

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

Cite as: Lobsiger v. Hall, 2016 NSSM 20

BETWEEN:

ULRICH LOBSIGER

Claimant

- and -

CHIPMAN HALL

Defendant

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**REASONS FOR DECISION**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on May 17, 2016

Decision rendered on May 24, 2016

**APPEARANCES**

For the Claimant                      self-represented

For the Defendant                    self-represented

**BY THE COURT:**

[1] The Claimant and Defendant were friends for more than three decades. Sadly, the prospects for this friendship continuing are guarded, given this dispute and the acrimony that surround it..

[2] The Claimant seeks the return of some furniture and payment of moneys, in connection with a small business venture.

[3] In late 2014, some type of arrangement was made with the following components:

- a. The Defendant owned a house on Oakland Ave., in Halifax, that was empty and vacant, and which had proved difficult for the Defendant to rent;
- b. The Claimant was in the process of downsizing his life, and had a considerable amount of furniture and other household effects that he did not need in his much smaller unit;
- c. The idea was hatched that the Claimant would allow his furniture and effects to be moved into the Oakland property, to allow it to be rented "furnished," thus exposing it to a different and hopefully more promising market;
- d. The Claimant would act as the administrator or agent, helping to find tenants and looking after their needs.

[4] Both parties agree that there was such an arrangement. The question is: what were the other terms, including remuneration?

[5] The Claimant was adamant at the trial that the deal was that he would receive 10% of the gross rents. He kept saying that the contract was in writing, confirmed in emails, but he did not bring any such emails to court.

[6] The Defendant simply says there was no such specific agreement, and insists that he would not have agreed to pay any percentage of the gross rents, since that gross number included utilities. He concedes that he owes the Claimant something for calendar 2015, but not as much as the Claimant is asking.

[7] The secondary question is when the Claimant is entitled to the return of his furniture? I will get to that later.

[8] In March 2015 the parties were fortunate to land as tenants a visiting couple of physicians from Australia, who paid \$2,200.00 per month. They left temporarily as at the end of 2015, and the property was rented on a short term basis as an Airbnb. The Australians are due to resume their tenancy shortly, and will likely stay until the end of 2016. The Claimant received some money for the Airbnb rentals, and makes no claim in that regard.

[9] The Claimant says he should receive \$2,020.00. I am not sure of how he calculates this, because it is less than 10% of ten months of rent, but that is what he seeks. He also wants his furniture back now.

[10] The first question I must resolve is this. What did the contract entitle the Claimant to receive either as a percentage of rents received, or on some other basis?

[11] There is no written material before me that confirms the amount. Where a contract is silent and fails to contain an essential term, it would be unjust to find that the contract is void. The law supplies the missing term, on the basis of what is called *quantum meruit*, or (in English) the just and reasonable amount deserved.

[12] In my view, the 10% figure requested is far from unreasonable. For that amount, the Defendant was getting the use of a house full of furnishings, and the services of the Claimant as a renting agent. I believe the Claimant when he says that he spent a lot of time on this project. I find that 10% was a justifiable, and reasonable commission, even based on gross rents. I believe the Claimant when he says that it was always gross rents that were being discussed. Had it been on net rents, the percentage might well have been higher. I take judicial notice of the fact that commercial rental agencies often charge one to one and a half months' rent just for finding a tenant.

[13] I accordingly allow the Claimant the amount requested, which was \$2,020.00. I am not prepared to award more than was asked for in the claim.

[14] I acknowledge that the Claimant was apparently prepared to accept less at one point, but this was in a settlement context and has no relevance to me.

[15] As for the furniture, the Defendant says that he offered the Claimant the opportunity to retrieve all of it, but he refused. He says that Claimant abandoned his stuff. The Claimant says that this offer was made just as he was about to leave on a trip to the Far East, and it was impractical to take everything at that time. In fact, the Claimant received back some of his items, so we are dealing with a smaller subset of the original amount of contents.

[16] I utterly reject the proposition that the Claimant abandoned his goods. It takes an unequivocal statement or gesture before the law considers goods to be abandoned. There is nothing close to that here.

[17] Although the Claimant would like his goods “now,” I am mindful of the fact that there are third parties involved. The Defendant says he is prepared to replace the Claimant’s goods with purchased items, to ensure that his tenants are looked after, but this cannot be expected to happen overnight. It would be a serious intrusion into the lives of innocent parties to rip away all of these items just as the tenants are moving back from overseas, and it creates the risk of financial losses and further litigation. The better order that I am prepared to make is this: the Defendant is ordered to arrange for the return of all of the Claimant’s goods, which are inventoried in Exhibit 3 filed with the court, “as soon as possible” but at the latest by January 31, 2017. Should the Defendant be in a position to offer them sooner than January 31, 2017, he must give the Claimant no less than 14 days of clear notice, and must make the items accessible so that the Claimant may arrange for them to be moved at a time of his choosing during the hours between 9:00 a.m. and 6:00 p.m. Also, to avoid causing the Claimant to make multiple trips, the goods should be returned in no more than two batches.

In other words, the Claimant may have to take some of them on one occasion and the entire balance on the second occasion.

[18] Any items that the Claimant fails to retrieve within the 14 days of notice would be deemed to have been abandoned by him, unless a further application is made to the court to extend the time.

[19] The final order will also provide that if the Claimant is not given access to all of his goods in the manner specified above, he may ask the court administrator to schedule a further hearing before me to consider what further order, if any, is justified.

[20] The Claimant is also entitled to his court costs of \$182.70.

**Eric K. Slone, Adjudicator**