

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Deveaux v. Sheppard*, 2018 NSSM 44

SCC SN No. 462894

BETWEEN:

ROBERT DEVEAUX

CLAIMANT

and

LISA SHEPPARD

DEFENDANT

Editorial Note: The electronic version of this judgment has been edited for grammar, punctuation and like errors, and addresses and phone numbers have been removed.

REASONS FOR DECISION

BEFORE: A. Robert Sampson, Q.C., Adjudicator

DATE OF HEARING: Hearing held at Sydney, Nova Scotia on January 15, 2018

DECISION RENDERED: February 13, 2018

APPEARANCES:

For the Claimant: William R. Burke

For the Defendant: Self Represented - Lisa Sheppard

PRELIMINARY NOTE:

1. This claim was filed in Small Claims Court on April 27, 2017. The matter was initially scheduled for hearing on July 12, 2017. However, on that date the Claimant appeared requesting the court for an Order for Substituted Service given the fact that he was unable to serve the Defendant.
2. On July 12, 2017 an Order for Substituted Service was granted and the matter was rescheduled for hearing to take place on September 13, 2017. Both parties appeared on September 13, 2017; however, shortly after the court was open, the Defendant indicated that she had not been aware that she was able to have legal counsel present with her and, therefore, requested a further adjournment. The matter was adjourned to October 11, 2017.
3. There was a series of further adjournments by the court which led to this matter being set down for a special hearing date of January 15, 2018.
4. The court further acknowledges receiving for review a copy of two decisions rendered by Justice Robin C. Gogan involving the two parties subject to this claim. Both decisions arise out of the same application to the court advanced by Lisa Sheppard against Mr. Deveaux. The principal subject matter in the first decision dealt with the ownership of residential property situated at 17 Third Street, Glace Bay. Both parties were represented by legal counsel in connection with the first proceeding.
5. The initial decision was rendered by Justice Gogan dated February 24, 2017. The principal issues determined by the court somewhat overlapped into these proceedings as it relates to a document which was also tendered into these proceedings and identified as Exhibit Booklet (1) as well as similar documents identified as Exhibits D-2 and D-3. Justice Gogan in considering the same document as before me did make a determination that this document represented an agreement that had existed between the parties or at least the basic terms of one. Again, the principal matter at issue which Justice Gogan

dealt with is whether the then Applicant, Ms. Sheppard, was entitled to receive a deed of conveyance for the property in question from Mr. Deveaux. Ultimately her findings, largely based on credibility, determined that the terms of agreement had not been fully met, and in particular the agreed-upon purchase price had not been paid in full and that the consideration that was paid amounted to \$4,500.00.

6. Justice Gogan's decision directed to allow Ms. Sheppard a period of 90 days to pay the balance of the purchase price (\$5,500.00) to Deveaux. In the alternative, if no payment is made, Deveaux was to return to Sheppard the \$4,500.00 partial payment that had been made. Justice Gogan noted that her order does not address any outstanding utility accounts and she acknowledged that issue was not before her, that no notice of contest involving this issue had been filed and no evidence was offered for any determination.
7. As a preliminary note, this Court also confirms that the subsequent decision of Justice Gogan dated May 23, 2017 dealt specifically with a decision on costs arising from the initial application hearing which in turn led to an order that Sheppard pay to Deveaux \$1,500 in costs, inclusive of disbursements.
8. The court references the above-noted decisions simply to ensure that the parties are aware that this Adjudicator has reviewed them and, from the text of the decision rendered by the Supreme Court, I am satisfied that the issues before this Small Claims Court were not placed before Justice Gogan in Supreme Court and therefore there are no issues of *res judicata*.

BACKGROUND

9. As noted by Justice Gogan in her decision and as gleaned by the court, Sheppard and Deveaux are not strangers to one another. The foundation for this claim arises out of what the Applicant, Mr. Deveaux, alleges is a written agreement between the parties as identified in Exhibit 1(1) (tab1 of the booklet tendered). It would appear that the principal purpose of the exhibit noted was to create a form of agreement whereby Sheppard was to purchase from Deveaux

the property situated at 17 Third Street, Glace Bay for a purchase price of \$10,000.00. This document is a handwritten note signed at the top by both Deveaux and Sheppard and further executed by two witnesses, Reid and Marr. Each party acknowledged before me the existence of the note (Exhibit 1/Tab 1) and its general intention and the fact that they had signed it.

