Claim No: SCT 475842

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Elm Investments Limited v. Brown*, 2018 NSSM 96

BETWEEN:

ELM INVESTMENTS LIMITED

Claimant

- and -

JODY LEE BROWN and NICOLE ELIZABETH BROWN

Defendants

ORDER

On November 6, 2018, a hearing was held in the above matter and the following Order is made:

UPON HEARING the evidence and argument of the parties;

AND FOR WRITTEN REASONS delivered this day:

1. IT IS ORDERED that the Claimant have judgment against the Defendants for the following amounts:

Debt	$15,525.00
Cost to issue and serve claim	$285.60
Total	$15,810.60

Dated at Halifax, Nova Scotia this 3rd day of December 2018.

Eric K. Slone, Adjudicator

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BETWEEN:

ELM INVESTMENTS LIMITED

Claimant

- and -

JODY LEE BROWN and NICOLE ELIZABETH BROWN

Defendants

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Truro, Nova Scotia on November 6, 2018

Decision rendered on December 3, 2018

APPEARANCES

For the Claimant	Grace MacCormick, Counsel Kristan Stollard, Articling Student
For the Defendants	Peter Lederman, QC Counsel

BY THE COURT:

[1] The Claimant is a commercial landlord with several properties in and around the Truro area. In mid-2017, it purchased a building at 1251 Prince Street in Truro, from Sobey's Inc., which building had housed both a beauty salon on one side, and a Needs convenience store on the other side. The Needs store had ceased operation, while the salon remained active. The Claimant placed a "for rent" sign in the window in the hope of attracting a new tenant for the vacant 2,400 square feet.

[2] The Defendants are a husband and wife who operate a business known as Jody's Home Made Goods, selling preserves on a wholesale basis to stores such as Sobey's. They had been operating their business out of a commercial kitchen in their home and wished to expand their operation. They got in touch with the principal of the Claimant, David Snook, and said they would be interested if the price was right. Mr. Snook testified that he had been reluctant to discuss rent without knowing more about the business and what might need to be done to the space, but the Defendants were adamant that they needed to know the amount of rent before pursuing it. Mr. Snook mentioned $1,500.00 per month.

[3] A critical issue in this lawsuit is whether Mr. Snook mentioned what he most definitely had in his mind, namely that there would be 15% HST on top of this $1,500.00. He thinks he must have mentioned it, because HST is a common, if not automatic, add on. The Defendant Nicole Brown testified that there was no mention of HST and that she therefore assumed that the $1,500.00 was all they would have to pay.

[4] I will return to the HST issue later.

[5] It was agreed that the space required a new heating system. The Claimant arranged for a new heat pump system to be installed. At the same time, the Claimant installed a powerful and specialized range hood suitable to vent the fumes from the five stoves that the Defendants intended to install. The Claimant agreed to do some minor exterior work to improve the appearance.

[6] The parties agreed that the Defendants would be responsible to fix up the space in all other respects. It is admitted by all that the space was dirty and somewhat roughed up from its many years as a convenience store.

[7] It was agreed that the Claimant would be responsible for all expenses of the building, including taxes and snow removal, but the Defendants would be responsible for electricity.

[8] It was also agreed that the Claimant would prepare and present to the Defendants a written lease setting out all of the terms including the rent and the duration of the lease. The Defendants asked for a lease in simple language, which Mr. Snook said could be prepared.

[9] While there was no direct evidence on the point, counsel advised that the parties all understood that the lease would be for a five-year term commencing September 1, 2017. On the strength of these discussions, the Defendants took possession of the premises sometime in August 2017 and began fixing the place up. The heat pump and range hood were installed in August and the Claimant

paid the $14,751.50 bill to the contractor who supplied and installed the equipment.

[10] September 1 came and went without any rent being paid. In fact, no rent was ever paid, which is strange and raises a number of issues.

[11] Mr. Snook testified that he had some serious health issues starting in the summer of 2017, which caused him not to be on top of certain issues such as getting this tenancy fully signed up. Strange as it may appear for a company with a significant inventory of commercial buildings, there was no one else in the company paying attention to what needed to be done, such as getting a lease drafted and collecting rents. Ms. Brown testified that she received one phone call (from a female employee of the Claimant) several months into the tenancy asking for rent arrears, to which she replied words to the effect that she would pay rent after she signed a lease. This appeared to mollify or at least silence the caller, and there were no further requests for arrears until much later.

