the 27th September

$500. in the first week of October

$500. in the second week of October

$800. in the third week of October.

31. In cross-examination, however, the defendant said that this rent (for the month of August) was paid in four payments, the first being in the month of August, one in September and two small fractions in October.

32. The Court does not accept the defendant's evidence. The Court accepts the evidence of Mrs. Ali and finds that Exhibit 30 was issued for rent paid for the month of September, 2001.

- **Exhibit 39(B)**

33. This receipt is dated the 3rd December, 2001. For the first time the defendant noted on the receipt the dates when the payments were made:

Payment: 20/11/2001 - $1,000.00

30/11/2001 - $1,500.00

The defendant also wrote on the receipt in two (2) places "for Rent due 30th September, 2001".

34. Mrs. Ali testifies that this receipt was for rent paid for October, 2001 and that October rent was paid on time in October. This receipt like the others contains a notation in the handwriting of Mrs. Ali "Rent for Octomber, 2001". On the other hand, the defendant insists that this payment was rent for the month of September and that the payments were made in the month of November.

35. The Court accepts the evidence of Mrs. Ali and finds that Exhibit 39(B) was issued for rent paid for the month of October, 2001.

- **Exhibit 39(A)**

36. This receipt for the sum of $1,000.00 is also dated 3rd December, 2001. The defendant wrote on the receipt the following:

"Cheque issue on 3/12/2001 Royal Bank No. 0044042 for the sum of $1,000. (cheque issue) for rent on part payment for October, Bal - $1,500.00". On the receipt, Mrs. Ali placed the notation: "Part Rent for November, 2001". The cheque referred to was exhibited as Exhibit 40 and is dated the 3rd December, 2001.

37. Despite Mrs. Ali's notation, she insists that the cheque for $1,000. was paid for the month of December and not November. According to Mrs. Ali, the December rent was paid partly by cheque - $1,000.00 and partly in cash - $1,500.00. According to her evidence, they paid partly by cheque because they were getting problems with the defendant. Mrs. Ali said in cross-examination that she gave the defendant $2,500.00 in cash in November month representing November rent and the defendant refused to give her a receipt, telling her that "time will tell".

38. In further cross-examination, Mrs. Ali testified that the defendant never refused to take rent from her before the 3rd December, 2001. The Court notes that her evidence is in contradiction to paragraph 7 of the plaintiff's affidavit filed on the 18th January, 2002 in support of proceedings for an injunction brought by him in this action. According to the plaintiff's affidavit, the defendant refused to take rent from them in November, 2001. The plaintiff, however, contradicted himself in cross-examination at the trial saying that the defendant did not refuse to accept rent from him in November, 2001. Later in the cross-examination of Mrs. Ali, she stated that the defendant refused to accept rent from her in December, saying that she had a person to rent to at a higher rent.

39. In all the circumstances, the Court has difficulty in accepting the evidence of Mrs. Ali that Exhibit 39(A) represented rent paid for December, 2001. In addition, the Court has considered Exhibit 45, being a letter dated 11th January, 2002 written to the defendant by the plaintiff's Attorneys-at-Law just prior to the re-entry. By that letter, the plaintiff's Attorney forwarded to the defendant a cheque in the sum of $6,500.00 "being due by way of rents for the period November, 2001 to January, 2002". There is no breakdown of this sum. In the view of the Court, the plaintiff's Attorney by this letter acknowledged that rent was owed for the month of November, 2001, which acknowledgement accorded with the notation on Exhibit 39(A) made by Mrs. Ali. The Court also observes that the Attorney's letter was completely silent on the allegation made by Mrs. Ali that rent was paid for November and that the defendant refused to issue a receipt. Surely that was an

important matter, which, if it were true, the Attorney's letter would have referred to specifically.

40. Accordingly, the Court does not accept that Exhibit 39(A) represented rent paid for December, 2001. The Court finds that it represented rent paid in part in the sum of $1,000.00 for the month of November, 2001. What is now clear to the Court is that November rent was paid only in part and that part was paid late.

41. After Exhibit 39(A), the defendant accepted no further rents from the plaintiff. As at the 3rd December, 2001, therefore, the plaintiff had paid rents in full up to the month of October, but still owed $1,500.00 for the month of November and $2,500.00 for the month of December, a total of $4,000.00.