10. The note is dated May 29, 2014 and, in addition to the terms relating to the purchase of the property, it contains the following caption: “changing water and taxes into her name”. Given that there were two principal parties to this note, both of whom appeared before me, together with the fact that Deveaux is a male and Sheppard is a female, I take the above caption to mean “changing water and taxes into her name” could only have meant Ms. Sheppard.
11. There appeared to be no dispute that Ms. Sheppard commenced occupying the residence at 17 Third Street in Glace Bay (“home”) sometime in the spring of 2014. Ms. Sheppard believed it was towards the end of May 2014. There appears to be no disagreement that Ms. Sheppard remained in the premises, together with her family, continuously through to sometime in late October 2016.
12. Ms. Sheppard acknowledged that she had not paid any rent at any time in connection with her residing in the home as she had maintained the belief, as was the subject of her application before Justice Gogan, that she had paid in full the purchase price and therefore effectively owned the home.
13. Ms. Sheppard further maintained that she had not paid any money towards the utilities, namely the water and taxes owing to the Cape Breton Regional Municipality, because she was unable to transfer these accounts into her name without first being provided a deed for the property.
14. It was Mr. Deveaux’s evidence that the reference noted in Exhibit 1 clearly acknowledges, in addition to any other promises set forth, that the water and the tax bills were to be changed into Ms. Sheppard’s name and implicit in this was the promise that she would thereafter be responsible for the water and taxes

associated with the property. As previously noted, this arrangement was part and parcel with their agreement that Sheppard would pay the purchase price as noted (\$10,000.00) in exchange for a deed from Deveaux.

15. As noted at the outset, the issues of whether an agreement of purchase and sale for the property itself had crystallized and what were its terms were squarely dealt with by Justice Gogan and therefore are not issues before me. Rather, what is before me, arising out of the same document and the evidence received relating to this hearing, is whether an agreement can be found confirming Ms. Sheppard's obligation, during the period in which she and her family occupied the home, to pay the utilities (taxes and water) that had arisen during that time.
16. In addition to the claim for reimbursement of utility costs, the Applicant Deveaux is also advancing a claim for reimbursement of repair costs to the home which arose because of damages that became known to the Claimant after he regained possession of the property in the fall of 2016.
17. Finally, on this point, I note that this claim was not filed until April 2017, some five months after Deveaux would have become aware of the fact that Ms. Sheppard and her family had vacated the home. In this regard, Deveaux explains that in the fall of 2016 into 2017, the collateral proceedings referred to above before Justice Gogan were ongoing and therefore, until a decision was rendered by the court as it relates to the ownership of the property, Mr. Deveaux was unable to determine whether he would have a right to advance the claim now before this court. The court accepts this position as being logical and notes that Mr. Deveaux has been represented by legal counsel throughout.

ISSUES

- (a) Whether Ms. Sheppard is required to reimburse the Claimant, Mr. Deveaux, the Cape Breton Regional Municipality municipal service charges relating to water and taxes associated with 17 Third Street, Glace Bay which were charged during the period in which she had occupied the home;

- (b) Whether the Claimant, Deveaux, has satisfied the court that the Defendant, Sheppard, while occupying the premises which are now determined to be owned by Deveaux, caused damages to the property and further whether the amount of the damage claim has been satisfactorily proven to this court.

POSITION OF THE PARTIES

ROBERT DEVEAUX

18. Mr. Deveaux currently resides in Glace Bay and is on pension income. Through his counsel he tendered Exhibit 1 which is comprised of a booklet of documents with tabs 1 through 8 in support of his claim. Mr. Deveaux has confirmed that he has known Ms. Sheppard for several years and that she and her family had occupied the home situated at 17 Third Street in Glace Bay of which he is the owner. He confirmed that he acquired the property sometime in the early part of May 2014.
19. It is Mr. Deveaux's position, pursuant to what is referred to as a written agreement set forth under Exhibit 1/Tab 1, that Ms. Sheppard had agreed to purchase the property for a purchase price of \$10,000.00 and that as part of that arrangement a deed would be given to her, she would take occupancy and upon completion of the purchase both the water and tax accounts were to be changed into her name. Mr. Deveaux further confirmed, based on what he understood to be the intention of the parties, that the actual purchase of the property would have been completed immediately and therefore Ms. Sheppard's occupancy of the home would include her responsibility to pay all costs associated with the home including maintenance, upkeep and utility charges.
20. Mr. Deveaux presented a series of printouts from the Cape Breton Regional Municipality relating to taxes (Exhibit 1/Tab 2) and the outstanding water account (Exhibit 1/Tab 3) covering the period commencing on or about June/July 2014 through to the present time.

