

Citation: *Singh v. Selly*, 2022 YKSM 3

Date: 20220617
Docket: 21-S0009
Registry: Whitehorse

SMALL CLAIMS COURT OF YUKON
Before His Honour Judge Digby

GURJANT SINGH and
LOVEKESH

Plaintiffs

v.

SANJAY SELLY and
KOMALPREET KAUR

Defendants

Appearances:
Gurjant Singh and
Lovekesh
Sanjay Selly

Appearing on behalf of the Plaintiffs
Appearing on behalf of the Defendants

REASONS FOR JUDGMENT

[1] The plaintiffs claim they are owed by the defendants equal shares of the portion of the security deposit returned to Ms. Kaur on April 14, 2021, upon termination on March 31, 2021, of a residential tenancy lease for premises at 171 Olive May Way, Whitehorse, Yukon. The defendants acknowledge owing \$133.33 to Mr. Singh but deny responsibility for the balance of the claim.

[2] The defendants, Ms. Kaur and Mr. Selly, are a common law couple. Mr. Selly advised that Ms. Kaur was not present at this hearing because she was not feeling well. Mr. Selly stated that he would speak on behalf of both of them.

[3] On August 22, 2020, the two plaintiffs and two defendants signed a month-to-month lease beginning on September 1, 2020, ending on August 31, 2021 with a monthly rent of \$2,400 and a security deposit of \$2,400. Each of the four tenants contributed an equal amount of \$600 for the security deposit.

[4] The lease contained the following statutory conditions:

3. Obligation of the Tenant – The tenant shall be responsible for the ordinary cleanliness of the interior of the premises and for the repair of damage caused by willful or negligent act of the tenant or of any person whom the tenant permits on the premises. (section 76(e)(f))
4. Subletting Premises – The tenant may assign, sublet or otherwise part with possession of the premises subject to the consent of the landlord which consent will not arbitrarily or unreasonably be withheld or charged for unless the landlord has actually incurred expense in respect of the grant of consent. (section 71)

[5] The lease also contained the following additional obligations:

8. The tenant promises to comply with any additional obligation set out below:
 - A. No pets, no parties and no smoking inside the property;
 - B. Limited four tenants live in this property;
 - C. Let the landlords bring the new tenants view the property when the current tenants decided to move out.
 - D. Do not rent this place out again and be a second landlord when you are living this property without the landlords promise.
 - F. Keep the property clean and good condition.

[6] Representations at trial revealed that Mr. Selly and Ms. Kaur were tenants of 171 Olive May Way immediately prior to September 1, 2020. Mr. Selly indicated that he owned the furniture in the house. Mr. Selly stated that from the start of the lease on

September 1, 2020, until December 31, 2020, there were eight people living in the house.

[7] Ms. Kaur was the person who collected rent contributions and paid the landlord. She was the contact between the tenants and the landlord. This no doubt is the reason why the landlord returned the security deposit less damages to her.

[8] Mr. Lovekesh gave notice to the other tenants in December 2020 that he would be moving out the end of December. Mr. Lovekesh did not pay rent for the months of January, February, and March 2021. At the beginning of the proceedings, the Court was advised that an individual, Mr. N., took Mr. Lovekesh's place as a tenant on an informal basis. Nothing was reduced to writing and no changes were made to the lease signed August 22, 2020. Mr. Selly submitted that Mr. Lovekesh's notice to leave did not comply with the 30 days' notice required under the *Residential Landlord and Tenant Act*, SY 2012, c. 20. As I find as a fact that no monetary loss was suffered by the other tenants for January, February, and March 2021, this point, even if correct, is of no consequence.

[9] Mr. Lovekesh maintains, and is supported by Mr. Singh, that he was content to leave his share of the security deposit with the landlord on the understanding that it would be returned to him when the landlord released it on termination of the tenancy. He does not take issue with the amount claimed by the landlord for damages. Both he and Mr. Singh request an order directing the plaintiffs to pay 25 percent of the amount of the returned security deposit to each of them.

[10] Mr. Selly's position, on his own behalf, is that since the balance of the security deposit was returned to Ms. Kaur and not him, he is not responsible for returning monies from it belonging to Mr. Singh and Mr. Lovekesh.

[11] Mr. Selly's position, on behalf of himself and his common law partner, is that they should be entitled to deduct monies expended by them to clean the premises and repair damage, plus an amount to compensate them for their time and labour. Without their efforts, the amounts retained by the landlord would have been greater.

[12] They claim the following should be deducted from the returned security deposit before being divided equally:

\$300 – Cleaning Supplies;

\$400 – Cleaning;

\$250 – Refrigerator part;

\$100 – Bulbs and sheet;

\$145 – U-Haul and dumping fees; and

\$55 – Floor markers and wooden plank (shelf).

[13] Despite Mr. Selly's intention to request contributions from Mr. Lovekesh and Mr. Singh, Mr. Selly did not obtain any receipts, or if he did, he did not retain them. As Mr. Selly is claiming entitlement to these deductions, the onus is on him to prove his entitlement on a balance of probabilities.

