

Claim No: 431576

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

Cite as: Chaisson v. Kennedy, 2014 NSSM 64

BETWEEN:

KATHERINE CHAISSON

Claimant

- and -

JACKIE KENNEDY

Defendant

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**REASONS FOR DECISION**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on November 4, 2014

Decision rendered on November 25, 2014

**APPEARANCES**

For the Claimant            self-represented

For the Defendant        self-represented

**BY THE COURT:**

[1] The Claimant rented a trailer/mobile home on one acre of land in Upper Stewiacke from the Defendant, with the intention of fixing it up and eventually owning it. For various reasons, that did not work out. In the aftermath of this arrangement, the Claimant asked for and received permission to leave some of her belongings stored there, until she could arrange to pick them up and transport them to Halifax. Some months past with no communication, after which the Defendant disposed of everything (or almost everything) and sold the trailer. The Claimant seeks compensation for her belongings, which she values at \$4,620.00.

[2] The Defendant has counterclaimed for \$4,580.00 to compensate her for a number of items, including unpaid rent, cost of cleanup and a loss on the resale to a third party.

[3] The relationship began with the signing of a Rent-To-Own Agreement dated June 24, 2013 ("the Agreement.") Some of the important terms of the Agreement were:

- a. Purchase price was to be \$19,900.00.
- b. A down payment of \$1,000.00 was required.
- c. The balance was to be paid in 45 equal instalments of \$420 per month commencing August 1, 2013.
- d. In the event the purchaser defaulted on a monthly payment, the Agreement would be null and void and all payments to date would be considered rent.

- e. All upgrades would be at the purchaser's expense, and if she defaulted, she would not be entitled to any compensation for what had been done.
- f. The purchaser was responsible for the upkeep of the property and agreed to keep it clean and free from debris.

[4] According to the Claimant, she paid the initial \$1,000.00 and 3 installments of \$420.00, at which time she ran into financial difficulties and could no longer pay. According to the Defendant, the Claimant only made two payments of \$420.00. (I will resolve this question if need be.)

[5] It is not disputed that after the Claimant told the Defendant that she could no longer pay the monthly amounts, the Defendant terminated the Agreement. From that point forward, the Claimant had no expectation of ownership.

[6] The Claimant had never lived in the trailer. It truly was something of a "fixer-upper." According to the Claimant, it had no running water although there was a well on the property. The roof leaked. There was mould in the walls and it was infested with rodents and insects. Her plan was to upgrade the trailer with new insulation, walls, windows etc., so that it could ultimately become her home.

[7] The Claimant had been working away at gutting the trailer. She had a number of tools on site to do the work, some of which she had bought for the occasion. She got a good deal on six new windows, which she planned to use as replacements for the old, poorly functioning windows. In her claim she provided a detailed list of everything she says she left at the property. The Defendant disputes various aspects of this list.

[8] There is no dispute that, sometime in October 2013 (or possibly in early November), the Defendant told her she could store her stuff in the basement of the trailer. The reason that she needed to do this was because she did not have a working vehicle that could transport everything to her new home in Halifax. Whether or not it was explicitly stated, there would have been an understanding that the stuff could not remain there if the trailer were sold. And there was no doubt that the Defendant planned to sell it.

[9] There is a difference between the parties as to the condition of the trailer when the Claimant left it. She testified that she and her boyfriend tidied it up thoroughly, leaving it in as good shape as possible for a partly gutted building. The Defendant says that she found it in a complete mess several months later.

[10] In July 2014, the Defendant listed the property for sale for \$18,500.00 on kijiji. She eventually accepted an offer for \$15,000.00. Part of what she counterclaims for is the shortfall that she experienced on this sale, namely \$3,500.00.

[11] It was sometime in November 2013 that the Claimant returned the key to the Defendant, and there is no evidence that the Claimant had any access to the trailer thereafter. Nor is there any evidence that the Defendant visited the property for many months thereafter.

