

In the Provincial Court of Alberta

Civil Division

**Date : 20041019
Docket: P0302000171
Registry : Ft McMurray**

Between

Denise Elaine Dodds

Plaintiff

- and -

Henriette Schmeikal

Defendant

Decision of the Honourable Judge Michael Horrocks

[1] This is a distressing action between two parties who might as well have come from different planets. They failed to understand each other in any way and, as they were separated geographically during the period of their legal relationship, they were unable to improve the situation. Nor have they been able to do so since. As a result this decision will be an outrage to one and a total insufficiency to the other. The plaintiff is quite young and unaware of the legal requirements of tenancy or the obligations of the agreement she signed. The defendant is somewhat older and a perfectionist who rented her property for the first time with a naïve belief in the efficacy of the agreement to preserve and protect her property. Everything suggests that she feels violated by what happened.

[2] The action is for the return of a damage deposit by the tenant, with a counter claim for damages to the premises by the landlord – owner. It is not disputed that the damage deposit was not returned, and the action is basically on the counterclaim. The house was about twenty years old and the defendant had lived there for two years prior to

the tenancy. It was by all accounts very well kept. By the end of the plaintiff's tenancy the carpets would be at least three years old.

[3] The tenancy ran from January 25th, 2002 until April 30th, 2003. The tenant/plaintiff gave proper notice and actually moved out on April 13th. The parties walked through the house before the tenancy started but they did not fill out any "Inspection in" report although the defendant made notes on the back of the lease very shortly after. These included some existing damage. At the conclusion of the lease the defendant attempted to get the plaintiff to complete an "Inspection out" report, but they were unable to agree on a date and the defendant was told to go ahead on her own, which she did. The plaintiff did not give a forwarding address to the defendant though she had redirected her mail and the defendant may have had a fax number.

Additional Claims of the Plaintiff

[4] The plaintiff claimed compensation for storage of the defendant's boat which was left in the driveway. After several months they arranged for it to be moved to storage. Initially it was suggested that it could be stored without charge, subsequently a charge of \$40.00 a month was mentioned and a claim for \$45.00 a month was finally advanced. Some handwritten receipts were submitted in the amount of \$45.00 each, purporting to be for payments for a boat stall or car stall for a number of months between May 2002 and April 2003 (minus October 2002). They do not specify the stall or show a decipherable name of the lessor; they are numbered successively and the numbering system misses the month of October also. The plaintiff in a note to the defendant said that she had kept the boat for seven months in the driveway before moving it the stall at a rental of \$40.00 a month. This would have started any rental from September 2002 rather than the May date of the invoices. The authenticity of the claim and documentation is so dubious that I am not prepared to allow it.

[5] The plaintiff also claimed for repairs done to the washing machine on the premises and produced an account from an appliance service company for \$261.10. The defendants say that the appliances were on an extended warranty which was in effect and that the plaintiff had been told of this and denied any phone conversation between themselves at the time of the repair, authorizing it. In this case, although it is a close decision, I am prepared to allow the claim. The plaintiff did pay the money and it is not established, on a balance of probabilities, that she knew of the warranty.

Damage Claims of the Defendant.

[6] The main basis for the Defendant's Counterclaim is the Inspection Out report done by the defendant and her husband after they were unable to get an agreement with the plaintiff to join them. It was done twice according to their evidence on May 5th and 7th, 2003. I got the distinct impression that the plaintiff was very reluctant to meet with

the defendant at that point, but her failure to do so does not aid her credibility where there are differences in testimony.

[7] The lease provided that the tenant was responsible for "all utility, heating, telephone and cable services required on the Premises." For some reason she decided that this did not include the municipal water, sewer and garbage collection fees and did not pay them. The failure to pay attracted penalty charges and the total amount for the lease period was \$735.60 (Exhibit 15).

[8] The defendant produced a number of photographs of the damages to the property : Exhibits 14, 17 (which pictures I have numbered), 19, and 25. These clearly show damages to the carpets in a number of areas; the attempted repainting of the spare bedroom; the unauthorized installation of mirror tile; the condition of the yard and a number of relatively minor items of damage. There is no question about the spare bedroom. The plaintiff, or one of the persons resident, repainted this in "shocking pink" and an attempt was made to rectify this disaster by further repainting the room an unsuitable blue, unrelated to its original colour. In the course of these renovations, the carpet was damaged by paint droppings (Ex 17.2) and the ceiling had blue roller marks in many areas (Ex 17.1). I allow the claim of \$690.15 for repainting and 50% of the carpet \$347.73 for those repairs. The installation of mirror tiles contravened section 7 of the lease (as had the repainting), and the quotation of Mr Massey (Exhibit 23) for removal, drywall replacement and repainting in the mount of \$246.10 seems appropriate and is allowed. It is a sign of the inexperience of the parties that they would even dream that a tenant was going to maintain the yard and garden to the standards of the owner. I do not believe that a normal tenant will devote tender, loving care to a garden of a rented house. As a result I am only willing to allow a cleaning fee in the amount of \$200.00, but not any replacement of shrubs.