[12] It appears that the Defendants asked for a draft lease several times over the period of September 2017 right up to May 2018, and were told by Mr. Snook that he or his people were working on it. Mr. Snook testified that, at some point, he asked his lawyers to draft a lease and believed that they were working on it.

[13] Ms. Brown testified that the Defendants were promised the lease many times, and they could not understand why there was such a delay. In the meantime, they did a lot of work and expended moneys on getting the place up and running as a commercial kitchen producing their products. She estimated that the cost of furnishing and cleaning the premises - including their own time

and that of their employees - was in excess of $22,000.00. The receipts for supplies indicate that the expenditures were mostly in August, with some in September. It appears that the process was completed by sometime in September, and the Defendants would have been up and running with their business in that time frame. The only thing apparently missing to complete the arrangement was the lease.

[14] Finally, in the second week of May 2018, Mr. Snook had a written lease to show the Defendants. He arranged to get it to them so they could take it to their lawyer. He also requested that they pay their arrears of rent. Ms. Brown testified that it was only upon seeing the draft lease, and receiving texts from Mr. Snook asking for arrears of rent, that she understood that the rent being requested was $1,500.00 plus HST.

[15] Ms. Brown testified that she and her husband were not prepared to pay this amount of rent. She admitted in court that she would be able to submit the HST as part of her application for HST credits, i.e. that she would get the money back, but this would be only once per year after filing her HST return, which would mean that they would be out of pocket for up to a year until the refund came. This excuse seems, with due respect, to be to be rather thin. The total HST payable on the rent over one year would have been $2,400.00, which amount seems fairly modest in relation to the likely revenues of the business, and (after all) it was not money lost or actually spent; it was a minor cash flow issue. At worst it would have required the Defendants to carry a small amount of debt, or additional debt, to carry this expense. The additional burden to the Defendants would have been slight, though not necessarily trivial.

[16] Instead of doing what one might have expected, i.e. contacting Mr. Snook to complain about the HST and perhaps negotiate changes to the lease, the Defendants simply decided to walk away. Over the course of a weekend, with no warning to the Claimant, they removed all of their inventory and equipment and left the place vacant. In common parlance, they "did a runner." To the extent that their good faith is open to consideration, the Defendants showed little or no good faith in the way they conducted themselves.

[17] I am left to wonder why the Defendants acted the way they did. One small clue may be found in the evidence that suggested that the Defendants were having difficulty getting approval from the municipal authorities for their business. On September 20, 2017 they applied for a building permit for a change of use from retail to commercial kitchen. On February 23, 2018 the Municipality of the County of Colchester wrote to the Defendants and advised them that their application was stalled because they had not submitted a required driveway approval from the Department of Transportation. They were cautioned that until such approval was obtained, they were operating unlawfully. On May 9, 2018, a building inspector attended at the premises to reiterate to them that they were operating unlawfully, and was somewhat rudely rebuffed and told that their lawyer would be dealing with it.

[18] It is too much of a coincidence that this happened two days before they saw the draft lease and decided to vacate.

[19] There was no evidence before me as to whether the approval process was truly problematic. Although this is pure speculation, it is possible that the

Defendants learned that there would have to be changes made to the driveway which might have created an unexpected and unmanageable cost.

[20] Whatever else might be said, clearly the Defendants made a decision in or about mid-May 2018 that they were not going to continue with this tenancy. They knew that they had been in possession for going on nine months without having paid any rent. But they had invested money and effort into improving the premises to make it viable. So something must have precipitated this decision to abandon the tenancy.

[21] The principal question for the court is whether that was a decision that they were legally entitled to make. If it was, that still leaves open the question of whether they are liable for any amount of rent. Either way, the question for the court becomes what amounts are they liable for and what amounts, if any, are they entitled to set off against their debt to account for the improvements that they made to the premises.

Was there a binding contract?

[22] The law seems clear that a commercial lease is a contract that can be agreed to verbally, or by means of written communications (eg. faxes) where it can be shown that the essential terms had been agreed to: see *Southwest Properties Ltd. v. Radio Atlantic Holdings Ltd.*, 1994 CanLII 4368 (NS SC).

[23] Here the parties appear to have agreed on everything with the exception of the HST.

[24] What the Defendants' position ignores is that the issue of HST was never open to negotiation, *per se*. Commercial rent is a taxable service. HST is payable by operation of law, not because of the wording of a lease.

