

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCV2019/0119

BETWEEN:

**[1] ROBERT DAVOODZADEH
[2] ALEN DAVOODZADEH**

Claimants

and

DEBBIE-JOY HUGGINS

Defendant

Appearances:-

Ms. Natasha Grey for the Claimants.

Mr. Jason Hamilton for the Defendant.

2021: March, 08
September, 15

JUDGMENT

- [1] **WARD, J.:** The claimants claim arrears of rent for the lease of commercial premises to the defendant. The defendant claims a setoff for money she spent repairing the premises and counterclaims for damages for breach of the landlord's covenant to repair.
- [2] On 23rd March, 2017, the claimants and the defendant entered into a lease of commercial premises at Port Zante in Basseterre owned by the claimants. The premises were to be used as a spa. The lease provided that during the period 1st April, 2017 to 31st March, 2018 the defendant would pay a monthly base rent of US\$3,800.00; 1st April 2018 – 31st March 2019: US\$3,952.00; 1st April, 2019 – 31st March 2020: US\$4,110.10; 1st April 2020 – 31st March 2021: US\$4,274.50 and 1st April 2021 – 31st March, 2022: US\$4,445.45. To the monthly base rent would be added 10% VAT, US \$41.00, representing the defendant's share of Port Zante's common area maintenance charge. The

defendant began to default on payment of rent in November, 2018 when she paid only US\$1,840.33 (leaving a balance of US\$ 2,547.87). She paid no rent for the period December 2018 to February, 2019.

[3] In the letter dated 5th February, 2019 the claimant's through counsel, wrote to the defendant demanding payment of the arrears and giving notice to quit. The defendant gave up possession of the premises on 16th February, 2019. The claimants seek to recover from the defendant the sum of US\$15,712.47 (EC\$42,423.67), representing arrears of rent between November 2018 and February, 2019.

[4] The defendant admits that only part of the rent was paid for the month of November (US\$1,840.33 leaving a balance of US\$ 2,547.87) and admits that no rent was paid for the period December 2018 to February, 2019. However, she claims that this was due to a dispute over sums due and owing by the claimants to her for restoration and remedial work which she was forced to undertake at a cost of EC\$34,415.45 because of the claimants' failure to discharge its obligation under clauses 1(K) and 3(b) of the lease relating to repair of the said premises for damages not attributable to the defendant, her servants and /or agents.

[5] According to the defendant's witness statement, she moved into the demised premises in or about March 2017 and duly paid the first month's rent in the sum of \$3,800.00 USD and a security deposit in the sum of \$7,600.00 USD was paid to the Landlord and/or their agents. She further stated:

"I made the necessary renovations in order to conduct business and began conducting business in or about June 2017 after conducting a soft opening. The business never officially had a grand opening as there were outstanding matters regarding the renovation work that needed to be concluded."

[6] According to her, the month of June produced a lot of rainfall and she began to encounter leakage into the demised premises. She attributed the sources of the leakage to three areas primarily: i) the windows; ii) the door facing eastward; and iii) the roof. As a result of said leakage, inventory and promotional material that had been purchased, and which were stored in the premises, were damaged.

[7] As it relates to the roof leakage, the defendant's evidence was that the roof tiles were observed to be stained and discoloured in certain areas and in others, some of the tiles became deformed and

started to sag. Water would occasionally leak from the roof and travel down the interior walls and unto the floor. In all instances the tiles in both areas had to be replaced. She hired a contractor and eventually discovered that there was an open and unsealed air condition duct in the unoccupied unit above hers. This was determined to be the cause of leaks through the ceiling.

- [8] As it relates to leakage through the eastern door, the defendant states that there was a drain in front of the said door and a gap between the floor and the bottom of the door. This was a source of water seeping under the door. She subsequently discovered, after inspection by her contractor, that the seals for the doors were defective and thereafter would leak when the rain fell.
- [9] Concerning the leakage from the windows, the defendant said that water would leak through the windows whenever the rain was accompanied by high winds.
- [10] These issues were drawn to the attention of Mr. Davoodzadeh and to his agent, Mr. Elvis Manners, both in writing and orally. These email exchanges were entered into evidence and relied upon by both parties.
- [11] Problems notwithstanding, the defendant eventually opened fully for business and held a grand opening in or about November 2017. Nonetheless, the problems with leakage continued and the defendant said she was forced to hire a contractor personally to rectify the issue of leakage with the side door and windows. This involved fabricating PVC shutters for the windows, raising the floor beneath the said door and sealing the windows and door with vinyl print. To address leakage from the ceiling, the defendant had a contractor secure and seal two air conditioning ducts in the unoccupied unit above hers which had been left opened and unsealed when the previous tenant vacated the premises.
- [12] The defendant says that in total she incurred expenses in the sum of \$32,415.45 to effect repairs to the door, windows and roof in an attempt to rectify the leakage issue. She inquired of Mr. Robert Davoodzadeh, whether, given the sums she had already expended to perform remedial work to the premises to rectify matters that she considered ought properly to be rectified by the landlords, he proposed to reimburse her. She contends that under the terms of the lease, she was only required to effect repairs to the windows and doors that were caused by herself, her servants and/or agents of customers visiting the premises, except in respect of deterioration occasioned by ordinary wear and tear.

