State of New York
County of Ontario
Canandaigua City Court

Index Number: **SC-000772-11/CA**

Edward J Campbell
Claimant(s)

-against-

Paul Graves
Defendant(s)

DECISION

Present: Hon. Stephen D. Aronson

Appearances: Claimant: Pro se

Defendant: Pro se

In this small claims case, the claimant ("landlord") seeks $5000 from the defendant ("tenant"). The tenant asserted a counterclaim against the landlord seeking $5000. A hearing was held on December 1, 2011; the parties testified; their spouses appeared; and the court heard testimony of three other witnesses. The parties were given until December 7, 2011, to make written submissions. The undisputed testimony showed that tenant and his family rented a house from the landlord on County Road 4 in Clifton Springs. The tenant and his family moved into the home in January of 2009 under a written lease with a one-year term. The tenant (and not the tenant's wife) is the real party in interest because his wife did not sign the lease. The tenant and his family continued to reside at the property at the expiration of their term. Under New York law, for tenants continuing to reside at a landlord's premises after the expiration of a written lease, the provisions of the written lease remain in force as long as the tenants remain in possession of the premises (*City of New York v. Pennsylvania R.R. Co.*, 37 NY2d 298 (1975);

McClenan v. Brancato Iron & Fence Works, 282 AD2d 722 [2nd Dept., 2001]). At the hearing the landlord presented a written summary of his claims; they totaled $5690.56. The tenant seeks the return of his $825 security deposit; he also seeks in excess of $12,000 for damage to personal property.

In every small claims case, the court is bound to perform substantial justice to the parties in accordance with the principles of substantive law (Uniform City Court Act § 1804).

OUTSTANDING LP GAS BILL

The landlord contends that the tenant owes $408.36 -- the amount incurred to fill the gas tank at the end of the tenant's period of occupancy. Although the lease is silent on the responsibility for payment of gas bills, the parties do not appear to dispute the fact that the tenant is responsible for gas bills. The credible evidence shows that the landlord had the gas tank filled at the outset of the lease. The credible evidence shows that during the period of occupancy of the tenants (Jan. '09 - Aug. '11), the propane gas bills were in the landlord's name for a part of the time and in the tenant's (and the tenant's wife's) name for part of the time. The credible evidence shows that the tenant paid the landlord for some of the gas during the tenancy but there is no conclusive evidence as to the amount paid. The computer-generated statements from Griffith Energy, Inc. (the gas supplier) show the propane purchases for both accounts; and they show that the last propane delivery was for $408.36 of gas on August 8, 2011, about the time the tenant and his family vacated the premises. However, in the absence of clear evidence as to how much the tenant paid the landlord directly for gas during the period of occupation, substantial justice to the parties would be performed by awarding the landlord one-half of the final billing amount of $408.36, or $204.18. A better record of monthly charges and monthly payments might have been beneficial.

CARPET REPLACEMENT

The landlord contends that the tenant should be responsible for $3889.24 for carpet replacement. The credible evidence showed that the landlord installed new carpeting in the Fall of 2008. Although stains and burn marks are claimed, the landlord offered no photos of damage to the carpet. The tenant acknowledged damage for a spot in the living room. The tenant claims that during a final walkthrough, this spot was the only damage found by the landlord's wife. The tenant contends that the landlord never sent a bill or estimate to repair or replace the carpet. In cases where the landlord claims damages beyond reasonable wear and use, the landlord has the burden to prove that the damage was beyond reasonable wear and use (*Blend v. Castor,* 25 M3d 1215 [Watertown City Court, 2009]). Although the parties gave a description of the damage to the carpet, there were no photos submitted, and the hearsay statements on the replacement estimate were not helpful. In the interest of performing substantial justice to the parties and given the paucity of evidence on this issue, the landlord is given a credit of $250 for carpet repair.

