

Claim No. SCCH 259949

Date:20060418

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: J.P. Shannon Realties Ltd. v. Provincial Spring Shop Ltd.,
2006 NSSM 39

Between:

J. P. SHANNON REALTIES LIMITED
CLAIMANT

-and -

PROVINCIAL SPRING SHOP LIMITED
DEFENDANT

DECISION

Adjudicator
David T.R. Parker

Heard: February 15, 2006

Decision: April 18, 2006

Counsel:

Andrew Inch for the Claimant

Wayne Francis for the Defendant

Introduction

This case involves a commercial lease in which the Claimant landlord alleges the Defendant tenant owes money for the Defendant's share of the common expenses related to the building's operation. The Defendant claims the Claimant landlord did not provide heat to the Defendant's leased unit in the Claimant's building and therefore there should be a set-off as a result of damages suffered by the Defendant as a result of the Claimant's failure to provide adequate heat.

The Defendant and its predecessor operated its business in the Claimant's premises for a number of years which involved repairing heavy equipment. Prior to December 1, 2003, when the current lease came into effect, the previous leases were based on gross rent. The Claimant and Defendant decided to renegotiate a new lease which was to commence on December 1, 2003. The results of that negotiated lease are reflected in a document entitled the "Lease Request" which was followed up by a formal commercial lease executed by the parties.

This lease forms the terms and conditions and obligations that exist between the parties.

The Claimant pursuant to the lease is required to provide heating required by the Defendant for reasonable use of the demised premises.

Apparently for a number of years only a couple of the five heating units in the demised premises worked, one of those that did work was the main heating unit where the Defendant's employees worked on heavy equipment for customers.

There was no mention of any problem with heating of the unit by the Defendant on the Lease Request. The lease states that the Defendant takes the demised premises in satisfactory condition unless the Defendant provides the Claimant with written notice that that is not the case.

The Defendant, along with other tenants in the building, was informed in writing in January 2003 that all maintenance requests must be in writing.

The lease also requires the Defendant to pay a fixed rent based on unit size plus additional rent for the Defendant's share of maintenance and operating costs of the building.

These operating costs were paid in 2003 by the Defendant; however, the operating costs for 2004 in the amount of \$6,013.16, which is the basis of the claim, were not paid by the Defendant. These costs were sent to the Defendant in March 2005.

It was after the Defendant's refusal to pay the operating costs that it was brought to the Claimant's attention that the Defendant was not satisfied with the heating of its premises. This was ultimately put in writing in July 2005. By this time the Claimant did not want to affect repairs until the Defendant paid its share of the operating costs.

The Defendant's owner said he decided "to withhold money for operating costs to get their attention and now they fixed it".

Ultimately the heaters were all fixed or replaced; however, there has been no payment on these operating costs.

Analysis

The Defendant is responsible for notifying the Claimant in writing if there are any problems otherwise the premises are deemed to be satisfactory. The Defendant did not notify the Claimant that heating was unreasonable at any time and only well after the Defendant received its additional rent invoice did it notify the Claimant in writing that the heating units do not function. These were ultimately repaired or replaced by the Claimant. I also noted that the Defendant did repairs with respect to other matters in the demised premises and the costs of same were deducted from its rent. There is no evidence before me that shows the heating provided was not acceptable. The functioning of the heating units only became an issue after operating expenses became due.

With respect to the Defendant's claim for losses suffered as a result of heat deprivation, the Defendant owner said in his testimony, "I cannot prove my loss. I cannot specifically say anything."

The Claimant shall succeed on its claim and the Defendant shall not succeed on its counterclaim.

The Claimant also requested an Order for payment of legal fees as a result of the enforcement of the terms of the lease by the Claimant. However, there was no presentation of same or arguments on the applicable lease provisions and I shall

not be making a determination with respect to this request.

DATED at Halifax, Nova Scotia, this 18th day of April, A.D., 2006.

David T.R. Parker
Adjudicator of the Small Claims
Court of Nova Scotia