- **Exhibit 42**

42. This is a banker's draft dated the 13th December, 2001 issued by the Muslim Credit Union Co-operative Society Limited on behalf of the plaintiff and drawn in favour of the defendant. The defendant's evidence was that she received this cheque via registered mail but never cashed it and in fact returned it to the plaintiff.

43. On the other hand, Mrs. Ali, despite the notation written by her at the foot of Exhibit 42, "Rent for November and December, 2001", insisted that this draft represented rent of $2,500.00 for the month of November and $1,500.00 for the month of December. Mrs. Ali admitted that the defendant refused to accept the draft.

44. In all the circumstances and having regard to the earlier findings of the Court, the Court finds that the draft represented the balance of rent owed for the month of November, that is, $1,500.00 and rent owed for December, that is, $2,500.00. If Mrs. Ali is to be believed, they would have paid rent twice for November and that this Court does not accept.

- **Exhibit 44**

45. This is a banker's draft dated 28th December, 2001 issued by the Muslim Credit Co-operative Society Ltd for the sum of $2,500.00 drawn by order of the plaintiff in favour of the defendant. The defendant acknowledged in evidence that she received this cheque by registered mail but she never cashed it and returned it to the plaintiff. According to Mrs. Ali's notation, this was for rent for January, 2002.

46. The Court therefore finds that from the month of November, 2001 the plaintiff was in arrears of rent and the defendant was refusing to accept the rents paid late. The question to be determined is whether in those circumstances, the defendant was entitled to re-enter the tenanted premises on the 12th January, 2002.

THE LAW:

47. If a lease does not contain a proviso for re-entry, one party may not determine the lease unless the other party has breached a condition contained in the lease [**Hill and Redman's Law of Landlord and Tenant** 17th Edn p. 443]. To determine whether a provision in a lease amounts to a condition which would confer a right of re-entry on the landlord or merely amounts to a covenant which does not confer a right to re-enter without the addition of a proviso for re-entry, the Court must construe the provisions of the lease.

48. At clause 2 of the tenancy agreement, it is provided:

> "The Landlady hereby covenants that in the event of the Tenant paying the rent herein reserved and observing the terms and conditions herein contained the Tenant shall have quiet enjoyment of the demised premises."

49. In the case of **Persaud v Ogle** (1979) 27 W.I.R. 160, the Court of Appeal of Guyana held that where there was no express proviso in the lease for re-entry by the landlord or for forfeiture for default in payment of rent, the landlord's undertaking that "the lessee paying the rent … shall peaceably hold and enjoy the demised premises" carried with it a common law right of re-entry and was intended to lay

down a condition: the condition that if the lessee's undertaking as to rent was broken, the landlord would have the right to re-enter and forfeit the lease for any unpaid rent.

50. Accordingly, the Court finds that the words contained in clause 2 of the tenancy agreement in the instant case, like the words in the material part of the agreement in **Persaud v Ogle,** are to be regarded as creating a condition of the tenancy carrying with it a common law right of re-entry.

51. No entry or ejectment can be maintained for non-payment of rent without a previous formal demand thereof made according to the strict rules of the common law [**Woodfall's Law of Landlord and Tenant** 28th Edn. Volume 1 paragraph 1-1905]. According to **Woodfall**, these rules are:

(1) The demand must be made by the landlord or by his agent duly authorized in that behalf.

(2) It must be made on the very last day to save the forfeiture.

(3) It must be made a convenient time before and at sunset.

(4) It must be made at the proper place. Therefore, if the lease specifies where the rent is to be paid, the demand must be made there and not elsewhere. But if no place is so appointed, the demand must be made upon the land, and at the most notorious place of it.

(5) The demand must be made of the precise sum then payable, and not one penny more or less.

52. It is the defendant's evidence that she demanded rent in person and at the tenanted premises. However, the defendant failed to make her demand on the very last day to save the forfeiture (rule 2 above). In fact, the undisputed evidence is that she was refusing to take the rents tendered by the plaintiff. Furthermore, the Court finds that the defendant did not comply with rule 5. At all material times, the

defendant held the belief that the plaintiff was in arrears of rent for one more month than was actually due. In cross-examination of the defendant, she stated that on the 30th November, she demanded rent for October and November. The Court has already found that Exhibit 39 (B) was issued for rent paid for the month of October, 2001. [paragraphs 34 and 35 supra]. In the circumstances, the defendant would never have demanded the precise sum payable.