- [13] Due to the state of affairs regarding the leakage issues, she gave notice of intention to vacate the premises in January 2019, effective February 2019. To date, the security deposit paid by her has not been repaid and remains due and outstanding.
- [14] In response, Mr. Davoodzadeh stated that he was not aware of there being any leaking front doors, windows and roof at the time that the premises were rented to the defendant. He denies that the unoccupied unit above the defendant's was the source of leakage through the defendant's ceiling since all of the water pipes for that unit were sealed off. Further, his agent, Mr. Manners, states in his witness statement and in oral testimony that he examined the unit above the defendant's and observed no evidence of leakage. Mr. Davoodzadeh stated that when the Defendant indicated that there was damage to her furniture and fittings, although they were not responsible for any damage, as a matter of courtesy, they made efforts on numerous occasions to send their contractor to put some sealant around the windows and/or install guards on the bottom of the doors but the contractor never got access since there was no one present during working hours.
- [15] Mr. Davoodzadeh further states that the defendant submitted invoices to him which had nothing to do with his obligations as a landlord as he was not responsible for providing shutters for the defendant under the lease and there was never an agreement at any time to pay the defendant for installing any shutters.
- [16] Mr. Davoodzadeh also disclaims responsibility for any decor affixed to any windows such as the one-way vision print or vinyl print affixed to the windows by the defendant.
- [17] The claimants contend that on proper construction of the lease, repairs of the nature undertaken by the defendant were solely her responsibility. They rely in particular on clauses 1(a), 1(k) and 3 (b) of the lease agreement to say that they had no obligations to the defendant to repair and keep the exterior doors or windows in tenantable repair.

Discussion

- [18] There is no real dispute that the defendant paid only part of the rent for November, 2018 and paid none for the period December 2018 to February 2019. The real issue comes down to whether the claimants were in breach of their covenants to repair and, if so, whether the defendant is entitled to set off the sums paid by her, to effect repairs to the premises against the arrears of rent. This

would in turn also require some factual analysis of the nature of the alleged defects in the premises.

- [19] As can be seen, both parties invoke the terms of the lease agreement in support of their respective contentions. It is therefore important to highlight the material covenants contained in the lease.

The material terms of the lease:

- [20] Clause 1 sets out the tenant's covenants. So far as material, it provides:

"1. The Tenant hereby covenants with the Landlord as follows:

(a) To accept the premises in "as is" condition. Landlord makes no representation regarding the condition of the premises.

(b) ...

(k) To repair and keep the interior of the demised premises and all additions thereto including electrical, plumbing, windows, doors and the Landlord's fixtures and fittings therein in tenable repair except in respect of deterioration occasioned by the ordinary wear and tear;

(l) Without prejudice to sub-clause (k) hereinbefore set out, to make good any damage to the demised premises or to any additions thereto or to any doors, windows, and any of the landlord's fixtures and fittings caused by the Tenant's servants, agents, customers or visitors to the demised premises whether accidentally or otherwise and to repay to the Landlord on demand all costs incurred by the Landlord in making good any such damage. The Landlord shall be entitled to effect any repairs and to make any damage which the Tenant is hereunder required to effect on the Tenant's failure to do so after reasonable request in writing."

- [21] Clause 3 of the lease agreement sets out the Landlord's covenants. So far as material, the landlord covenants at 3(b):

"That it will repair and keep the exterior (other than window, doors, locks latches, and lighting fixtures) of the demised premises and of all additions to the same and the internal load bearing walls roof and floor thereof (but not including plaster or other surface material applied to interior faces of any load bearing walls whether internal or external or floor boards..."

- [22] The first point to note is that the defendant agreed to take the premises "as is" and without any representation by the claimants as to its condition. This means that the defendant agreed to take the premises in its current condition. The defendant's evidence under cross-examination was that she was aware that the property was rented "as is" and that she had inspected the premises on

numerous occasions before deciding to rent it. By agreeing to take the premises in an “as is” condition after full opportunity to inspect it, and without any representation by the claimants as to the condition of the premises, the defendant must be taken to have accepted that, subject to the terms of the lease, any repairs or improvements to the property would be at her expense.