[25] The situation might have been different had the Defendants said that they considered the $1,500.00 to be inclusive of HST, though such a view would be terribly naive as HST is typically shown as a separate item, unlike the systems of collecting value added taxes in other countries where it is implicit. But that is not even what they say they expected. They expected the Claimant to collect $1,500.00 in rent and not charge them HST. That would have been unlawful and the Claimant could not have legally agreed to such a lease.

[26] The most that can be said on behalf of the Defendants is that they were ignorant of the law, specifically the law that holds them responsible to pay HST on commercial rent. The Defendants have a business number and are in a filing relationship with the HST authorities. It might be different if they were in an entirely HST exempt business or occupation. In their actual situation, because they sell food products which are HST exempt, they do not collect HST but they are entitled to a full credit for all HST that they pay. They are accustomed to filing for refunds on other HST that they pay, such as when they purchase non-food supplies (eg. jars) or pay for services such as electricity. As they admit, the issue was in part that they are set up to file annually.

[27] Even that excuse ignores the possibility that they could change their practice to file HST returns quarterly, as many businesses do, which would have further reduced the hardship of paying HST on rent.

[28] Putting all that aside for the moment, I address the threshold question: was there a binding agreement for a lease, and (if so) what would have been its terms?

The effect of the *Statute of Frauds*

[29] Although not raised by the Defendants, the point was made by counsel for the Claimant that no lease for a term of five years can be legally entered into except in writing, by virtue of s.3 of the *Statute of Frauds*. This point is conceded, perhaps to explain why the Claimant did not seek to enforce the agreement as a five-year lease, which could have led to a claim much larger than the one advanced. That section reads:

> **Creation of interest in land**
>
> 3 Every estate, or other interest in land not put in writing and signed by the person creating or making the same, or his agent thereunto lawfully authorized by writing, shall have the force of a lease or estate at will only, except a lease not exceeding the term of three years from the making thereof, whereupon the rent reserved amounts to two thirds at least of the annual value of the land demised.

[30] The rigours of the *Statute of Frauds* have been mitigated to a degree by the consideration of part performance. In *Self v. Brignoli Estate*, 2012 NSSC 81 (CanLII), dealing with a different section of the statute, Justice Coady reviewed the law of part performance in Nova Scotia.

> [8] The *Statute of Frauds* provides that no agreement concerning an interest in land is enforceable by action unless it has been reduced to writing and signed. An exception to the rule exists if the beneficiary can demonstrate part performance of the agreement it seeks to enforce.
>
> [9] Section 7(d) of the *Statute of Frauds* states:
>
> 7 No action shall be sought

> (d) upon any contract or sale of land or any interest therein; or
>
> unless the promise, agreement or contract upon which the action is brought, or some memorandum or note thereof, is in writing, signed by the person sought to be charged therewith or by some other person thereunto by him lawfully authorized. R.S., c.442, s.
>
> The purpose of the statute is to protect against perjured evidence to support a conveyance of land. *Tabesky v. Hope* [2008], N.S.J. 574 (C.A.)

[10] Di Castri's *The Law of Vendor and Purchaser* states as follows at page 4-1:

> "The *Statute of Frauds* provides that no agreement concerning an agreement in land is enforceable by action unless there is evidence in writing signed by the party to be charged or his agent."

[11] The impact of the *Statute of Frauds* may be avoided if the party seeking to enforce the agreement is able to establish part performance of the agreement. Di Castri describes the test for part performance at page 4-14:

> But in order to exclude the operation of the *Statute of Frauds*, the acts of part performance relied upon the plaintiff must:
>
> (1) be unequivocally and in their own nature, referable to the contract asserted, which must be one that, if properly evidenced by a writing, would be specifically enforceable;
>
> (2) demonstrably, unmistakenly and exclusively point to this contract as affecting the ownership or the tenure of the land in question; and
>
> (3) be such that to deny its recognition would be to permit the statute to be made an instrument of fraud by permitting the defendant to escape from the equities with which the acts of part performance have charged him.

[31] He went on to consider the controversy in the law over whether the acts of part performance had to be <u>unequivocally referable</u> to the contract, or merely <u>consistent</u> with them, and concluded:

> [19] I submit that the law in Nova Scotia follows the more traditional test set out in *Deglman* and applied by Hallett, J. in *Carvery*. In order to avoid the *Statute of Frauds* a plaintiff must show acts of part performance that are unequivocally referable to the contract for land asserted by the plaintiff.

