

BRITISH VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE

BVIHCV2008/0013

BETWEEN:

CYNTELIA TODMAN-DOSWELL

By her Attorney in fact **AUDREY TODMAN**

Claimants

AND

CLIFFORD JOHNSON

Defendant

BVIHCV2008/0015

BETWEEN:

CYNTELIA TODMAN-DOSWELL

By her Attorney in fact **AUDREY TODMAN**

Claimants

AND

ANDREW REID

Defendant

Appearances:

**Mrs. Margaret Price-Findlay and Ms. Susan Demers for the Claimant
The Defendants in person**

**2007: February 22nd, March 11th
April 4th, May 13**

JUDGMENT IN CHAMBERS

- [1] **Joseph-Olivetti, J.:** These claims were heard together by consent on 19th February and 11th March although they were not consolidated and I reserved judgment and delivered an interim ruling on the 4th April with written reasons to follow. I apologize for the delay in so doing.
- [2] The claims were both initiated by fixed date claim forms. On their face they appeared to be simple enough - claims by a landlady, Mrs. Cytelia Todman-Doswell by her attorney, Mrs. Audrey Todman, for the recovery of premises, arrears of rent and mesnes profits. In fact

- they were two of four similar claims made by Mrs. Todman- Doswell in like manner. The other two were disposed during the course of these proceedings as explained below.
- [3] The claims are identical except that in the case of Mr. Reid the allegation is that he has quit the premises but still has his possessions therein. Essentially, Mrs. Todman-Doswell alleged that the defendants are tenants of certain premises at Maya Cove, Tortola, that rent was \$300.00 per month and that she served notice to quit in October 2007 to expire on 1st December 2007. The reason for the notice was that the defendants had been continually and habitually late in the payment of the rent and had failed and refused to pay the rent. The figure claimed for arrears of rent was \$1,800.00.
- [4] On the first hearing on the 19th February three of the defendants in the four claims attended court. They were all unrepresented. Mrs. Todman-Doswell was represented by Mrs. Demers. The court inquired of the defendants as to what they had to say in their defence. The defendants each admitted that they owed rent but felt that they ought not to be required to pay the full amount claimed and that compensation should be awarded to them for what they regarded as the unlawful acts of the Mrs. Todman-Doswell by her agent Mrs. Todman.
- [5] It was common ground that the monthly rent of \$300.00 included payment for utilities. The defendants made certain disquieting allegations against Mrs. Todman. They all alleged that because one tenant (who was not then before the court) had apparently failed to pay his or her rent Mrs. Todman in September 2007 had refused the rents they had tendered and had discontinued the electricity services to all their premises which were serviced by only one meter. In addition, the water supply had been cut off. Mrs. Todman subsequently served notice to quit in October 2007 and on the failure of the defendants to vacate on the 1st December as stipulated in the notices she caused the several premises to be broken and entered into in the absence of the tenants and damaged and took away the toilet facilities.
- [6] The defendants said they reported the matter to the Police but the Police seemed not to have taken any action. In addition, Ms. Antoine, a defendant to one of the other claims which was subsequently withdrawn said that she had filed a claim in the Magistrate's Court seeking compensation for damages for spoilt foodstuff and expressed her frustration that

at that date and despite several adjournments she understood that the claim had not yet been served on Mrs. Todman and so could not be dealt with.

[7] Counsel for Mrs. Todman was visibly and understandably taken aback as Counsel had earlier indicated to the court that she was holding papers on behalf of Mrs. Findlay and this was the first she was hearing of these allegations. Further, that if any of the alleged self-help actions had been taken by Mrs. Todman they were certainly not taken on the advice of her lawyers as Counsel's files did not reflect this. Counsel requested time to take instructions and the court acceded to her request.

[8] On the return date Mrs. Findlay appeared. Two of the matters were disposed of. Essentially, the claim against Miss Antoine was withdrawn, the parties agreeing to abide by whatever decision would be taken by the Magistrate (the claim had apparently been heard in the interim), and the other matter was withdrawn as the defendant did not appear.