21. Exhibit 1/Tab 2 also includes what is referred to as “dunning charges”. Mr. Deveaux’s evidence was that the property in late December 2016 was placed up for tax sale by the Municipality and that these charges, in addition to the outstanding taxes owing, are effectively administration charges associated with tax sale proceedings and were required to be paid in addition to the payment on account Mr. Deveaux made to stop the tax sale proceedings.
22. Exhibit 1/Tab 4 provides a further summary of the tax account issued by the CBRM for the period January 1, 2014 to December 5, 2017.
23. With respect to each of these exhibits (water and taxes), as it relates to the starting date upon which Sheppard occupied the home, they confirm that as of June 2014 no monies were owing.
24. Mr. Deveaux’s evidence was that he had spoken to Ms. Sheppard a number of times and she had promised to make payment on these bills but no payments had been made.
25. Mr. Deveaux’s evidence was that Ms. Sheppard had agreed to be responsible for the taxes and water from the very outset before she occupied the home and that throughout the period that she had occupied the home, when this issue was repeatedly brought to her attention by Mr. Deveaux, repeated promises were made to pay these bills but nothing had been paid.
26. As it relates to Mr. Deveaux’s claim for damage to the property, through his counsel he reviewed a series of photographs (11 in total) that were exhibited to the court under Exhibit 1/Tab 8.
27. Exhibit 1/Tab 8 (photos 1, 2 and 3) relate to the bathroom in the home and specifically damage to the gyproc/wall as well as the sink cabinet.
28. Exhibit 1/Tab 8 (photo 4) depicted a square cut out in the screen of an upper window identified as the home. Mr. Deveaux’s evidence was that he had replaced virtually all the windows in the home except for a few that were in

reasonably good condition which I will refer to later. From picture number four it appears that newer replacement windows have been installed in the home.

29. Exhibit 1/Tab 8 (photos 5 and 6) related to a window which was located in the rear porch of the home. It appears completely smashed out and boarded up with insulation and what appears to be plywood.
30. Exhibit 1/Tab 8 (photo 7) Mr. Deveaux confirmed that this is the staircase inside the home leading upstairs which appears to have been partially painted.
31. Mr. Deveaux confirmed that Exhibit 1/Tab 8 (photo 8) confirmed the “mess” that the home was left in and shows a fair bit of debris in the room depicted. He also confirmed that this picture shows a door leading into where the hot water tank is located is missing. He indicated that for certain there was a door there when the occupancy was handed over to Ms. Sheppard.
32. Exhibit 1/Tab 8 (photo 9), Mr. Deveaux indicated was a picture of the upstairs bedroom and he indicated there had been carpet on that floor when occupancy was handed over. The picture appears to show the current status which is the original floor boards.
33. Mr. Deveaux identified picture 10 (Exhibit 1/Tab 8) as the ceiling in the kitchen where it appears a number of panels have been either damaged or misplaced.
34. Mr. Deveaux identified picture 11 (Exhibit 1/Tab 8) as being the back porch area leading into the kitchen area. He noted that it looks like the existing floor may have been broken up or there was an attempt to replace the floor that wasn't finished.
35. In addition to the photographs, Mr. Deveaux confirmed that both the back and front doors appear to have been kicked through and split which required new casings on both. He also confirmed they were in good shape (new) before occupancy by Ms. Sheppard. He indicated they were split where the lock pin goes into the door jam. Both the back and front doors were in the same

condition. Mr. Deveaux indicated that both the back and front doors had been replaced by him with new steel doors after he purchased the house.

