

Claim no. 299062

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: MacDonald v. Aryakhah, 2008 NSSM 65

BETWEEN:

WENDY ANNE MACDONALD

Claimant

- and -

RAMON ARYAKHAH

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on August 18, 2008

Decision rendered on August 19, 2008

APPEARANCES

For the Claimant self-represented

For the Defendant self-represented

BY THE COURT:

- [1] The Claimant and Defendant lived together as domestic partners for a short period of time in late 2007 and early 2008. The Claimant is suing the Defendant for damage that he is alleged to have done (in anger) to some of her personal possessions. She also sues for \$325 which represents half a month's rent which, she says, he promised to pay to ease her financial burden after he moved out.
- [2] The Defendant has Counterclaimed for damage that he claims the Claimant did to his computer. He also claims \$1,000 to repay him for money he says he paid for her tuition at Community College. He also seeks return of a damage deposit he claims to have paid to the Landlord for the apartment where they were living.
- [3] The parties' evidence could hardly have been any more opposed. For example, the Claimant says that the Defendant smashed a wooden table, free-standing fan and large picture frame in a fit of rage. She also says that he put his fist through the wall in two places, also in anger, and head-butted the wall creating damage.
- [4] The Defendant testified that the Claimant created the damage herself when she fell on these items when she was drunk, although he allows that she might not have remembered the next day that she had done so, because of her heavy drinking. He also stated that the damage to the wall was caused when some furniture was being moved.

- [5] The Defendant is an accomplished kick boxer. I accept that this does not mean that he is violent or aggressive, but it does indicate that he is at least physically capable of doing the damage that is attributed to him.
- [6] It appears that this couple had significant issues surrounding money at the time of these events. The Claimant was finishing a course at the Community College and had a limited income. The Defendant was employed, but apparently was not happy with the fact that he was bearing a greater burden of the household bills. The Claimant testified that the Defendant came to her in early January with a bag full of bills that he had paid and been saving up, insisting that she pay half of them back to him. The Claimant testified that the Defendant's manner was harassing, and that (against her better judgment) she eventually gave him \$1,000 out of funds that she had set aside for her tuition. She placed in evidence her bank statement showing two \$500 withdrawals which she said was the money that she had given the Defendant.
- [7] When the time came to pay her tuition, the Claimant pleaded with the Defendant to return the money. He did eventually pay \$1,000 directly toward her tuition. He now says that she owes him that money. He flatly denies that she had given him the \$1,000 originally out of her tuition money.
- [8] Having listened to the evidence of the parties, as well as the evidence of a friend of the Claimant's in whom she confided during the relevant times, I much prefer the Claimant's version of events. I did not find the Defendant to be credible. His evidence seemed tailored to make himself look good,

no matter how improbable it sounded. The Claimant on the other hand was consistent and straightforward.

- [9] I find that the Defendant destroyed the items and did the damage that the Claimant says he did, whether just to vent his frustration or to intimidate the Claimant. He should bear responsibility for that damage. I find that the cost to replace or repair these items and repair the damage to walls is approximately \$470.00.
- [10] Dealing with the claim for \$325 towards rent, on June 21, 2008 (after the relationship had ended), the Defendant signed a promissory note agreeing to pay \$325 to help the Claimant with July's rent. This was backed up by a cheque given a few days later. For reasons not entirely clear to me, he stopped payment on that cheque.
- [11] Whatever else may have been going on, the Defendant gave a promissory note that is regular and enforceable. The law does not oblige me to go behind that note to ask what, if any, motives or reasons were behind it. It is the same with a cheque. In this case, the \$325 claim is backed by both. The Claimant is entitled to recover that amount. She is also entitled to recover \$35 the bank charged her for a returned cheque.

Counterclaims

- [12] As indicated above, the Defendant has counterclaimed for \$1,000 which he says he contributed toward her tuition. I prefer the evidence of the Claimant to the effect that she gave him \$1,000 in cash in order to put an end to his badgering her for money, and that when she realized later the

problem that she had with her tuition, she convinced him to return the money.

- [13] It may well be that the Defendant paid more of the expenses of the household than did the Claimant. The evidence was that he had a larger income than her. Even so, there is no legal principle that says that all expenses in a common law relationship must be shared 50-50 down to the last dollar. Parties may agree to such an arrangement, but more often than not the arrangements are much less precise and may depend as much on ability to pay as to mathematical equality.
- [14] The claim for \$1,000.00 is not allowed.
- [15] The claim for damage to the Defendant's computer was barely touched upon in the evidence. He filed photos apparently showing that someone had used a knife to damage some of the ports on the back of the computer. There was no evidence that the computer did not work or that any repairs were made. In any event, I am not satisfied that the Claimant did any damage to the Defendant's computer.
- [16] The Defendant also claims his damage deposit that was paid on the apartment where the Claimant still resides. He claims to have paid the full \$325 while the Claimant says that they each contributed half. I accept the Claimant's evidence. I do find however that the Defendant does have a legitimate claim for half of that deposit, since the Claimant is entitled to have it returned to her whenever she vacates the apartment. The sum of \$162.50 should be deducted from the sums otherwise payable to the Claimant.

[17] The Claimant will accordingly have a judgment for \$470 for damages to personal property and to the apartment walls, \$325 for the amount set out in the promissory note and cheque, and \$35 for the bank fee for the cheque that was returned. The Claimant is also entitled to her filing fee of \$87.06. The Defendant is entitled to an offset of \$162.50 for the damage deposit.

[18] The total judgment is therefore for \$754.56.

Eric K. Slone, Adjudicator