[9] The court heard evidence on the return date from the remaining defendants, Mr. Reid and Mr. Johnson and from Mrs. Todman. The court also afforded the parties an opportunity to arrive at a settlement having regard to the grave nature of the allegations made by the Defendants. Agreement was arrived at in relation to Mr. Johnson vacating the premises but no agreement could be reached as to what damages if any should be paid by Mrs. Todman-Doswell to the Defendants and so I am left to make a final determination in respect of damages if any to be awarded to the Defendants and to determine when Mr. Reid should vacate the premises.

[10] I have no hesitation in saying that I prefer the evidence of the defendants to that of Mrs. Todman in all material respects. The following are my findings. Both Mr. Reid and Mr. Johnson are joiners by profession. They occupied one-room apartments, essentially premises consisting of a single room with a small kitchenette and bathroom in a building owned by Mrs. Todman's daughter, Mrs. Cyntelia Todman-Doswell at Maya Cove, Tortola. They were tenants of long-standing – Mr. Reid for over 10 years and Mr. Johnson for 9 years. The current rent of \$300.00 per month which had been arbitrarily and unilaterally increased over the years included utilities namely water and electricity as the rooms did not have separate meters.

[11] In early September, Mr. Johnson attended on Mrs. Todman to pay his rent. She informed him that another tenant was in arrears and that he had a choice either to hold the rent until

the other tenants paid or vacate the room. She thus refused the tendered rent. He also tendered rent on behalf of Ms. Antoine and this too was declined by Mrs. Todman on the same basis. Shortly thereafter, the electricity supply was discontinued. The defendants did not make any further attempt to tender rent for the ensuing months as they felt aggrieved by this. They claimed that they were of the view that Mrs. Todman had caused the supply to be cut off and that this was not the first time it had happened and that on every occasion the same person attended to disconnect the service.

[12] Mrs. Todman denied specifically that she discontinued the electricity and the water supply. The water supply it is noted has since been restored. However, I find that she was responsible for causing both services to be interrupted. With respect to the electricity supply Mrs. Todman testified that she did not pay the bill because the rent had not been paid and therefore the electricity company disconnected the electricity from the building. Clearly, she was not prepared to accept any responsibility for the disconnection. Her failure to pay the electricity bills and attend to the water situation amounts to a breach of contract. She was contractually obliged to provide the utilities and this obligation was not dependant on the tenants first paying their rents as my attention was not drawn to any contractual term agreed on or implied by law in these oral tenancies to that effect. I also accept that Mrs. Todman had habitually caused the electricity supply to be disconnected whenever a tenant was in arrears of rent thus plunging the entire building into darkness so to speak and this without any regard to her contractual obligations to the non-defaulting tenants. I also accept that the Defendants complained to Mrs. Todman time and again and requested separate meters for both water and electricity but apparently Mrs. Todman did not see fit to incur the expenses to rectify these matters.

[13] In October 2007 Mrs. Todman served both Defendants with notices to quit and deliver up their respective premises by 1st December 2007. The defendants did not vacate the premises as requested and I accept that this was due to the difficulties of finding suitable alternative accommodation and not due to any obduracy on their part. It is notorious that the British Virgin Islands has a large community of expatriate workers and that it is not easy for lower income workers in particular (to which group the defendants belong) to source proper accommodation at relatively short notice.