36. Mr. Deveaux then reviewed in detail Exhibits 5 and 6 which are quotes/estimates for the cost of materials to complete/repair some of the damage noted above. Exhibit 6 is from M&H Hardware and identified 7 pieces of replacement flooring totaling \$1,731.74 (including H.S.T.). He confirmed that damage was caused to the flooring throughout each room of the home -- including the living room (carpet removed), kitchen, back porch, bedrooms and bathroom -- and required complete replacement. Exhibit 5 is a quote from Cameron Building Supplies Ltd. and principally dealt with the costs of various materials required to replace damaged gyproc, the rear window in the back porch and some internal doors that were missing and two external doors (back and front) that were damaged. This estimate totalled \$2,067.22 (including H.S.T.).
37. Mr. Deveaux confirmed that he had not yet carried out any of the required work to the premises and currently, while he remains the owner, the home remains vacant.

LISA SHEPPARD

38. Ms. Sheppard was not represented by counsel and sworn in. In addition, she called witnesses whose evidence will be referred to below. At the outset, she tendered two exhibits identified as Exhibits D-2 and D-3. She identified these documents as being re-writes of the Claimant's Exhibit 1/Tab 1 representing the original document that had been prepared and signed by both her and Mr. Deveaux relating to her intended purchase of the home. The content of these two exhibits were virtually identical insofar as the wording. However, for reasons unknown, she pointed out the fact that while the wording is the same they were two separate documents written out, one intended to be a copy for her and the other a copy for Mr. Deveaux at the time which it was made.

39. Ms. Sheppard was permitted to cross-examine Mr. Deveaux and asked a series of questions principally relating to the evidence of Mr. Deveaux about the damage of the premises.
40. Ms. Sheppard, through a series of suggestive questions, challenged Mr. Deveaux as to the condition of the property at the time in which she took occupancy back in the spring of 2014 suggesting that there had been leaks in the back porch, the back window was already damaged, the missing door had been damaged, the fact that the furnace was required to be replaced during her tenancy and that there was some damage on the floor in the furnace area close to the kitchen. Ms. Sheppard further cross-examined Mr. Deveaux on a number of the pictures that he had tendered. This included questions about Mr. Deveaux's knowledge of the prior owner and whether he knew that the prior owner had kept a dog in the home, with the suggestion that it "did its business" in an upstairs bedroom.
41. For the most part, upon cross-examination Mr. Deveaux maintained his position as to the condition of the home prior to her occupancy and the fact that doors were missing, flooring was missing, the bathroom was damaged, the front and back doors were damaged, the back porch window was damaged and so forth when he re-gained occupancy in early 2017.

ERIN MACDONALD

42. Ms. MacDonald resides at [address removed], Glace Bay. She was presented as a witness on behalf of Ms. Sheppard whom she has known for approximately 12 years. She indicated that she was familiar with Ms. Sheppard's home situate at 17 Third Street, Glace Bay and in fact had lived there herself a number of years ago. She indicated that when she had lived there, although no specific timeframe was provided, she believed there was smoke damage to the home.

43. Ms. MacDonald provided evidence that she recalled when Ms. Sheppard moved that she “didn’t think it had a furnace” and that she was uncertain as to where the existing furnace had come from.
44. She testified that she had recalled a leak in the bathroom which led to a piece of the ceiling falling down but she couldn’t recall when. She further testified that she could recall the stove had caved through the kitchen floor and that the floor area had to be replaced but couldn’t recall exactly when.
45. Ms. MacDonald’s evidence confirms she could recall new carpets had been put down by Ms. Sheppard and some painting but couldn’t provide much detail as to exactly the extent of what work and/or flooring or when it had occurred.
46. Ms. MacDonald confirmed her recollection that the back bedroom did not have any flooring on it when she moved in nor when she left.
47. Ms. MacDonald confirmed that she was aware that a Glenn Kaiser had lived in the residence prior to Ms. Sheppard taking occupancy and that he had kept a dog and that she believed that often he used “papers” in the back bedroom for the dog but she did not recall any damage done by the dog.
48. Ms. MacDonald indicated that she recalled a meeting that took place in St. Anne’s parking lot where she, together with Ms. Sheppard, had counted out what she recalled to have been \$4,500.00 and immediately thereafter Ms. Sheppard got out of the car and got into Mr. Deveaux’s vehicle. She could not state what might have occurred after that.
49. Ms. MacDonald confirmed Ms. Sheppard resided at the home for approximately two years and that she did run into some problems because of the fact that she could not produce a deed to show ownership of the home. She recalled that there had been a need for the washer drain pipe to be piped out into the back yard and at times it had frozen. Ms. MacDonald testified that she was not present when Ms. Sheppard actually moved out of the home.

