

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA  
Cite as: Winchesters Classic Woman Ltd. v. Classique Ladies Wear Ltd.,  
2004 NSSM 34

BETWEEN:

Name Winchesters Classic Woman Limited Claimant

Name Classique Ladies Wear Ltd. and  
Rhonna Gaum and Thomas Gaum (Guarantors) Defendants

**DECISION**

**Revised Decision:** The text of the original decision has been revised to remove personal identifying information of the parties on August 22, 2007.

Appearances:

Peter Andrews and Diane Andrews, on behalf of the Claimant;  
Thomas Gaum, on behalf of the Defendants.

- [1] This matter came on before me on June 1, 2004.
- [2] The Defendant Classique Ladies Wear Ltd. was a tenant of the Claimant; the Defendants Rhonna and Thomas Gaum were guarantors of the Defendant's lease obligations.
- [3] The Claimant advanced a number of claims. I will deal with them in sequence.

**1. Unpaid Monies Under the Lease**

- [4] The claimant claims under clause 4(j) of the lease, which provides that the lessee "covenants to pay when they fall due all taxes and including HST and rates charged

- in connection with the occupancy of the demise premises or assessed or levied in respect of any business or other activities carried on upon the demise premises.”
- [5] At issue here is the extent of the demise premises: was it one third of the overall premises, or was it some lesser figure. The Claimant says that it was one third based in part upon prior conduct; the Defendants says that the Claimant has not proved to his satisfaction that the demise premises constituted one third of the overall usage.
- [6] The evidence of both parties made clear that a similar clause existed in a previous lease, and that under that wording and clause the Defendant had paid its share of taxes based on a one third occupancy. The Defendant also used the one third occupancy as the basis for splitting other costs such as garbage, sound systems and the like.
- [7] The Claimant introduced evidence to substantiate its claim of \$4,263.89 under the clause, based on the one third split.
- [8] Mr. Gaum agreed that he paid the previous year’s claim on a one third occupancy, but says that he never specifically agreed to one third; and he maintains that the Claimant has not actually proved, through the use of surveys or plans or the like, that the occupancy is actually one third.
- [9] On the evidence I am satisfied that there was an agreement to split the taxes on a one third occupancy. I come to this conclusion, in part, because of the past conduct of the Defendant which created a rebuttable estoppel, since the Landlord would have relied on that in proceeding the next year; and because the same split applied to other services arising out of the occupancy, such as garbage.
- [10] The next issue is whether the taxes should be paid on the basis of eight months or only five.
- [11] This was a year to year lease and the Tenant was in possession until August, which is eight months.
- [12] Accordingly, I accept the claim as calculated by the Claimant in the total amount of \$4,263.89.

## **2. The Claim For Halifax Heating**

- [13] This claim, for \$103.22 arises out of cost associated with adjusting a thermostat. The thermostat, which controlled the heating in the entire building, was located in the Tenant’s premises. The Claimant’s position was that the Tenant ought not to

have tampered with or adjusted the thermostat in any way; the Tenant's evidence is that the thermostat did not work and if they did not adjust the thermostat they would have been left with a premises that was either too hot or too cold which, for a retail establishment, is obviously not suitable.

[14] The Landlord is under an obligation to provide suitable heating and I am not satisfied that the arrangement of placing a thermostat that controls the heating for the entire building in the Tenant's premises was appropriate. Accordingly, I dismiss that part of the claim.

**3. Increase in Electrical Rates**

[15] The Claimant claims \$346.25 associated with increases in electric rates and the use of electricity.

[16] Under the terms of the lease the Tenant was responsible for oil heat, but the Landlord made a decision to change the building over to electric heat. However, in making that decision it decided to use only one meter for both the Tenant's premises and the Landlord's premises. Having done that, it was then forced to enter into complicated calculations in an attempt to apportion the electrical rates between the Tenant and the Landlord. The Tenant was prepared to pay electricity on the basis of previous year's usage (which it did), but it was not prepared to accept the Landlord's complicated calculations, in part because the meter was reading both the Landlord's use as well as the Tenant's use.

[17] On balance, having heard the evidence, I am not satisfied that the Landlord has proved that the \$346.25 it claims with respect to electricity is fairly attributable to the Tenant's use and I accordingly dismiss that part of the claim.

[18] The Claimant also claimed costs of \$150 for its filing fee which I allow, but I do not allow the claim of \$100 for administrative costs associated with preparing the claim.

Dated at Halifax, Nova Scotia this )  
11<sup>th</sup> day of June 2004 )  
)  
) **ADJUDICATOR**  
) W. Augustus Richardson

Original Court File  
Copy Claimant(s)  
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