[9] The plaintiff admitted that the living room rug was damaged. In the event, the defendant made an insurance claim and replaced it with laminate. They claimed the deductible of \$500.00 and I will allow this claim (the full cost being \$2,393.88).

[10] A number of claims were evidenced by two quotes from out of town contractors. One by an Al Massey (Ex 23) was dated August 5th and had a breakdown sheet attached on which some of the prices quoted were identical with the original damage claim faxed to the plaintiff on May 31st, 2004 (ex 4). The other quote was from another Mr Massey (N.R.M. Interiors) which had no breakdown (Ex 24). The defendant stated that Fort McMurray prices were so high that they went out of town to keep the cost down. Very little of this work was actually done and I think that at least one local quote should have been obtained. Nothing in the evidence suggested that either contractor inspected the damage they were offering to repair. The defendant often overstated the amount of damage : the holes in the wall shown in Ex 17.23 being described as "huge" for example. No bills were produced for some of the claims. A stove repair of \$267.50 found in the

May 31st claim and the Massey quote is not authenticated. The actual damage is shown on Ex 17.24 and appears unlikely to be so high. The exact duplication of claim from the defendant's original demand and the quote of an "independent" contractor gives me some trouble. While the injured party is not required at law to actually repair the damage, the Court must be satisfied by independent and sufficient quotes of the proper amount of that damage to make the right award.

[11] In the result I am prepared to allow the defendant the following : -

Replacement of switch covers etc Claim \$37.45	\$ 20.00
Repainting of fireplace surround etc Claim \$267.50 (Ex 17 .25 & .26)	\$130.00
CD damage; landing molding; stove Repair; kitchen cabinet. Claim \$518.95 Ex 17.24 ; .13 & 14; .10	\$260.00

[12] The defendant claimed the cost of replacing 2 jacuzzi cushions with a quote of \$90.00 each (Ex 20) as shown on Ex 17.21. This claim is allowed. There was also a claim for replacement of a toilet seat in the amount of \$43.75 but without any evidence of how much was spent or would have to be spent. A seat appears in Ex 17.10 so that some replacement has been achieved and no award will be made.

[13] The defendant gave evidence that she was a professional artist in the production of murals. The house had a number of these and produced prior to tenancy pictures : Ex 11, 12, and 13. Damage to one of these (11), and pictures of this and others that she claimed were damaged (Ex 17.15; .16 ; .17 ; and .18) gave rise to a repair estimate of \$600.00 (Ex 18). No independent evidence of her professionalism or the appropriate value of the works was offered to the court. The damage is not very apparent in the pictures though there are some clear gouges in the adjacent plaster as there are in areas of the stairs. The value of all these is extremely difficult to assess and a figure of \$300.00 is only a rough conclusion.

[14] At the commencement of the lease, the company moving the defendant to Calgary either forgot or lost the main bedroom curtains which were of considerable sentimental, not to mention financial, value to the defendant. The plaintiff denied any responsibility for the curtains or any knowledge of what had happened to them. The evidence is not clear enough for me to come to a conclusion.

The Lease.

[15] A good deal of reference was made to the lease Exhibit #1 (and #10 with appended notes). The breaches of this lease by the plaintiff were of concern to the defendant. These included the subletting of the house without telling the defendant, the permitting of animals upon the premises, the alterations : repainting and mirror tile; and the failure to pay the water and sewer bills. The lease itself appears to have been taken from an apartment lease and is not entirely appropriate for a house. I note that it provides for only one payment of \$2,200.00 for the entire term of the year. Since this was clearly neither the understanding, intention or practice of the parties, I would rectify the terms to make the payment monthly. Where the plaintiff was in breach, I have awarded damages if appropriate. The defendant, for instance, does not seem to have suffered from any subletting.

Conclusion.

[16] It was never disputed that the defendant had failed to return the \$2,200.00 Damage Deposit to the plaintiff. The evidence is that she had no address and the plaintiff failed to do a Moving Out Damage Inspection with her. I have allowed her claim for the repair of the washing machine for \$261.10 so that she is entitled to \$2,461.10.

[17] The damages that I have allowed in paragraphs 7 to 13 total \$3,599.56

[18] The net award to the defendant is \$1,138.46

[19] The plaintiff was self represented and the defendant was represented by an agent. It was not clear that this agent was not a lawyer, which appears to be the case. He was quite competent and traveled from Calgary on the two sessions of the court that this case required. However, he is not entitled to solicitor costs and his expenses would not be recompensed for that reason. In all these circumstances I will award \$500.00 in costs to the defendant.

Dated at Fort McMurray, Alberta this 26th day of October, 2004.

M. Horrocks.
The Provincial Court of Alberta

Appearances

The Plaintiff : In person.

The Defendant : By Agent: J. Demers.