50. On cross-examination Ms. MacDonald was shown Exhibits D-2 and D-3 and confirmed that she was not present when they were written and had no knowledge of either. She further confirmed that she had lived in the home herself approximately eight years ago for a duration of less than one year.
51. She confirmed in cross-examination that she did not do any work to the house but simply helped Ms. Sheppard from time to time to work to tidy up her home. Ms. MacDonald couldn't recall the last time she was at the house before Ms. Sheppard moved in and therefore was unable to speak to the condition of the home prior to Ms. Sheppard taking occupancy.

BRANDON SHEPPARD (SON)

52. Brandon Sheppard is the son of the Defendant, Ms. Sheppard, and resides at [address removed], Glace Bay. He was sworn in and confirmed that he resided in the home together with his mother, Ms. Sheppard, during the period in question.
53. His testimony was that in the back porch the floors were rotten and the window was broken but was unable to say how it got broken.
54. He further testified that in the kitchen he had to redo the floors and recalls having to repair in and around the sink area and stove. He testified that the dining room was missing a few pieces of laminate flooring and noted that he did not feel that it was a safe place to be.
55. He noted the floors in the dining room were curling as a result of water damage. He acknowledged that his mother had put carpet down in the front room but could not recall if there was flooring placed anywhere else. Mr. Sheppard noted that in one of the bedrooms upstairs to his knowledge there had never been any flooring in there and that old groove and tongue wood flooring was on the floor--no carpet. He further noted that from his recollection there was no carpet in any of the bedrooms upstairs. He later second-guessed himself as to whether in fact there was any carpet upstairs.

56. Regarding the bathroom, he indicated that there was mold in the bathroom and that it was he who had commenced repairs, including ripping the gyproc from the wall, with the intent that he was going to put in new flooring, sink, vanity and wall covering. He confirmed that he did not have a chance to finish the work.
57. He testified that he couldn't recall what, if any, income his mother had. He further confirmed that when they moved out the house had been cleaned up, other than some items that were piled in one room because they were delayed in being able to get a truck/trailer to retrieve the items.
58. On cross-examination, Mr. Sheppard confirmed that the front door was damaged when they had got locked out and he needed to kick it through. He further acknowledged that his action may have caused damage to the door jam. He noted that he recalled putting a new door handle on the front door but did not recall any damage to the back door.
59. Mr. Burke reviewed each of the pictures under Exhibit 1/Tab 8 with Mr. Sheppard as follows:
 - As to pictures 1, 2 and 3 he acknowledged that he had caused the damage in anticipation of completing repairs to the bathroom. As it relates to picture 4 (screen) he had no knowledge.
 - As to pictures 5 and 6 (back porch windows) he acknowledged that he had boarded it up because it was cracked and drafty.
 - Picture 7 (mismatched painting) - he indicated that he had no knowledge of who did this unfinished work.
 - Picture 8 - he testified that there was never a door leading in to where the hot water tank was located.

- Picture 9 – he confirmed that is how the floor was when they took occupancy (wooden).
 - Picture 10 (kitchen ceiling) he did not recall it looking like that when they moved out.
 - Picture 11 (back porch) he didn't know what that represented.
60. His evidence confirmed that when they had left the home it was his understanding that the home was in good condition and that the doors locked fine, particularly the back door which was principally the door they had used.
61. He also confirmed that they could not use the front door for a while following the damage that occurred to it and it was held closed with some form of bar.

LISA SHEPPARD

62. Ms. Sheppard confirmed that with regard to the back porch window there was a crack in it and that is why it was boarded up.
63. As it relates to water and taxes, she confirmed that she could not get the accounts changed to her name unless she had a deed and therefore could not make any payments on the accounts for the period of time in which she and her family occupied the home (approximately 1 year and 7 months).
64. Ms. Sheppard's evidence confirmed that she left in October 2017 and at that point in time she felt "she had to move". Ms. Sheppard further confirmed that her son Brandon came to her home and started ripping up the bathroom with the intentions of fixing it up.
65. She further confirmed in her evidence that she had called the CBRM with regards to the water and taxes and told them that they were going to court over the

ownership of the house and further that if she received a deed she would pay the water and taxes.

