Citation: *Aerts v. Lasker,* 2016 YKSM 4

Date: 20160318
Docket: 15-S0046
Registry: Whitehorse

SMALL CLAIMS COURT OF YUKON
Before His Honour Judge Luther

PIERRE AERTS

Plaintiff

v.

MALIK LASKER

Defendant

Appearances:

Pierre Aerts	Appearing on own behalf
Malik Lasker	Appearing on own behalf

REASONS FOR JUDGMENT

[1] The plaintiff sues the defendant for failure to return a deposit.

[2] In the summer of 2014, the plaintiff was looking to rent a house for his family in or near Whitehorse. He was working here and his wife was living in Montreal with their cats and dogs.

[3] The initial contact was made by email on 12 July 2014 following which the plaintiff, in the company of the defendant, viewed his house. The plaintiff took photos which were forwarded electronically to his wife. The plaintiff would not commit to this house until his wife would see it in person.

[4] Furthermore, the plaintiff disagreed with the format of the written lease which was presented to him at Tim Horton's on 25 July 2014. However, the plaintiff did give the defendant a cheque in the amount of $1,050. The monthly rent they had negotiated would have been $2,100.

[5] The sole issue in this case is the purpose of the cheque.

[6] Initially the plaintiff offered a deposit of $200 which was rejected. The cheque itself contained the words "1/2 Security Deposit for 9 tigereye".

[7] There was no written document or receipt for the deposit spelling out details as to what it was for and whether the cheque should be cashed. The terminology was not precise and the words "security deposit" and "damage deposit" were bandied about even in the trial. There was nothing in writing nor in their discussions as to a refundable deposit. I do not accept the plaintiff's evidence that the idea of returning the cheque was discussed.

[8] The plaintiff felt pressured by the defendant to give the deposit. The defendant was under financial pressure and preferred to sell the property. The plaintiff was not interested in purchasing it. Both were grown men. In fact, the plaintiff said there was a 95 percent chance they would rent it.

[9] The plaintiff's wife was coming up here in early August. The plaintiff did not want the defendant to sell the house in the meantime and clearly wanted it available should he and his wife decide to rent it. The defendant agreed not to list it until the plaintiff's wife had an opportunity to inspect it which she did on 3

August 2014. Because of the carpeting and her severe asthma condition, they decided not to rent the property. That was clearly made known to the defendant the same day.

[10] The defendant listed the house for sale on 4 August 2014 and shortly thereafter leased it for two years. The house was vacant throughout August 2014. The defendant received no rent from anyone for August 2014.

[11] As to the purpose of the deposit, based solely on the discussions between the parties, as there was no written documentation, it is quite clear it was not a damage deposit. The plaintiff with the cheque reserved his option to rent the property by having persuaded the defendant not to list nor sell it until his wife could inspect it.

[12] In his evidence, the plaintiff stated the purpose of the cheque was to have the defendant wait another week or so after their meeting at Tim Horton's so that his wife could inspect it and that the defendant would not list it with a broker. The defendant followed through with this promise. There was no discussion whatsoever about the defendant not cashing the cheque.

[13] For the plaintiff to succeed in his claim, he has to prove on a balance of probabilities that the deposit was refundable. This onus was discussed in some

detail and historical context in *Whitehorse Condominium Corporation #2 v. Environmental Refuelling Systems Inc.,* 2015 YKSM 2.

[14] The plaintiff has failed to prove his case. Thus it is dismissed.

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LUTHER T.C.J.