

IN THE PROVINCIAL COURT OF ALBERTA

BETWEEN:

MARGARET SEATON

Plaintiff

- and -

DEVON BERNARD and STACEY HORAN

Defendant

JUDGMENT OF THE HONOURABLE JUDGE J.N. LeGRANDEUR

Nature of Proceedings

[1] In this case, the Plaintiff/Landlord, Margaret Seaton claims damages from the Defendant/Tenants, Bernard and Horan in the sum of \$1,045.49, for allegedly breaching their tenancy agreement. The Plaintiff has chosen not to seek judgment against the tenant Bernard, as a result of an out of court settlement reached between he and the Plaintiff, whereby Bernard paid to the Plaintiff the sum of \$535.25 toward the claim. The Plaintiff seeks judgment from this Court against only the Defendant Horan for any sum found payable in excess of the payment by Bernard.

Issues

[2] The issues before the Court relate to whether the Defendants breached the tenancy agreement by causing damage to the premises, failing to keep the premises clean and failing to leave the premises in a satisfactory condition upon vacating the same; and if so, to what compensation is the Plaintiff entitled.

Facts

[3] On the 23rd day of November, 1998, the Defendants executed a document entitled "Rental Agreement", (Exhibit #1) with respect to the farm house on the SW1/4 of 16-19-15 W4th. This document, for the most part, is a memorandum of the terms of the tenancy agreement between the parties, although it was never signed by the Plaintiff/Landlord. The agreement describes the leasehold as an annual lease, but does not specify a date of commencement. The viva voce testimony of the Plaintiff, Seaton and the Defendant, Horan confirms that the Defendants received the keys for the premises on the 20th of November, 1998 and that the tenancy commenced December 1st, 1998.

[4] The rent agreed to by the parties was \$650.00 per month in advance, with a security deposit of \$650.00 payable as well. The security deposit was returned to the Defendants by the Plaintiff following their vacating of the premises. The Plaintiff returned the security deposit despite her claim for damages because no pre-occupancy inspection report or post-occupancy inspection report was completed as contemplated and required by the Residential Tenancies Act, R.S.A. 1980, C.R-15.3.

[5] Although no pre-occupancy inspection report was prepared, the tenants did view the property before entering into the lease, and did, with the help of parents, cause a video of the premises to be prepared while they were moving in. The video prepared was viewed by all parties at the hearing and is marked as Exhibit #8 in these proceedings.

[6] Particulars of the Plaintiff's damage claims are specified in the document marked as Exhibit #7. The Landlord claims for the replacement of a damaged spruce tree, maintenance costs to return the yard and garden surrounding the residence to a satisfactory condition, the cost of cleaning the inside of the residence, the cost of cleaning the carpet, costs associated with the replacement of a basement rug, allegedly damaged by cat urine, and the cost of moving all the rubbish and garbage remaining in the premises or on the grounds surrounding the premises to a landfill.

Law and Analysis

[7] By virtue of s.16 of the Residential Tenancies Act, supra, as amended, the Defendant/Tenants covenanted, among other things, that:

- a. they will not do or permit significant damage to the premises,

- b. common areas or the property of which they form a part, and that they will maintain the premises and property rented with it in a reasonably clean condition.

Section 39.4 of the Statute provides:

- (4) No deduction may be made from a tenant's security deposit for normal wear and tear to the residential premises during the period of the tenancy.

Normal wear and tear is defined in s.39(0.1)(a) to mean:

The deterioration that occurs over time with the use of the premises, even though the premises receive reasonable care and maintenance.

[8] The memorandum (Exhibit #1) which I am satisfied represents the substance of the terms of the leasehold agreement between the parties specifically provides:

- 6. There are to be no boisterous parties or any activity carried on in this premises which will in any way damage or devalue the property or annoy neighbours. Any damages will be charged to the tenant. Premises are to be kept clean. The Landlord reserves the right to make periodical inspections with 48 hours notice.
- 10. The garden is to be kept cut, weeded and watered in the summer. If this is not done to the satisfaction of the Landlord, the Landlord will have it done without notice and charge for this as increased rent.

[9] The Landlord's claim is premised on the allegation that the tenant has breached one or more of the aforementioned statutorily provided or agreed upon covenants. The Landlord has the obligation of proving that which she asserts, that is the breach of the covenant or covenants as alleged. In order to meet that obligation, the Plaintiff must satisfy the Court by a preponderance of evidence that a breach or breaches of the tenant's obligations have occurred.