66. Ms. Sheppard further confirmed that she did not pay any rent during the term of her family occupancy in the home.
67. On cross-examination from Mr. Burke, Ms. Sheppard confirmed that had she gotten a deed she would have paid the taxes and water. She further confirmed that she made an application to the court for the purpose of getting a deed and that it had been denied.

REASONS FOR DECISIONS

ISSUE NUMBER 1:

68. As it relates to the Claimant's claim for reimbursement of the outstanding taxes and water that occurred during the time at which Sheppard and her family occupied the home, I find that the Claimant has satisfied me that he should be entitled to reimbursement.
69. The evidence appears clear both from my review of Justice Gogan's earlier decision and the evidence that was presented to me that, apart from any of the issues dealt with relating to the purchase price of the home, the amount paid and whether Ms. Sheppard was entitled to a deed (which has already been dealt with by the Supreme Court), I find that inherent in the terms which led to Ms. Sheppard occupying the home, it was understood that she would then assume the responsibility for payment of all of the relevant charges associated with the home including the utility charges (taxes and water).
70. As previously referred to, Justice Gogan has already made a determination that the terms of the agreement which would have given rise to Ms. Sheppard's entitlement to receive a deed to the property had not been fulfilled. However, from my review of Exhibit 1/Tab 1 relating to what appears to be the agreement

between the parties dealing with the terms of purchase and sale of the home, the agreement clearly acknowledges that the utility accounts were to be transferred into Ms. Sheppard's name from Mr. Deveaux. Implicit in this is the result that Ms. Sheppard would then assume the responsibility of paying such charges.

71. I accept Mr. Deveaux's evidence that throughout the period of occupancy he presented these accounts to Ms. Sheppard and that she acknowledged her responsibility to pay them and confirmed that she would.
72. I further note in Ms. Sheppard's evidence she indicated that she herself had contacted the CBRM regarding the water and tax accounts (undoubtedly in an effort to stay off any tax sale proceedings that appear to have been commenced by the CBRM sometime in late 2016) to ask that the status quo remain until a final determination was made as to actual ownership.
73. I further find that Ms. Sheppard's evidence, where she stated that the only reason she did not pay the water and taxes was that she was unable to have these accounts transferred into her own name, indirectly confirms her acknowledgement of her responsibility to pay these accounts.
74. While I recognize the municipal accounts associated with water and taxes are rendered in the name of the property owner only, the fact that Ms. Sheppard was unable to convince the Municipality to change these accounts into her own name does not, in itself, relieve her of her obligation to pay for the consumption of these utility charges which she and her family had consumed during her occupancy.
75. I'm satisfied with the evidence of Mr. Deveaux and in particular the exhibits tendered, notably Exhibit 1 (Tabs 2, 3 and 4) which sets forth printouts from the CBRM identifying the various charges for water and taxes commencing on or about the end of June 2014. These exhibits show that the balances were effectively nil at the time of Ms. Sheppard's occupancy. I'm also satisfied with Mr. Deveaux evidence of the fact that he was the one to have made payments on the

account, notably the tax account, in effort to stave off the property going up for tax sale. Consequently, these accounts include additional charges for administrative costs associated with the tax sale proceedings which I find to be reasonable and a direct result of the fact that Ms. Sheppard did not fulfill her obligation to pay these accounts.

76. Finally in this regard, I find, again confirmed by Ms. Sheppard's evidence, that in spite of the final determination made by Justice Gogan, what is clear is that Ms. Sheppard was able to occupy the home in the spring of 2014 and did in fact reside there together with her family until October 2016 and did not during that period of time pay any rent or other consideration to Mr. Deveaux. I further appreciate that both parties may have had best intentions to complete the purchase and sale of the property as far back as the spring of 2014, however, a determination has already been made that it did not occur. Therefore, based on this finding it would be unjust to allow Ms. Sheppard to profit from her own conduct in not completing the payment of the full purchase price and in turn somehow justify that as an excuse for not paying the taxes and water utility.
77. Therefore, I order the defendant, Lisa Sheppard, to pay to the Claimant, Robert Deveaux, the sum of \$1,040.35 representing reimbursement of the taxes against the property that had accumulated during her period of occupancy and further the sum of \$1,760.19, representing the sum of outstanding water charges incurred during the Defendant's occupation of the residence.

