

GRENADA

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. GDAHCV2006/0008

BETWEEN:

GRENADA INDUSTRIAL DEVELOPMENT CORPORATION Claimant

and

NICHOL WILLIAMS Defendant
(T/a CB Williams & Associates)

Appearances:

Mr. A. Joseph for the Claimant.
Ms. S. Khan for the Defendant.

2008: September 24

JUDGMENT

- [1] **HENRY, J.:** Grenada Industrial Development Corporation (GIDC) is a statutory body incorporated under the Grenada Industrial Development Corporation Act Cap. 149. By lease dated 1st February, 1995, GIDC let to Mr. Williams premises at Frequent Industrial Park for use as his business place. The lease was for 3 years commencing on 1st November, 1994, at a monthly rent of \$1,800.00. The lease contained an option to renew for a further term of 5 years. On the expiration of the lease, Mr. Williams elected not to renew. Instead, he remained in possession and continued to pay, and GIDC continued to accept the same rent.
- [2] During the tenancy, issues arose between the parties. GIDC on more than one occasion complained of the untidy condition in which Mr. Williams kept the premises and served him

with a notice to remedy the situation. GIDC further complained that it granted Mr. Williams permission to undertake certain construction to facilitate the expansion of his business, but that Mr. Williams exceeded the permission granted.

[3] In 2001, the rent was increased to \$3,000.00 per month, which increase Mr. Williams paid. In 2003, GIDC again notified Mr. Williams that the rent would be increased to \$3,300.00. GIDC says that Mr. Williams accepted the increase and has tendered payment in accordance with the increase, but is in arrears. Mr. Williams says he never agreed to an increase and therefore the purported increase is illegal. GIDC thereafter requested that Mr. Williams remedy several alleged breaches. These included payment of arrears of rent, to clean and keep the premises in a tidy condition, and desist from further construction on the premises. According to GIDC, Mr. Williams failed to remedy the alleged breaches and in January 2004, GIDC served on Mr. Williams a notice to quit and deliver up the premises by the 29th February, 2004. Mr. Williams, however, remained in possession of the premises. Rent was subsequently tendered by Mr. Williams and accepted by GIDC. In January 2006, GIDC commenced this action seeking possession of the premises, arrears of rent and Mesne profits.

[4] The issues for the court are:

1. Was the second increase of rent valid and binding?
2. Is Mr. Williams in breach of the various covenants alleged by GIDC?
3. Even if Mr. Williams is in breach of the various covenants alleged, is GIDC entitled to an order for possession?

The increase of rent

[5] Mr. Williams contends that that he paid the first increase, but that it was by force and under protest. In regard to the second increase he says that GIDC unilaterally increased the rent in 2003 from \$3,000.00 to \$3,300.00; that he never agreed to it; that he refused to pay and never paid same; that under the law of contract, a bilateral agreement such as a tenancy agreement cannot be unilaterally altered by one party without the consent of the other. He therefore denies that he is in arrears of rent, since he continues to calculate his rent at the monthly sum of \$3,000.00.

- [6] Claimant says that defendant was notified of the increase; that there were discussions held and that like the first increase, defendant has paid the increase, just not consistently. It is claimant's position that defendant's rent is in arrears and that he has failed to remedy this and the other several breaches brought to his attention.
- [7] A tenant holding over after the expiry of a fixed-term lease becomes a tenant at will. Where the tenant remains in possession and pays rent, all the circumstances must be examined to see whether the parties reached an agreement for some further tenancy **Longrigg, Burrough and Tounson v Smith** [1979] 2 EGLR 42. Here, due to the considerable period of occupation following the expiry of the lease, coupled with the payment and acceptance of rent by reference to a month, the implication can be safely drawn that the parties intended to create a monthly periodic tenancy.
- [8] With regard to the premises in question, there are no applicable statutory restrictions on the increase of rent. The premises are exempt from rent restriction (see the Rent Restriction (Exemption) Order, SRO No. 1 of 2001). Therefore, the rent can be increased at anytime once there is agreement between the parties. The dispute centers on whether there was such agreement.
- [9] Although the record shows an exchange of letters between the parties on other issues that arose between them, there was no such exchange on the issue of the rent increase. No correspondence was put before the court where the defendant wrote to the landlord to say he did not accept the rent. There are no letters written by him even expressing reservation about either increases. Likewise, even though claimant asserts that Mr. Williams accepted and consented to the increase, no written record of such consent was put before the court. Both parties in support of their position mainly rely on the payment record.
- [10] The statements of transaction attached to the May 18, 2006 affidavit of the defendant support the claimant's assertion that defendant paid his rent in an inconsistent manner. Defendant's rent was often in arrears. Even for the years prior to the first increase and thereafter up to the time of the second purported increase, the record shows arrears of rent.