[32] In the case before me, the acts of taking possession and fixing up the premises point unequivocally to some type of tenancy, but not to any particular term. As such, the possibility of a verbal lease for five years is defeated by the *Statute of Frauds*. In accordance with s.3, the tenancy must be treated as a tenancy at will, which means that the Defendants were at liberty to end it at any time. In a sense, they were correct in their evident belief that they did not have to sign the lease, and were free to withdraw. They did not even have to provide a reason for doing so. In the case of five-year leases, a deal is not a deal until it is signed.

[33] But the fact remains that this was a tenancy at will, and the legal right to end the tenancy does not mean that the Defendants have no responsibility to pay rent for the time that they were in possession.

[34] As noted, the Claimant is not seeking to enforce the lease as a five-year lease. It is not seeking any future rent. It only seeks rent for the actual time that the Defendants were in occupation.

[35] I do not see how the obligation to pay rent while in occupation, enjoying all the benefits of the tenancy, can be avoided. I find that the Defendants are liable for rent at the agreed upon rate of $1,500.00 for nine months. They are also liable to pay HST, by operation of law and specifically the *Excise Tax Act*.

Are the Defendants entitled to any set-off?

[36] The next question is whether the Defendants can offset against their rent obligation any or all of the expenses that they incurred in improving the premises.

[37] The Defendants filed a document breaking down what they contend were expenditures totalling $22,745.91, on cleaning and improving the premises.

[38] A great deal of that claim consists of labour by the Defendants themselves or their employees. Each of two individuals (Kelly and Marilyn) are said to have spent 87.5 hours painting, for which they are notionally charged out at the rate of $20.00 per hour. The Defendants themselves are said to have put in 225 hours (Jody) and 50 hours (Nicole) which time is valued at $40.00 per hour. These amounts alone total $14,500.00.

[39] An additional amount of $1,600.00 represents $20.00 per hour for 80 hours attributed to a "subcontractor" named "Dan Violette." It is not specified what work this individual performed.

[40] The balance consists of $3,752.91 for building supplies and $2,893.00 for utilities.

[41] Dealing first with the issue of utilities, no explanation was put forth for why the Defendants should not pay their own utilities while in possession. This is simply a cost of doing business, which is their rightful responsibility.

[42] The balance of $19,852.91 represent moneys expended on improving the premises, although I do not necessarily accept that the value of the hours of time put in by the Defendants or their employees are appropriately valued. The amounts are somewhat arbitrary, though not on their face extravagant. There was no evidence before me as to whether these amounts were in line with what it might have cost to contract out the work, or even what it actually cost.

[43] The larger question is what happens to leasehold improvements made by a tenant at the end of a commercial tenancy?

[44] The law has traditionally differentiated between chattels and fixtures which are in a premises at the end of the term. The tenant is entitled to remove its chattels, while (absent an agreement to the contrary, or in other special circumstances) it must leave behind all fixtures. The distinction is whether or not the items in dispute are attached to the land or building. The Nova Scotia Supreme Court in *Frank Georges Island Investments Ltd. v. Ocean Farmers Ltd.*, 2000 CanLII 2543 (NS SC) set out the test:

> [39] The way to distinguish fixtures from chattels (which may be taken and do not form part of the freehold) was explained in the seminal case of *Stack v. T. Eaton Co.* (1902), 4 O.L.R. 335 (Ont. C.A.). Speaking for the court, Meredith, C.J. formulated the following principles for distinguishing fixtures from chattels:
>
> "(1) That articles not otherwise attached to land than by their own weight are not to be considered as part of land, unless the circumstances are such as shew that they were intended to be part of the land;
>
> (2) That articles fixed to the land even slightly are to be considered part of the land unless the circumstances are such as to shew that they were intended to continue as chattels;
>
> (3) That the circumstances necessary to be shewn to alter the prima facie character of the articles are circumstances which shew the degree of annexation and object of such annexation which are patent to all to see;

> (4) That the intention of the person affixing the article to the soil is material only insofar as it can be presumed from the degree and object and annexation."

[45] In the case here, the Defendants took their stoves and shelving and anything else in the way of chattels. They are not asking to be able to remove items that they installed - such as doors or walls - but are rather seeking to be compensated for the cost of having installed them.

[46] The general law in commercial tenancies is that fixtures belong to the landlord, even where the tenant has borne the cost of installing them. Commercial tenants are presumed to understand that fixtures will revert to the landlord.