ISSUE 2 - DAMAGE

78. There was conflicting evidence as to state of repair of the home prior to the Defendant Sheppard's occupancy. Mr. Deveaux confirmed that he had acquired ownership for the home sometime in the spring of 2014 and thereafter had completed certain repairs including window replacements and new external doors. From the pictures, he had shown he indicated that while there were other costs he anticipates having to incur, such as the cleaning up of the property and

the labour to carry out the required repairs, he is only claiming the actual material expenses he anticipates having to incur to deal with the door replacement, back window replacement, some painting and flooring.

79. As for the evidence of Ms. MacDonald, it provides little assistance to the court in determining the state of the home at the time in which Ms. Sheppard took occupancy and the resulting damage which is alleged to have existed after she had left. I appreciate that Ms. MacDonald is familiar with the home, having herself resided there some eight years ago and further would have been in the home on a number of occasions during the time in which Ms. Sheppard resided there. However, by her own admission, she was not able to speak directly to any of the issues surrounding the alleged damage.
80. Further, as to Ms. MacDonald's evidence of being in a van with Ms. Sheppard at a time in which \$4,500.00 was counted out and allegedly provided to Mr. Deveaux, during these proceedings Mr. Deveaux readily acknowledged that he did in fact receive the sum \$4,500.00 towards a part payment of the purchase price of the home. So too did Justice Gogan make a finding in this regard.
81. I find that Brandon Sheppard's evidence provided some assistance in clarifying some of the damage claim at least to the extent of how it may have occurred. Notably, he had clearly acknowledged that he had attempted to carry out repairs to the bathroom which gave rise to the damages shown in the pictures presented by Mr. Deveaux. Ms. Sheppard in her evidence acknowledged this as well.
82. Further, Brandon Sheppard also acknowledged having to kick in the front door because they were locked out of the home at some point in time, although he testified that the door was repaired and it was his recollection that both the front and back doors worked fine. Mr. Deveaux's evidence is that both doors, including the door jams, had been newly installed almost immediately before Ms. Sheppard took occupancy and both were damaged.

83. Mr. Sheppard acknowledged that his mother had put carpeting in the living room area and that it was further acknowledged that such carpeting was removed from the premises in October 2016.
84. Mr. Sheppard was unable to speak to the condition of the painting in the home depicted by the Claimant's exhibits (mis-match of colours) or to the status of the flooring in the upstairs of the home and whether there had been carpets or not.
85. Mr. Sheppard could not speak to the condition of the window at the back porch when they had occupied the home but does recall there had been a crack in the window, that it was drafty and was required to be boarded up.

LISA SHEPPARD

86. Ms. Sheppard was placed under oath at the commencement of the proceeding and therefore made comments throughout which were noted by the Adjudicator. Her position as it relates to the damage was simply that the place was in bad shape when she took it over and most of the damages existed at that time. For example, she indicated that the alleged missing door leading into where the water tank was had already been damaged, while her son Brandon's evidence was that there was never a door there to begin with.
87. Ms. Sheppard acknowledged that there had been a cracked back porch window which needed to be boarded up. However, from the pictures exhibited, it appears that the window was in fact damaged before any boarding up might have taken place. Also on this particular damage item, Mr. Deveaux's evidence was that the window was fine and that was the reason it was not replaced when he undertook to replace most of the other windows in the home. It was Mr. Deveaux's position that if the window had required replacement he would have replaced it along with the rest of them.
88. Ms. Sheppard confirmed that she had put new flooring down in the living room area (carpet) and took it with her when she had left the home.

89. Based on all of the evidence I have heard, I accept Mr. Deveaux's evidence as to the damage that he found upon re-gaining occupancy of the home in early 2017. I am further satisfied that the claim he has advanced likely does not compensate him for all of the damages and for certain there is no contribution towards the anticipated labour charges to carry out the repairs needed.
90. I find that the estimates set forth in Exhibit 1 (Tabs 5 and 6) are reasonable and directly relate to Mr. Deveaux's evidence as to the nature of the damage that had occurred during Ms. Sheppard's occupancy of the premises.
91. Therefore, I order the Defendant, Lisa Sheppard, shall pay to the Claimant, Robert Deveaux, the total sum of \$3,978.96 representing the material cost to repair the damages sustained to the residence.