[11] According to the statement dated 12/31/03, at the time of the second increase in June 2003, there were arrears of \$3,685.00. An invoice for rent for the month of June of \$3,300.00 is shown and a payment of \$3,000.00. For the month of July 2003, again an invoice of \$3,300 is shown. In that month defendant made payments of \$6,000.00 in two payments of \$3,000. Claimant continued to show the rent at the rate of \$3,300.00 per month and to apply the payments received on account and to show the arrears in the statement.

[12] The statement of transactions dated 12/31/04 shows arrears due of \$9,085.00, and that the payments received were applied to the account with rent continuing to be calculated at \$3,300.00 per month. The statement for the year 2005 shows the following payments by Mr. Williams:

January	\$3,000.00
March	6,000.00
May	6,000.00
June	3,000.00
July	5,000.00
August	5,000.00
October	10,000.00
December	5,000.00

The arrears due and owing at the end of the year were shown as \$5,685.00.

[13] For the year 2006, the statement ends at February and shows one payment by Mr. Williams in the sum of \$5,000.00. The arrears due is shown as \$7,285.00. The claim was filed in January 2006 and no rent has been paid since then.

[14] So what the record shows is that Mr. Williams, between 2003 and February 2006, was in possession of statements of transactions showing his monthly rent at \$3,300.00 and showing arrears of rent after the amounts paid by him were credited to his account. There is no evidence before the court that he challenged these statements. He has simply indicated in his evidence that he never accepted the increase. As a matter of fact, when asked in cross-examination what made the increase illegal, he responded "because no

one in the park had an increase in rent of over 66% and I was not in agreement with an increase in rent of over 66%".

[15] Claimant submits that the payments outlined above include payments of the increase and therefore shows defendant's consent. Because of the fact that payments were often being made in arrears on account, the amount of each cheque tendered cannot serve as an indication of what monthly rent was being paid. There were months when payments were in the sum of \$5,000.00 and as much as \$10,000.00. The more accurate indicator is the total rent paid by Mr. Williams. From June 2003, when the purported increase was made through January 2006 when the last payment was made is 32 months. If, as Mr. Williams alleges, he never accepted or paid the increase, then at the rate of \$3,000.00 per month, his total rent would have been \$96,000.00. As of the end of May 2003, there were arrears, according to the statement, of \$3,685.00. So the most Mr. Williams would have paid during that period would be \$99,685.00. If however, he was making payments at the increased rent of \$3,300.00, his total liability for the same period would be \$109,285.00, including the previous arrears. The record shows that Mr. Williams made payments on account of \$102,000.00.

[16] GIDC urges the court to find that Mr. Williams accepted the increase. GIDC buttresses the evidence of the payments with evidence by Mr. Carlton Frederick that discussions were held with Mr. Williams and that during those discussions he did accept the increase. The Court accepts this evidence.

[17] On the totality of the evidence, the court finds that Mr. Williams did accept the increase; Mr. Williams is therefore liable to pay rent at the increased amount of \$3,300.00 monthly. Mr. Williams has not paid rent since service on him of the Fixed Date Claim Form. GIDC is therefore entitled to judgment for the outstanding arrears in the sum of \$69,985.00 representing arrears of rent up to the date of trial.

Breaches of other covenants

[18] GIDC further contends that Mr. Williams is in breach of two additional covenants, namely: (a) to maintain the premises in a clean sanitary and serviceable condition and (b) to refrain from construction on the premises without first obtaining permission from GIDC. With

regard to (a), Mr. Williams admits that as far back as 1999 he received letters from GIDC alleging that he kept the premises in an untidy condition and that his workmen discharged garbage around the building. Mr. Williams however asserts that he is not responsible for the untidy state of the premises; that when GIDC delivered possession of the premises to him, there were old transformers, fridges, electronic apparatus, alternators and other debris on the outside of the premises. According to Mr. Williams, it took him about 1 year to remove all the debris he met on the premises. He further asserts that GIDC failed to provide a bin for his garbage as they did for the other tenants. Therefore, he had to gather his garbage at one spot and then hire a truck to cart it away.

[19] Mr. Williams, however, in the lease that bears his signature, declared that he received the premises, its approaches and environs in good condition. His now belated claim to the contrary, is unconvincing. Further, by Clause 4(f) he agreed "to maintain the premises in a good tenantable, clean and sanitary condition and to remove all trash, rubbish, garbage and other waste from the premises in a clean, safe and sanitary manner independently arranged and paid for by the tenant". His excuse that GIDC failed to provide him with a bin is no answer to the alleged violation. It is clear from the evidence, including but not limited to the photographs tendered in evidence, that Mr. Williams violated this covenant.