VINYL FLOORING

The landlord contends that the tenant should be responsible for $632.96 to replace the vinyl flooring. The landlord contends that the vinyl flooring in the laundry room is ripped. The tenant contends that nothing was mentioned about a ripped floor in the final walkthrough. The tenant submitted a tape recording of the final walkthrough involving the parties' spouses. Although the landlord's wife may have limited the damages to be deducted from the security deposit, in the absence of a binding agreement between the tenant and landlord, neither party is bound by the statements made at the final walkthrough. As stated above, in cases where the landlord seeks damages, the landlord has the burden to prove damages beyond reasonable use

and wear (*Blend v. Castor, Id.*). In the absence of photos or other proof of damages, and considering the credible evidence, principles of substantial justice do not support an award to the landlord for the alleged vinyl flooring tear.

BALANCE OF GUEST FEES

The landlord seeks $160 for fees the tenant agreed to pay for guests. The tenant agrees to owing the landlord the sum of $160 for unpaid guest fees.

MOVING STORAGE SHED

The credible evidence shows that when the tenant moved in, the landlord agreed to pay $100 so that the tenant could move the storage shed onto the property for which the tenant agreed to pay the landlord the sum of $50. The tenant contends that he shouldn't have to pay the $50 because he gave the shed to the landlord; the landlord claims the tenant just left it. Even if the tenant gave the shed to the landlord, the tenant should not be relieved of his contractual agreement to pay $50 for having the shed delivered to the property at the outset of the tenant's occupation. The landlord should be credited with $50.

FIRE EXTINGUISHER

Substantial justice warrants an award of $46 to the landlord for a missing fire extinguisher that was clearly on the premises when the tenant moved in. The tenant could not remember there being a fire extinguisher at the premises when he and his family moved in.

SIDING HOLES FROM CABLE

The landlord seeks $400 from the tenant for siding damage caused from installation of Directv cable. The landlord contends that the installation was done without his permission. The tenant contends that the cable company would not have done the installation without permission from the landlord. Regardless of whether the landlord's permission was obtained, the tenant

should be responsible for any damages caused by a service requested by the tenant. The landlord ballparked $100 per hole for 4 holes to do the repair. In the absence of an actual estimate, substantial justice would be performed by awarding the landlord a credit of $200.

LOCK REPLACEMENT

The landlord seeks $100 to replace the locks because the tenant changed the locks after moving in. The credible evidence shows that the landlord consented to the tenant changing the locks. Under these circumstances, the landlord should be responsible for replacing them again when the tenant and his family vacated the property.

COUNTERCLAIM

The tenant seeks the jurisdictional limit of $5000 for damage to his son's personal property and for return of his $825 security deposit. The personal property was allegedly damaged because of the landlord's negligent failure to fix the garage roof. In the absence of any ownership interest in the personal property, the tenant is not a proper party and the claim must be denied. In the absence of an indemnification, assignment or power of attorney, the tenant has no legal right to seek damages for his son's personal property.

SUMMARY

The landlord is entitled to credits of $910.18, consisting of $204.18 for gas; $250 for carpet repair; $160 for guest fees; $200 for TV hole repairs; $50 for the storage shed transport; and $46 for the fire extinguisher. The tenant is entitled to a credit of $825 for his security deposit. The difference of $85.18 is owed by the tenant.

Judgment for the landlord for $85.18 plus the $20 filing fee.

ENTERED: Canandaigua, New York
DATED: December 21, 2011

Hon. Stephen D. Aronson
City Court Judge

"An appeal from this judgment must be taken no later than the earliest of the following dates: (I) thirty days after receipt in court of a copy of the judgment by the appealing party, (ii) thirty days after personal delivery of a copy of the judgment by another party to the action to the appealing party (or by the appealing party to another party), or (iii) thirty-five days after the mailing of a copy of the judgment to the appealing party by the clerk of the court or by another party to the action."

Exhibits will be held for 30 days at which time they will be destroyed, if not picked up.