- [14] Sometime in early December (the season of giving and sharing) Mrs. Todman caused her workmen to break into the premises of the Defendants whilst they were away to break the pipes and remove the toilets and face basins from the rooms. They were taken away in her vehicle. Mrs. Todman attempted to deny liability for her acts by saying that she was not present and how could the court possibly be expected to believe that she physically could lift and carry away a toilet.
- [15] It is to be remarked that that Mrs. Todman although well and robust seeming is a woman advanced in age and certainly the court would not have accepted that she herself actually lifted and took away the toilets if that were the allegation. However, I am satisfied from the evidence that her workmen were there and did the acts complained of on her orders. I also find that these inhumane acts were done without the benefit of legal advice and that as of the 16th February hearing Mrs. Todman had not informed her lawyers of what she had done in an effort to harass her erstwhile tenants into leaving.
- [16] I have already held that Mrs. Todman in failing to pay the electricity bills and causing the electricity to be disconnected and the water supply to be interrupted acted in breach of contract. That breach persisted until the contract was terminated by notice on 1st December. That the Defendants suffered serious inconvenience for approximately two months is a given having regard to the vital role of water and to the fact that electricity is a basic amenity without which many of one's daily activities cannot be carried on without great deal of inconvenience and discomfort. I find it difficult to imagine that Mrs. Todman, a woman of obvious intelligence and good education was not fully aware of the consequences of her acts yet she allowed this situation to continue without a qualm. Accordingly, the Defendants are entitled to damages. This must perforce be limited to general damages only as they no doubt due to lack of the means to obtain legal advice have not presented any particulars of special damages. Mrs. Todman can regard this as a fortunate circumstance. In my judgment an award of general damages of \$3,500.00 will be made to each Defendant as I think it reasonable compensation for the hardship suffered in all the circumstances.
- [17] Now, are the Defendants entitled to any relief as a result of Mrs. Todman taking away their toilet facilities? These facilities were taken away or damaged after the contractual tenancies had been determined by Notice to Quit. At common law, the tenancies having

been so determined, the tenants became trespassers. See **Aglionby v Cohen [1955] 1 All ER 785**. This is so as there is no legislation in place in the BVI to protect the rights of tenants especially tenants of residential premises and so secure for our residents the basic human right to proper accommodation which I view as a component of the right to life. That this is so is particularly surprising given that the BVI is very sophisticated in some respects, is a British Overseas Territory to boot and that England spearheaded the protected tenancies legislation first in England and then in the British Commonwealth in the early part of the last century. I remark on this significant omission in our laws with the hope that the relevant authorities will see fit to remedy this lacuna in the near future in the search for a better life for all its residents.

[18] And so it is left that as trespassers, these two persons who had lived as tenants of Mrs. Todman-Doswell for so many years have no protection from arbitrary and/or unreasonable eviction. The only stricture or protection at common law is that Mrs. Todman could use no more than reasonable force to evict them. This related to the use of actual physical force on their persons or possessions. Thus, strictly speaking they have no recourse against Mrs. Todman for taking away what is in law the toilet facilities of the landlady. I therefore leave those acts to the good conscience of Mrs. Todman as in the end, law without due regard to the dictates of conscience cannot withstand scrutiny by right thinking men and women.

[19] I do not for one moment accept Mrs. Todman's lame attempt to excuse her actions by saying that she thought that the tenant had left. If this were so then what was the need to remove and take away the facilities? Although strictly speaking Mrs. Todman damaged her own property and deliberately ran the risk of turning her daughter's premises into slum tenancies in a humane, civilized and sophisticated society the means she used to attempt to get her former tenants out cannot be tolerated. To use the words of Lord Denning in **Drane v. Evangelou [1978] 2 All ER 437** Mrs. Todman resorted to "monstrous" acts to rid her daughter of unwanted tenants. Yet having regard to the state of the law I do not perceive that I have any power to order compensation for the damages resulting to the Defendants from those barbaric acts.

- [20] With respect to the claim for arrears of rent I find that the Defendants must each pay \$900.00 being rent for September, October and November 2007 but this must be set off against the damages awarded to them.
- [21] With respect to the claim for mesnes profits I will make no order in that respect as without more no one can expect to have any tenant where premises are without electricity and toilet facilities. If Mrs. Todman-Doswell wants compensation under this head then it follows that she must restore the supply and the toilet facilities or bring evidence to indicate the level of rent she will get.
- [22] I consider that in all the circumstances Mrs. Todman-Doswell should pay the costs of the Defendants which I have summarily assessed at \$ 900.00 each.

Conclusion

- [23] In conclusion to sum up the orders made are as follows:-
- (1) Mr. Johnson to deliver up possession by the 15th April.
 - (2) Mr. Reid to deliver up possession on the 30th April.
 - (3) The Defendants must each pay \$900.00 being rent for September, October and November 2007 to the Claimant, this sums to be set off against the compensation and costs awarded;
 - (4) The Claimant shall pay to each of the Defendants the sum of \$3,500.00 as damages for breach of contract.
 - (5) The Claimant must pay the Defendants' costs of \$900.00 each.

Rita Joseph-Olivetti
High Court Judge