[47] But are there different considerations where the tenancy in question is a tenancy at will, or where the improvements were installed in furtherance of a tenancy which was never fully consummated?

[48] The Defendants have asked for an "equitable set-off," though without specifying how (i.e. by what legal theory) they are entitled to claim the value of the improvements that they made. The onus would be on the Defendants to establish that they have a legal right to be compensated. I do not think they have met that onus.

[49] Standing back from the situation, I can think of only two legal frameworks which might arguably supply some relief for the work and expense they put in, and which could result in an equitable set-off from the rent otherwise owing. One theory would be the law of rescission; the other would be unjust enrichment.

Rescission

[50] The rescission theory goes like this. Because the contemplated tenancy was never entered into, as its terms were never agreed to, then the contract should be rescinded and both parties should be put back as closely as possible into the positions they held before they expended time and money.

[51] In this case, arguably the Defendants should have restored to them their moneys and time put into improvements. By the same token, the Claimant should have restored to it the $14,751.50 that it paid for a heat pump and ventilation hood, though the Defendants would dispute this *quid pro quo*!

[52] Rescission is far from automatic. It is an equitable remedy typically only available where there has been misrepresentation by one party, or some fundamental joint misunderstanding. Even then, the claim may not succeed. Madam Justice McLachlin (as she then was) in *Kingu v. Walmar Ventures Ltd.* (1986), 1986 CanLII 142 (BC CA), 10 B.C.L.R. (2d) 15 (C.A.), referred to the requirements the plaintiff must meet to receive rescission. Those requirements were described thus (at p.6 - 7):

> (a) A positive misrepresentation must have been made by the defendant.
>
> Where the defendant owes a fiduciary duty to the plaintiff, as it may be contended Chmilar did to the plaintiffs in this case, failure to disclose material facts may suffice: *Laskin & Bache & Co. Inc.* (1972), 1971 CanLII 598 (ON CA), 23 D.L.R. 385 (Ont. C.A.); Waddams, *The Law of Contract*, 2nd ed., p. 262.
>
> (b) The representation must have been of an existing fact: *Anderson v. Pacific Fire and Marine Insurance Co.* (1872), L.R. 7 C.P. 65; see also *Bisset v. Wilkinson*, [1927] A.C.177 (H.L.)

(c) The representation must have been made with the intention that the plaintiff should act on it: *Peake v. Gurney* (1873), L.R. 6 H.L. 377.

(d) The representation must have induced the plaintiff to enter into the contract: *Shortt v. MacLennan* 1958 CanLII 11 (SCC), [1959] S.C.R. 3.

(e) The plaintiff must have acted promptly after learning of the misrepresentation to disaffirm the contract: *Clough v. L.N.W. Ry.* (1871), L.R. 7 Ex. 26; *Wallbrige v. W.H. Moore & Co. Ltd.* (1964), 48 W.W.R. 321 (B.C.S.C.); *Dodds v. Millman* (1964), 1964 CanLII 467 (BC SC), 45 D.L.R. (2d) 472 (B.C.S.C.); *Bango v. Holt* 1971 CanLII 988 (BC SC), [1971] 5 W.W.R. 522 (B.C.S.C.); *Timmins v. Kuzyk* (1962), 1962 CanLII 452 (BC SC), 32 D.L.R. (2d) 207 (B.C.S.C.)

(f) No innocent third parties must have acquired rights for value with respect to the contract property: *Babcock v. Lawson* (1880), 5 Q.B.D. 284.

(g) It must be possible to restore the parties substantially to their pre-contract position: *Redgrave v. Hurd* (1881), 20 Ch. D. 1; *Schlote v. Richardson*, 1951 CanLII 90 (ON SC), [1951] O.R. 58 (H.C.J.); *McLaughlin v. Colvin*, 1941 CanLII 302 (ON CA), [1941] 4 D.L.R. 568, affd. 1942 CanLII 359 (SCC), [1942] 3 D.L.R. 292 (Ont. C.A.); *Friesen v. Berta* (1979), 1979 CanLII 449 (BC SC), 100 D.L.R. (3d) 91 (B.C.S.C.); *Andronyk v. Williams*, [1986] 1 W.W.R. 225 (Man. C.A.).

(h) An executed contract for the sale of an interest in land will not be rescinded unless fraud is shown: *Redican v. Nesbitt*, [1923 CanLII 10 (SCC), 1924] S.C.R. 135; *Shortt v. MacLennan*, supra; *Krah-Hansen v. Kin-Corn Construction & Developments* Ltd. (1979), 13 R.P.R. 22 (B.C.S.C.).