[10] The duty of a tenant, at common law, with respect to repair and maintenance of

leasehold premises, is adequately summarized by Denning, L.J. at p.27 of the reported case Warren v.Keen, [1954] 1 Q.B. 15, C.A.:

Apart from express contract, a tenant owes no duty to the landlord to keep the premises in repair. The only duty of the tenant is to use the premises in a husband like, or what is the same thing, a tenantlike manner. That is how it was put by Sir Vicary Gibbs C.J. in Horsefall v.Mather and by Scrutton L.J. and Atkin L.J. in Marsden v.Edward Heyes Ld. But what does "to use the premises in a tenantlike "manner" mean? It can, I think, best be shown by some illustrations. The tenant must take proper care of the place. He must, if he is going away for the winter, turn off the water and empty the boiler. He must clean the chimneys, when necessary, and also the windows. He must mend the electric light when it fuses. He must unstop the sink when it is blocked by his waste. In short, he must do the little jobs about the place which a reasonable tenant would do. In addition, he must, of course, not damage the house, wilfully or negligently; and he must see that his family and guests do not damage it; and if they do, he must repair it. But apart from such things, if the house falls into disrepair through fair wear and tear or lapse of time, or for any reason not caused by him, then the tenant is not liable to repair it.

[11] Clause 6 of the Memorandum of Agreement between the Landlord and Tenants (Exhibit #1) provides that, in effect, the Tenant must pay for any damage to the property caused by an activity carried on in the residential premises. In keeping with the summary of Lord Denning referred to aforesaid, I would interpret Clause 6 of the Memorandum of Agreement to mean that the leasehold premises must not be damaged wilfully or negligently by the Tenant and the Tenant must see that his/her friends and guests don't negligently or wilfully damage the leasehold property either.

[12] The Plaintiff/Landlord's claim may be broken down into two categories. First, she alleges certain damage, that is the destruction of a spruce tree and damage to the basement carpet caused by cat urine. The second group of allegations centres not on damage, but on the covenant to keep the premises reasonably clean and to leave the premises reasonably clean.

Damaged Spruce Tree - (\$50.00 claimed)

[13] The subject spruce tree was located in the yard of the residence and was damaged by an automobile. The Plaintiff replaced it by planting a spruce tree in a different area of the farm. The Plaintiff did not purchase another tree, the \$50.00 claim is based upon what she understands would be the cost of replacement. The statutory covenant found in s.16(c) of the Residential Tenancies Act, supra, provides that the Tenant will not do or permit significant damage to the premises or common area. Clause 6 of the Memorandum of the terms of the leasehold tenancy (Exhibit #1) provides that the tenant is liable for damage caused by any activity on the premises. Although I do not believe the damage in this sense to be significant, it nonetheless is damage caused wilfully or negligently by the Tenant or the Tenant's guests and given the clear wording of Clause 6 of the Memorandum of terms, I find the Defendants liable for the destruction of the spruce tree. The Plaintiff's evidence as to the damage is of little value as to actual loss, however, I am satisfied a loss has occurred and I award nominal damages of \$50.00.

Yardwork - (\$140.00 claimed)

[14] Mowing, trimming and weeding - 7 hours at \$20.00 per hour (includes equipment)
\$140.00

[15] Paragraph 10 the Memorandum (Exhibit #1) requires that the garden be kept cut, weeded and watered in the summer. The Tenants vacated the premises in September of 1999 and the evidence demonstrates the degree to which this clause was not fulfilled. The Plaintiff is entitled to judgment for the costs of doing that which the Defendants failed to do so as to return the garden to a condition similar to that which it was in when it was originally occupied by the Defendants. The Plaintiff's claim of \$140.00 is reasonable in this regard in my view. This sum is arrived at on the basis that two people, each working for 7 hours at the rate of \$10.00 per hour, fulfilled the required work.

Cleaning the residence - (\$170.00 claimed)

[16] The Plaintiff paid the ingoing tenant \$170.00 for 15 hours work at the rate of \$10.00 per hour plus a further \$20.00 for cleaning material to clean the subject premises after it was vacated by the Defendants. I have no evidence as to why it took 15 hours to do, nor do I have the standard of cleaning that was undertaken by the ingoing tenant. If her work was in fact a reparation of normal wear and tear, it cannot be allowed, or if the ingoing tenant's effort reached a level of cleanliness that would exceed that which was

reasonable or necessary in the circumstances, then the full cost charged ought not to be allowed.