[14] From January 1, 2021, to March 31, 2021, there were six people residing in the house. Ms. Kaur and Mr. Selly had the upper floor. The others had the ground floor bedrooms and their own bathroom. Common areas were the basement, garage, kitchen, common rooms on the ground floor, plus the outside areas. Mr. Singh and Mr. Lovekesh provided photographs bearing the date March 28, 2021, showing the clean condition of their part of the house. Both state they did not leave any furniture or personal possessions behind when they vacated the premises. Mr. Selly agrees.

[15] Mr. Selly attached photographs to his reply: four undated photographs; three likely of the refrigerator; one of a shelf; and two photographs dated February 22, showing garbage in an interior room or rooms.

[16] In evaluating the defendants' claims, the focus is on the tenant's obligation under the terms of the lease regarding the condition of the property upon conclusion of the lease. Any understanding or agreement, one or more of the tenants may have had with either of the two additional residents of the house regarding the condition of the premises, is not relevant. In any event, there is no evidence of any such agreement or understanding.

[17] In consideration of the above, along with other submissions, both oral and writing, the defendants' claims are assessed as follows.

Cleaning Supplies

[18] Without receipts, a list of items purchased, quantities unused and available for future use, or a way of determining the portion used on common areas, it is impossible to calculate a precise figure.

[19] Despite this lack of information, it is reasonable to conclude that there must have been some cleaning supplies required to clean the common areas. This is arbitrarily estimated to be \$100.

Cleaning Cost

[20] The defendants claim \$400 to compensate them for three days spent cleaning the house. The plaintiffs were not advised of this claim for compensation in advance of the work being performed, and did not, at any time, agree to such compensation. It is not clear how much of the three days was spent cleaning the common areas nor have the defendants indicated any imputed hourly rate. The defendants have failed to persuade me on a balance of probabilities that they are entitled to compensation for their time spent cleaning the premises.

Refrigerator Part

[21] A photograph confirms the damage to the refrigerator drawer. Mr. Selly explained that he got advice from the landlord as to where he could obtain a replacement part. He said he paid cash for the part. I accept his estimate of the cost. I find that Mr. Selly has proven this claim for \$250 on a balance of probabilities.

Bulbs and Sheet

[22] There is little, if any, evidence to support this claim. This claim is not proven on a balance of probabilities and is therefore denied.

U-Haul and Dumping Fees

[23] Mr. Selly indicated that he had to remove 50 to 60 garbage bags and take them to the dump. He stated he used a U-Haul which he had for a few days. He claims a total of \$145 which is not itemized between tipping fees and a pro-rated cost of the U-Haul. The plaintiffs maintain they should not have to contribute to the cost of the U-Haul which Mr. Selly had for his own moving needs. They also question the quantity of garbage bags as the landlord had been at the premises midmonth for the purpose of showing the premises to prospective tenants. There was no complaint to their knowledge regarding excess garbage. Mr. Selly, in response, says the garbage was in storage areas of the house and yard. The defendants have not persuaded me, on a balance of probabilities, that the defendants incurred any additional expense, of any consequence, in using the U-Haul to take garbage to the dump. Without information as to the cost of tipping fees, together with conflicting evidence as to the number of bags, it is not possible to estimate a dollar amount on a preponderance of probabilities. The claim for reimbursement for U-Haul charges and dumping fees is denied.

Floor Markers and Wooden Plank (Shelf)

[24] The damage to the shelf (wooden plank) in the kitchen is supported by a photograph. Mr. Selly's estimate of the cost is accepted. The claim for \$55 has been proven on a balance of probabilities.

Conclusion

[25] The claims allowed can be deducted from the security deposit less damages received from the landlord by Ms. Kaur.

Security Deposit Returned		\$1,661.25
Less Cleaning Supplies	\$100	
Refrigerator Part	\$250	
Floor Markers & Shelf	<u>\$55</u>	<u>\$405.00</u>
		<u>\$1,256.25</u>

[26] The defendants believe this amount should be divided three ways on the basis that Mr. Lovekesh, having left the premises by December 31, 2020, is not entitled to the security deposit. The evidence of Mr. Lovekesh and Mr. Selly that Mr. Lovekesh was content to leave his security deposit with the landlord until the landlord returned any balance owing to the tenants is accepted. Earlier in this decision, I found, as a fact, that the other tenants suffered no monetary loss as a result of Mr. Lovekesh leaving as another resident, Mr. N., took his place.

[27] There is no basis for depriving Mr. Lovekesh of his 25 percent share of the security deposit less damages returned by the landlord.

[28] Each of the plaintiffs is entitled to 25 percent of \$1,256.25, which is \$314.06.

[29] As Ms. Komalpreet Kaur received the security deposit refund, she is ordered to pay Mr. Gurjant Singh \$314.06 by August 15, 2022, and Mr. Lovekesh \$314.06 by August 15, 2022.

[30] As success is divided, there will be no order regarding costs.

DIGBY T.C.J.