53. Furthermore, the Court repeats the concession made by Attorney for the defendant that the notice to quit dated the 12th December, 2001 was invalid and ineffective to determine the tenancy. Accordingly, the Court finds that the defendant's re-entry onto the tenanted premises on the 12th January, 2002 was unlawful and the plaintiff is entitled to damages.

ELECTRICITY

54. As to the defendant's allegation that the plaintiff was in arrears of electricity payments, the Court has looked closely at the evidence of the witnesses. The evidence of Mrs. Ali was that she paid their share of the electricity bill up to November, 2001 and was awaiting the January bill for payment but they were evicted prior to this.

55. The defendant's evidence under cross-examination was that the last time the plaintiff paid his share of electricity was the October, 2001 bill. Under further cross-examination, the defendant said that she could not remember if she had told the Court earlier that the last payment the plaintiff made was in October but unequivocally stated that the plaintiff had paid "not a cent in electricity after August".

56. Further, the defendant conceded in cross-examination, that if she had made payments in September and October (as she had had earlier said) the sum owing by bill dated 31st December, 2001, would have been less than the sum stated on the

bill, that is, $3,467.00 [Exhibit 48]. She also conceded in further cross-examination that she did not make any payments after 23rd August, 2001.

57. As a whole, the Court is not satisfied with the defendant's evidence on this issue and does not accept that the plaintiff was in arrears of electricity as the defendant claims.

DAMAGES:

58. Where a lessee is unlawfully evicted the normal measure of damages is the value of the unexpired term, which will be calculated as the rental value of the premises less the contractual rent which would have fallen to be paid in the future [**McGregor on Damages** 14th Edn. Paragraph 770]. The plaintiff has made no claim for the value of the unexpired term and has advanced no such evidence.

59. The plaintiff has also made no claim for the expense of setting up a new place of business, to which a lessee who has been unlawfully evicted, may be entitled.

60. In the case of **Rampersad v Madam Alcede** (1964) WIR 114, the Court of Appeal held that in an action for breach of the covenant for quiet enjoyment, a High Court judge could not make an estimate of the plaintiff's special damages when the plaintiff's evidence at the trial varied from the damages pleaded. Special damage must not only be specially pleaded but also strictly proved. Mcshine J.A. opined that there are indeed occasions when a judge may have to estimate, for example, the value of a used article pleaded and proved to have been lost where there is a conflict as to its present value. McShine J.A. explained that it would then be proper for the judge to estimate the value of the article. However, McShine J.A. stated that it was not open to a judge to estimate what articles may have been lost and further estimate their possible values.

61. In the unreported case of **Nalene Mohammed v Barry Dwarika** CV 2005 - 00347, Smith J. was concerned with the wrongful termination of the claimant's tenancy by a landlord who locked her out of the premises. In assessing the quantum of damages to be awarded to the claimant, Smith J. noted that the lack of any supporting documentary proof of the claimant's claim made her evidence less reliable.

62. Smith J. stated at page 10:

> "Secondly, while I accept that the Claimant has been locked out of the premises since 31st October 2005 and that she does not have the actual records of the business, I do not think that this absolves the Claimant from producing any documentary proof of her loss. She could have produced bank records or documents from her suppliers (for example) to support her claim. The lack of any supporting documentary proof of her claim makes her evidence less reliable".

63. The Court will therefore proceed to examine the plaintiff's claim for special damages. By his original Statement of Claim, the plaintiff claimed the sum of $406,000.00 for loss of goods. In addition, he particularised two items which were lost and which were set out earlier in this judgment [paragraph 5 supra].

64. By his amended Statement of Claim, the claim for $406,000.00 was deleted and some seventy-eight (78) items of loss and damage amounting to $45,991.42 were added.