[20] With regard to the allegation that Mr. Williams carried out construction and excavation without permission, in January 2000 Mr. Williams was given permission to construct a covered building on 3,480 sq. ft. of land in back of the premises he occupied. The additional space was to be used for storage for his growing business. In May 2003, Mr. Williams again sought permission for further expansion work. He allegedly sought permission to concrete an area in back of the storage building that he had earlier constructed. The record shows, however, that Mr. Williams had already commenced excavating the lands before he sought permission from GIDC. His letter to GIDC begins as follows: "Please note the following: we were excavating lands with the intention of concreting the back portion of the storeroom mainly for the following reasons: (a) to relocate containers that are in the front portion of yard to the back. (b) to relocate materials that are to the front portion of the yard to the back. (c) to create more space to organize our materials in a more orderly fashion. (d) to fence material inside in an effort to eliminate

thieves." Mr. Williams then requested permission to continue his endeavors. Permission was denied and Mr. Williams was requested to desist from all construction on the compound; remove two containers that were improperly parked; and clean and keep in a tidy condition the area he occupied. Mr. Williams was given 14 days in which to remedy the situation or the letter threatened legal action.

- [21] The court has no hesitation in finding that Mr. Williams exceeded the permission he had earlier been granted. His letter of request speaks for itself. He has merely given the court a list of other matters that GIDC has failed to do in respect of his tenancy. However, these do not constitute an answer to the alleged breach on his part.

Is GIDC entitled to an order for Possession?

- [22] Except where otherwise provided by statute, a weekly or other periodic tenancy is determinable by a proper notice to quit. In fact, it is said that the right to determine a periodic tenancy by notice to quit is an inseparable incident of such a tenancy (Hill & Redman's Law of Landlord and Tenant, Para 210, 8142). A valid notice to quit puts an end to the right to occupy of the tenant under that tenancy as from its expiry date.
- [23] The notice to quit, served on 21st January, 2004, required Mr. Williams to deliver up possession on 29th February, 2004. GIDC had also previously served Mr. Williams with a Notice to remedy the breaches of covenants in compliance with section 13 (1) of the Landlord and Tenant Act Cap 164. Mr. Williams did not deliver up possession. However, no action was taken by GIDC until 6th January, 2006, when the Fixed Date Claim Form was filed. In the interim GIDC continued to accept rent tendered by Mr. Williams, albeit on an irregular basis.
- [24] Mr. Williams submits that by virtue of the act of GIDC's acceptance of rent from him for the period 2004 to 2006, a new tenancy was created upon the expiration of the Notice to Quit and that a new notice ought to have been served. In **Davies v Bristow [1920] 3 K. B. 428 at 437, 438** Lush, J., points out that when the term has been terminated by a competent notice, it is wrong to talk about a waiver. If the relations of landlord and tenant continue thereafter, it is by agreement between the parties. On the facts of this case, there is

sufficient evidence to conclude that the parties intended to create, and did create, a new tenancy. In order to determine this tenancy a new notice was required.

- [25] Furthermore, Mr. Frederick the Manager of GIDC recognized the need for a new Notice when he stated in his affidavit that having not taken any action after the first notice expired, he instructed his Attorney to serve a new notice. Unfortunately, no evidence of service of the new notice was presented. While there was reference made to a process server's affidavit, no such affidavit was submitted nor was the person called as a witness. Consequently, GIDC has failed to prove that it properly determine the tenancy by the service of a valid notice to quit on Mr. Williams. GIDC has also not proved compliance with section 13(1) of the Landlord and Tenant Act Cap 164, since the notice served thereunder in 2004 was subsequently waived with the acceptance of rent between 2004 and 2006. GIDC is therefore not entitled to an order for possession.

Conclusion

- [26] Mr. Williams, a monthly tenant of commercial premises, is in breach of the covenant to pay rent. GIDC is therefore entitled to judgment for the arrears of rent at the rate of \$3,300.00 per month. Mr. Williams was also in breach of the other covenants as alleged. However, the acceptance of rent by GIDC after the expiration of the notice to quit served in 2004, created a new tenancy for which a new notice to quit was required. No such notice having been served, the tenancy was not properly determined. GIDC is therefore not entitled to an order for possession.
- [27] Since GIDC was successful on two of the three issues tried, costs will be awarded to GIDC of two third of the prescribed cost.
- [28] Accordingly, judgment is granted in favor of GIDC as follows:
1. Arrears of rent in the sum of \$69,985.00.
 2. Costs in the sum of \$9,332.00.


Clare Henry
HIGH COURT JUDGE