- [23] While she claims that the claimants accepted responsibility and suggested that she install shutters on the windows and doors to address the leakage issue, she admitted in cross-examination that none of the exhibited emails contain any reference to an agreement to install shutters.
- [24] In the absence of an express stipulation, or of an obligation imposed by statute, the landlord is generally under no liability towards the tenant to put the demised premises into repair at the commencement of the tenancy, or to do repairs during the continuance of the tenancy: **Halsbury’s Laws of England, Vol 62 (2016), para 300.**
- [25] In commenting on the covenant to repair, the learned author of **Commonwealth Caribbean Property Law** states: “The obligation to repair the demised premises may rest on the landlord, or on the tenant, or partly on the landlord and partly on the tenant. The matter is entirely one for negotiation between the parties, and the extent of the obligation depends on the wording of the covenant.”
- [26] It is therefore necessary to examine the terms of the covenants to repair contained in the lease agreement.
- [27] By clause 1 of the lease, responsibility for repairing doors and windows fell on the defendant. The defendant is in error in construing the lease as casting the responsibility for repairing doors and windows on her, only where she or her servants, agents or visitors caused damage to them. This notion seems to be derived from a reading of clause 1(l). However, read with the preceding clause 1(k), it is plain that, that clause is explicitly stated to be without prejudice to 1(k). Thus, the defendant has a general and free standing duty to keep doors and windows repaired irrespective of whether she, her servants or agents have caused damage thereto. Defective door or window seals fall squarely within her remit to repair.
- [28] On this basis, the claimants were under no obligation to effect repairs to the doors and windows of the demised premises. These were expressly excluded from the claimants’ responsibility and

specifically cast on the defendant. Accordingly, she was not entitled to withhold payment of rent on account of having to effect repairs to the doors and windows.

- [29] As it relates to internal roof repairs, this was clearly the responsibility of the claimants per clause 3(b). Where the landlord retains possession of some part of the building which requires proper maintenance for the protection or safe enjoyment of the demised premises by the tenant, it is an implied term that he is under an obligation to take reasonable care that the premises retained are not in such a condition as to cause damage to the tenant or to the demised premises unless the lease contains an express term to the contrary.
- [30] The defendant's case is that leakage from the internal roof was caused by an opened and unsealed air condition duct in the unit directly above the defendant's unit which was owned by the claimants. It is first and foremost a question of fact, however, whether the roof was a source of water leakage into the premises. For the reasons that follow, I prefer the evidence of Robert Davoodzadeh and Mr. Manners on this factual issue.
- [31] It appears from email exchanges in August, 2017 that the defendant had by 24th August concluded that the cause of water entering the premises was a clogged drain on the outside of the premises which was the responsibility of the Urban Development Corporation. The claimant wrote:

"Hello Robert,

Hope all is well. I met with Mr. Manners and we both walked thru and surveyed the issue the cause of the water entering. Upon inspection, on the outside of the door, there is a storm drain. I mentioned that on several occasions when entering there a large pool of water (sic) on the ground in front of the door. On the day we were there we noticed as well the drained (sic) is shallow and blocked. So when rain falls instead of going down the drain it collects and comes back towards the door. He suggested I inform you and we took pictures. He said this is an issue for UDC and he will speak to you about getting the information to them. Please see attached pics. I am also going to lift the floor under the door as there is a gap between the door and the ground...if this is okay with you. This also allows water to pass under the door quite easily. I am hoping you can resolve this issue with UDC as I have not loved (sic) in any of my equipment as yet for fear of another flooding incident. Thank you for your assistance in the past.

Best regards,
Debbie-Joy Huggins"

- [32] On 2nd October, 2017, the defendant experienced another episode of water ingress. She wrote via email: "It has become crystal clear to me that the drainage is inadequate." Again, the cause is attributed to inadequate drainage on the outside of the premises. Mr. Davoodzadeh offered "in the absence of response from the port to take matters in our own hands" and to also have his plumber assist with the other issues. It should be stated that this offer to assist, does not create a legal obligation on the part of the claimant for such repairs.
- [33] It is not until October 16th via email that the defendant expresses her suspicion of water leakage "from somewhere upstairs". In apparent response to this complaint, an inspection was conducted by Mr. Manners in company with the defendant's contractor, Mr. Bally. Mr. Manners testified that he observed no water on the floor of the upstairs unit. He said at some point a small amount of water would come through the window on the Eastern side of that unit but nothing heavy. No suggestion was put to Mr. Manners that there was an opened and unsealed air condition duct in that unit and that that was the source of the leak. No such suggestion is contained in any of the emails to the claimants. Indeed, under cross-examination, the defendant accepted that her claim was in relation to costs incurred in installing shutters and sealing the windows and doors. She admitted that the sums claimed by her had nothing to do with leakage from the roof. That puts an end to the issue.
- [34] The issue of roof leakage seems to have assumed prominence in the defendant's case to a degree not manifested in her contemporaneous complaints to the claimants and tends to cast doubt on this aspect of her case. For these reasons I do not accept that there was leakage from the ceiling caused by an open and unsealed air condition duct in the unoccupied unit above hers or at all. The claimants were therefore not in breach of their obligation in this regard. The defendant was therefore not entitled to withhold rent.
- [35] In the premises, I find that the defendant was in breach of the lease agreement and is indebted to the claimants for arrears of rent between November 2018 and February, 2019. I further find that the defendant has failed to prove her counterclaim on a balance of probabilities.
- [36] Accordingly, I make the following orders:
- (i) the defendant shall pay the claimants arrears of rent in the sum of US\$15,712.47 (EC\$42,423.67);

(ii) interest on the said sum at the rate of 6% from the date of judgment to the date of payment;

(iii) The defendant's counterclaim is dismissed

(iv) Costs to the claimants on the claim and counterclaim.

Trevor M. Ward QC
High Court Judge

By the Court

Registrar