65. Mrs. Ali gave evidence that the following goods were broken or destroyed by rain or stolen:-

ITEMS	COST	EXHIBIT	PROFIT
649 sheets of gift paper @ 43 cents per paper	$279.00	3	$649.00
48 pairs canvas shoes	$957.00	5	$478.50
29 pairs ladies slippers	$1078.00	5	$539.00
Black denim (63)	$1256.85	6	
Blue denim (4)	$ 837.90	6	
3 plastic in rolls	$3828.00	6	$1276.00
Gents brown slippers	$1220.40	7	$ 610.00
18 doz. small towels @ $12.95 per towel	$2747.40	7	$ 916.40
17 doz. large towels @ $18.95 per towel	$2865.80	7	$ 955.33
Black and Decker (300)	$ 90.00	9	
Black and Decker (340)	$ 110.00	9	
57 pieces door mats (12) @ $6.95 per mat plus vat	$ 396.15	12	$ 198.58
57 bed sheets @ $18.00 per sheet	$1026.00	15	$ 615.60
78 bed sheet (set) @ $26.00 per set	$2028.00	15	$1216.80
5 standing fans	$ 375.00	20(a)	
2 Dinner Sets @ $75.00 per set	$ 150.00	21	
Towels	$240.00	23	$ 80.00
18 Pairs white Sneakers @ $52.00 per pair	$936.00	25	$ 468.00

ITEMS	COST	EXHIBIT	PROFIT
Black Sneakers	$1248.00	25	$ 624.00
33 Glass Plates @ $14.40 plus vat	$ 475.00	38	
30 Glass Plates @ $14.40	$ 432.00	38	
Radio	$ 100.00	8	$ 60.00
5 pieces Ceiling fan @ $200.00	$1000.00		$ 600.00
Microwave	$1300.00		$ 780.00
4 Wool Set Sheets @ $525.00 per sheet	$2100.00		$1260.00
Total	$27076.50		$11326.61
Grand Total			$39052.11

66. Mrs. Ali also gave evidence as to the "mark up" placed on the following items:

ITEMS	MARK UP PERCENTAGE
Sheets, radios, and microwave	60%
Sneakers and slippers	50%
Towels	33%
Door mats	50%
Ceiling fans	60%
All plastic	33%

Gift paper - selling price $1.00 per sheet

67. The Court accepts Mrs. Ali's evidence that the above goods were damaged or destroyed by rain or stolen. Mrs. Ali worked in the business and appeared to be the one responsible for the financial aspects of the business. Throughout her evidence, she was familiar with all aspects of the running of the store. Despite rigorous cross-examination, she impressed the Court as to the truthfulness of her evidence with respect to the goods which were in the store on the 12th January, 2002.

68. On the other hand, the defendant's case was that by the 12th January, 2002, the defendant had removed many of the goods he had in the store and the business was, by the time of the re-entry, poorly stocked. Despite this, the defendant admitted in cross-examination that it took the bailiff (and his staff) "a little under two (2) hours" to remove the goods from the store.

69. As to the goods which the plaintiff claims were lost by rain or theft, the Court is also satisfied with the evidence advanced on behalf of the plaintiff. Despite the "hard swearing" of the defendant and her witnesses that rain was drizzling slightly, the evidence of the bailiff Kurt Preudhomme was that a tarpaulin was placed on the truck that took away the goods. The Court also accepts the evidence advanced on behalf of the plaintiff that the goods were placed on the pavement and the road leaving them open to theft and rain.

70. The Court is not, however, satisfied with the supporting documentary proof advanced on behalf of the plaintiff as to the items allegedly supported by Exhibit 6, and the last three (3) items on the list. As to Exhibit 6, the invoice is in the name of another person and no reasonable explanation has been given by the plaintiff for same. As to the last three (3) items, no supporting documentary proof has been advanced.

71. Accordingly, the Court finds that the plaintiff is entitled to the sum of $24,813.36 representing special damages.

72. The plaintiff has also claimed loss of income from the 12th January, 2002 as follows:

> from Mondays to Thursdays at a daily rate of $2,000.00, and on Fridays and Saturdays at a daily rate of $3,500.00.

73. According to the Written Submissions advanced on behalf of the plaintiff, the value of the term lost can be calculated by the amount of income that the plaintiff would have earned had he been in possession up to the 31st December, 2004. It was submitted on behalf of the plaintiff that Mrs. Ali had stated that at the very least she would have earned $1,200.00 per day for a six day week, that is, 300 days for each year, amounting to $360,000.00 as loss of income per year. Accordingly, it was submitted, the plaintiff's claim for loss of income from the 12th January, 2002 until the 31st December, 2004, when the agreement would ordinarily have determined, amounted to $1,080,000.00.