[17] The Defendant's ought to have left the premises in a state of cleanliness similar to that which the premises were in when they occupied the same, subject to the fact that normal wear and tear must be considered in this context as well. I am not able to conclude on the evidence that the cleaning undertaken was that which was necessary or not. The evidence on the issue was unclear and I am not able to conclude that the cleaning was necessary to the extent it was undertaken. I do accept that some cleaning was necessary. Accordingly, I award a nominal sum of \$75.00 towards the inside cleaning of the home.

Carpet Cleaning - (\$152.00 claimed)

[18] There is no specific covenant requiring the cleaning of the carpets in the Memorandum of Terms (Exhibit #1). There is evidence of some staining and dirt, however, I do not consider this to be anything more than normal wear and tear, given the nature of the premises and the use it was to be put to. Carpets get dirty with normal wear and tear and although a tenant would be responsible for usual and ordinary cleaning and would be responsible for cleaning the results of abnormal use, I do not conclude on the evidence, that this carpet was subject to abnormal use. The evidence leads me only to the conclusion that the cleaning of the carpet in this instance would simply be repairing normal wear and tear, which is not the obligation of the Tenant, unless a specific covenant provides therefore. (Re: MacNeil v. North American Leaseholds Ltd., (1981) 118 DLR (3d) 37)

Re-carpeting - (\$227.16 claimed)

[19] The Plaintiff testified that certain carpeting in the basement was replaced due to cat stains. The Defendant's were charged for only a portion of that cost (60%). The Defendant Horan disputes the damage, denying that the carpet was stained with cat urine. Photo #15 of the bundle of photographs (Exhibit #2), shows carpet with what appears to be stains on it, although I have no evidence as to the actual cause of the stains, other than the testimony of the Plaintiff and the denial of the Defendant. Neither do I have any basis on which to compare to assess the condition of the rug as at the date the premises were vacated by the Defendants as compared to when they took occupancy of the subject

premises. In any event, this is a very limited area, the original carpet was old and was of no real value. The Plaintiff has, in my view, suffered no real loss. To allow the Plaintiff's claim in this regard would be to allow a betterment of their position, given the age and location of the carpet in the first place. The Plaintiff has not satisfied me by a preponderance of evidence that the carpet sustained the damage alleged and in any event, given the age of the carpet and its location, I conclude that no real loss has been suffered.

Removal of Rubbish - (\$180.00 claimed)

[20] I am satisfied on the evidence presented that there were items left in the house and items on the premises surrounding the house that ought to have been removed in order to leave the premises in a reasonably clean condition and given the volume of such items as shown in the photographic evidence, the Plaintiff should be compensated for the cost and/or effort of gathering up the materials and transporting them to a local landfill. The Plaintiff charged for six hours of work for both she and her husband at the rate of \$15.00 per hour per person, for a total of \$180.00, plus \$50.00 attributable to the use of their trailer and \$24.00 for the round trip of 48 kilometers at the rate of \$.50 per kilometer for travel to and from the landfill. I have no basis on which to determine that \$15.00 per hour for the Plaintiff and her husband is representative and why this rate should be more than the \$10.00 per hour rate charged with respect to the yard work referred to herein previously. Accordingly, the Plaintiff's claim with respect to the effort in gathering and removing the rubbish shall be paid on the basis of 6 hours work for each of two individuals at the rate of \$10.00 per person per hour, for a total of \$120.00, plus a nominal amount of \$50.00 being attributable to use of their trailer to haul the rubbish and the Plaintiff shall further be entitled to mileage at the rate only of \$.30 per kilometer for the 48 kilometer round trip, which is the sum of \$14.40. The Plaintiff shall receive total compensation with respect to this item in the amount of \$184.40.

Summary of Judgment and Costs

[21] The Plaintiff has proven total damages in the amount of \$449.40. This sum has been satisfied by payment of the Defendant Bernard in the sum of \$535.25, which sum I understand, was paid as a credit against whatever the total indebtedness was assessed at, on the understanding that if judgment were obtained for more than the sum paid, it would not be enforced against the Defendant Bernard. Given that the damage claim has been satisfied by the aforementioned payment, no judgment shall issue against either of the

Defendants.

[22] Given that the Plaintiff did not succeed in proving damages in an amount greater than the sum paid by Bernard, no costs are awarded to either party.

DATED at the City of Lethbridge, in the Province of Alberta, this 23rd day of July, A.D. 2001.

Jerry N. LeGrandeur
Judge of the Provincial
Court of Alberta

JNL/sk