COUNTERCLAIM

92. The court acknowledges that a Defence/Counterclaim was filed by the Defendant dated November 3, 2017 (filed on the same date). The contents of the Defence simply state that the Defendant was not responsible for water or taxes and that there had been no damages done to the property as claimed. The Counterclaim simply states Four Thousand Five Hundred Dollars (\$4,500.00).
93. The court noted this matter to the parties at the outset of the proceedings and the Claimant indicated that he had never been served a copy of any Defence or Counterclaim and was unaware of the same. A copy of the Form 2 was shown to the Claimant's counsel, Mr. Burke, for his review. He reviewed the same and agreed to proceed with the hearing based on the claim, Defence and counterclaim.
94. The evidence relating to the Counterclaim, and specifically the \$4,500.00 claimed, was given through Ms. Sheppard's witness, Ms. MacDonald, who testified that she was present with Ms. Sheppard when that same amount of

money was counted out in cash when they were in a vehicle in St. Anne's parking lot and that immediately thereafter Ms. Sheppard left the vehicle and got into Mr. Deveaux's vehicle. Based on this she assumed, although she did not witness anything that was said or any transaction which occurred between Ms. Sheppard and Mr. Deveaux, that Ms. Sheppard gave the \$4,500.00 to Mr. Deveaux.

95. Throughout the proceedings Ms. Sheppard continually alluded to matters surrounding the original agreement and the fact that she maintained that she ought to have been provided a deed by Mr. Deveaux as she had paid him money.
96. At the end of the proceeding the court again raised the issue of the counterclaim and there appeared to be a consensus between both parties that, as found by Justice Gogan, the sum of \$4,500.00 had been paid by Ms. Sheppard to Mr. Deveaux. That is referred to in the final Order of Justice Gogan and her February 24, 2017 decision.
97. However as noted at the outset, Justice Gogan in her decision set forth a deadline (90 days) to afford Ms. Sheppard the opportunity to pay the balance of the monies to Mr. Deveaux and directed Mr. Deveaux to provide to her a deed upon receipt of the payment. This 90 days has long lapsed and the best one can determine from the evidence given at this proceeding, is that no additional monies were paid by Ms. Sheppard to Mr. Deveaux. In fact, the evidence is clear that Ms. Sheppard vacated the premises in October 2016 and the premises remained vacant.
98. I find that the \$4,500.00 which represents the counterclaim is the same \$4,500.00 which was already the principal subject matter of the proceedings before Justice Gogan and that she specifically ruled on that amount. Therefore, I find it would be inappropriate for this court to seize any jurisdiction over what I have concluded to be the same \$4,500.00 that was already dealt with before Justice Gogan.

99. I will say, as a matter of courtesy to Ms. Sheppard who is no longer represented by legal counsel that Justice Gogan's decision presently stands albeit, as Mr. Burke points out, no formal Order has ever been taken out from the Court. Therefore, in fairness to Ms. Sheppard, if she wishes to realize her entitlement to be reimbursed for the \$4,500.00 originally paid to Mr. Deveaux, it will be necessary for her to take out a formal Order arising from Justice Gogan's decision which then would entitle her to be reimbursed the \$4,500.00. There is, of course, the second decision of Justice Gogan as it relates to "costs" which in turn would permit Mr. Deveaux to take out an Order arising from that decision that would entitle him to receive judgment against the Defendant for costs in the amount of \$1,500.00 awarded in his favour.
100. Beyond these comments, I leave it to the respective parties to determine whether it is their intention to take out an Order arising from Justice Gogan's decision as those matters are not before me.

SUMMARY

101. In summary, I order that the Defendant, Lisa Sheppard, pay to the Claimant, Robert Deveaux, the following:

(a) Reimbursement of tax arrears and water arrears -	\$3,000.54
(b) Reimbursement for cost of materials arising from damage -	\$3,978.96
(c) Costs:	<u>\$334.35</u>
(i) Filing Fee - \$199.35	
(ii) Bay Document Service - \$60.00	
(iii) Bay Document Service - \$75.00	
(d) TOTAL ORDER -	\$7,313.85

DATED this 13th day of February, 2018.

A. ROBERT SAMPSON, Q.C.

Adjudicator