74. The Court finds that this claim is completely unsubstantiated by documentary proof. Despite the plaintiff's claim that he earned such substantial income, he was not registered for VAT. He produced no income tax returns and no accounts for the business. Further, no bank statements have been tendered into evidence to support the plaintiff's contention that the business was earning such income. While the Court accepts that the plaintiff's books may have been lost in the re-entry, something more is required if the Court is to award the plaintiff over a million dollars for loss of income. The claim for loss of income is therefore refused.

EXEMPLARY AND AGGRAVATED DAMAGES:

75. The Court has examined the matters and facts on which the plaintiff has placed reliance in support of his claim for exemplary and aggravated damages.

76. Mrs. Ali has alleged that the defendant had said to her that she wanted them out of the tenanted premises because she had a person to rent to at a higher rent. Despite the importance of this allegation, the Attorney's letter to the defendant – Exhibit 45 – is completely silent on it. The focus of the letter was the notice to quit which had been issued by the defendant on the 12th December, 2001. The Court repeats that by December, 2001, rent in the sum of $1,500.00 was still owing for the month of November and rent in the sum of $2,500.00 was owing for the month of December, making a total of $4,000.00. It was not until that notice to quit was issued that the plaintiff obtained the banker's draft dated the 13th December, 2001 for the sum of $4,000.00 and sent it to the defendant by registered mail [Exhibit 42.].

77. According to the defendant's evidence, which the Court accepts, having regard to the fact that rent was in arrears, she attended the offices of Miss Anjani Ram, Attorney at Law, and sought her advice. Miss Ram prepared the notice to quit which is exhibited as Exhibit 41, and which Attorney for the defendant has conceded was bad. According to the notice to quit, the plaintiff was to leave the tenanted premises by the 12th January, 2002 or face ejectment. On the said 12th January, 2002, the eviction took place. The defendant hired a licenced bailiff, and one police officer to carry out the eviction.

78. The Court finds that the defendant was under the impression, albeit mistaken, that she could have lawfully terminated the tenancy agreement on the 12th January, 2002. Since the re-entry was unlawful, the plaintiff is entitled to the special damages he has pleaded and proved. The Court finds no evidence, however, of any high-handed and outrageous disregard of the plaintiff's rights or of wrongful

conduct calculated to yield a benefit in excess of the compensation likely to be paid to the plaintiff by the defendant. **[Kuddus (AP) v Chief Constable of Leicestershire Constabulary)** [2001] UK HL 29]. In the circumstances, the Court makes no award for exemplary damages.

79. On the other hand, the Court has considered that the plaintiff was unlawfully thrown out of his business place on a busy Saturday morning (the busiest time of the week) onto the Chaguanas Main Road in the presence of his customers. He suffered mental distress, embarrassment and severe inconvenience aggravated by the defendant's conduct referred to in this judgment. In all the circumstances, I award the plaintiff the sum of $20,000.00 in general damages assessed on the footing of aggravated damages.

ORDER:

80. The Court therefore orders as follows:

There shall be judgment for the plaintiff against the defendant as follows:

(i) Special damages in the sum of $24,813.36 with interest thereon at the rate of 6% per annum from the 12th January, 2002, to the date of this judgment; and

(ii) General damages in the sum of $20,000.00 with interest thereon at the rate of 12% per annum from the 18th January, 2002, the date of the Writ, to the date hereof.

81. As to the Counterclaim, the Court notes that the defendant has kept the sum of $7,500.00 agreed between the parties as a deposit. Accordingly, the Court dismisses the counterclaim with no order as to costs. As to whether the sum of $7,500.00 represented rent paid in advance or a security deposit, the Court finds from all the documents tendered into evidence that the parties never regarded that

sum as rent which could have been applied to any arrears. It was indeed regarded by them as a security deposit.

82. As to the issue of costs, the plaintiff has not been able to prove several of his claims. The Court therefore awards the plaintiff 75% of the costs of the action certified fit for Counsel and to be taxed in default of agreement.

Dated the 4th day of April, 2008

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Maureen Rajnauth-Lee

Judge