[53] I am unable to find here that there was any form of misrepresentation by the Claimant. A unilateral misunderstanding (that HST would be payable) does not suffice, in my view, to invite rescission.

[54] Perhaps most fatal to the rescission argument is that it is impossible to restore the parties to their pre-contract position.

[55] To the extent that good faith is required for a party to claim an equitable remedy, these Defendants showed bad faith by leaving surreptitiously as they

did, without giving the Claimant any opportunity to work out the apparent issue in dispute with some form of compromise.

[56] I do not see how this contract can be rescinded. It stands as a 9-month tenancy at will.

Unjust enrichment

[57] The leading case on unjust enrichment is the 2011 Supreme Court of Canada case of *Kerr v. Baranow*, [2011] 1 SCR 269, 2011 SCC 10 (CanLII), where Justice Cromwell stated the following with respect to unjust enrichment:

> [31] At the heart of the doctrine of unjust enrichment lies the notion of restoring a benefit which justice does not permit one to retain: *Peel (Regional Municipality) v. Canada*, 1992 CanLII 21 (SCC), [1992] 3 S.C.R. 762, at p. 788. For recovery, something must have been given by the plaintiff and received and retained by the defendant without juristic reason. A series of categories developed in which retention of a conferred benefit was considered unjust. These included, for example: benefits conferred under mistakes of fact or law; under compulsion; out of necessity; as a result of ineffective transactions; or at the defendant's request: see Peel, at p. 789; see, generally, G. H. L. Fridman, *Restitution* (2nd ed. 1992), c. 3-5, 7, 8 and 10; and Lord Goff of Chieveley and G. Jones, *The Law of Restitution* (7th ed. 2007), c. 4-11, 17 and 19-26.
>
> [32] Canadian law, however, does not limit unjust enrichment claims to these categories. It permits recovery whenever the plaintiff can establish three elements: an enrichment of or benefit to the defendant, a corresponding deprivation of the plaintiff, and the absence of a juristic reason for the enrichment: *Pettkus*; *Peel*, at p. 784. By retaining the existing categories, while recognizing other claims that fall within the principles underlying unjust enrichment, the law is able "to develop in a flexible way as required to meet changing perceptions of justice": *Peel*, at p. 788.

[58] The argument for the Defendants would be that they were deprived of their money and labour, that it is unjust for the Claimant to retain the fruits of the

Defendants' labour and materials, and that there is no juristic reason for them to be enriched by that retention. The requested remedy would take the form of compensation for the value of that enrichment.

[59] I will take it as established that the Defendant's have suffered a deprivation, in that they spent money and effort in excess of what might be expected in a short-term lease. But has the Claimant been enriched? I agree that there has been some enrichment, but not necessarily to the full extent claimed. The improvements that the Defendants made to the premises were to suit their own business. There is no evidence as to what use a future tenant will be able to make of the way the Defendants configured the space. The general clean up and painting of walls and replacement of flooring would likely be of some benefit to a future tenant, though even that is not certain.

[60] But is the enrichment unjust? I do not see it that way. The parties verbally agreed that the Defendants would take the premises in the rough shape that they were in, and in exchange the Claimant would clean up the outside of the building, update the heating system and install a specialized commercial grade ventilation hood. It was also agreed that the rent would be $1,500.00 a month, which might or might not be the rent that a premises in better condition might have commanded. That was the exchange, and it does not strike me as an inherently unfair bargain.

[61] In brief, there was an element of enrichment but not an unjust one.

[62] If we begin to try and unravel the extent to which each party has been enriched by the expenditure of the other, we might conclude that the Defendant come out slightly ahead, but even that proposition is questionable.

[63] I do not find the Defendants entitled to any relief arising from unjust enrichment.

Conclusions

[64] I find that the agreement amounted to a tenancy at will, and that the amount of rent payable per month is $1,500.00 plus HST, which is payable by operation of law. The Defendants are not entitled to offset anything for the improvements thay made, which were part of a verbal agreement to improve the premises as they saw fit, in exchange of which the Claimant would clean up the exterior, and add the new heating system and ventilation hood.

[65] The Claimant is entitled to $15,525.00 plus costs of $285.60, for a total of $15,810.60. In my discretion, because of the Claimant's delay in preparing the lease, I deny any prejudgment interest.

Eric K. Slone, Adjudicator