[12] It was at some time in the spring of 2014 that the Defendant says she decided to get the property cleaned up to ready it for sale. She testified that it was in a filthy condition. She called as a witness a gentleman, William Hamilton,

who testified that he trucked six loads of construction debris to the dump, charging the Defendant \$240.00 for his services.

[13] This testimony is in contrast to the evidence of the Claimant, who testified in some detail how she and her boyfriend tidied up the place before she returned the key to the Defendant. She admits that she left a pile of debris outside, which she says was in as neat a pile as could be left. She had no ability to remove it.

[14] The Defendant admits that when she started to clean up the property in the spring of 2014, she took all of the Claimant's belongings from the basement where it had been stored. Some of it she threw out. Other items she says she still has in her possession.

[15] The Defendant also admits that she made no effort to contact the Claimant before removing her belongings from the property. She says she assumed that the Claimant had abandoned them. She denies that everything on the Claimant's list was actually there.

### **Legal principles**

[16] As a starting point, several basic legal principles should be stated. One of them is that property rights in personal property (chattels) are not lost unless the owner intends to divest herself of that property. Sometimes, intention is not clear but may be inferred. The principle of abandonment is an example where property rights may be lost because an intention to divest may be inferred from someone's conduct. The law of abandonment is well summarized in the various

legal texts quoted in the Saskatchewan case of *Stewart v. Gustafson* 1998 CarswellSask 581, [1998] S.J. No. 614, [1999] 4 W.W.R. 695, 171 Sask. R. 27:

13 R.A. Brown in *The Law of Personal Property*, 2nd ed. (Chicago: Callaghan, 1955) defined "abandonment" as follows:

Abandonment occurs when there is "a giving up, a total desertion, and absolute relinquishment" of private goods by the former owner. It may arise when the owner with the specific intent of desertion and relinquishment casts away or leaves behind his property ....

14 *Black's Law Dictionary*, 5th ed. (St. Paul Minn.: West Publishing Co., 1979) provides the following definition:

The surrender, relinquishment, disclaimer, or cession of property or of rights. Voluntary relinquishment of all right, title, claim and possession, with the intention of not reclaiming it.

.....

"Abandonment" includes both the intention to abandon and the external act by which the intention is carried into effect.

15 Professor Ziff, in *Principles of Property Law*, 2nd ed. (Toronto: Carswell, 1996) at p. 127 noted that abandonment involves the converse of possession-taking in the sense that there must be an intention to relinquish title, "that is, an indifference as to the fate of the chattel, coupled with sufficient acts of divestment...."

16 The act of abandonment is essentially a question of fact to be proven by the party relying on the principle of abandonment: *Simpson v. Gowers* (1981), 121 D.L.R. (3d) 709 (Ont. C.A.); *Property Law Cases, Text and Materials* by Mendes Da Costa and Richard J. Balfour (Toronto: Emond-Montgomery Limited, 1982) p. 114, c. 3. The burden of proof is an onerous one where the owner's actions do not clearly manifest an intention to surrender ownership of the chattel in issue. ...

[17] Following these principles, the onus of proof is on the Defendant to prove that the Claimant intended to abandon her property. On the evidence, I do not find sufficient proof here of an intention on the part of the Claimant to abandon

her possessions. There is nothing in the evidence pointing to "a giving up, a total desertion, and absolute relinquishment."

[18] What is most likely is that the Claimant continued to believe that her goods were safely tucked away in an unoccupied building, although vulnerable perhaps to theft or vandalism. That was a risk she was prepared to take. Even if she was a bit careless in leaving her goods for as long as she did without checking, that is not sufficient to constitute abandonment. No doubt she believed that if there were any urgency to remove them, she would be contacted. The Defendant has given no explanation for why she did not try to contact the Claimant. She admitted that she had contact information.

[19] The law has more than one way of approaching the situation where someone has interfered with someone else's property. The law of "conversion" applies where someone simply takes what does not belong to them. Another principle is that of "bailment," which I find to be the most appropriate characterization. The principle of "bailment" holds that where someone (the "bailee") is entrusted with property, there is a basic duty to take reasonable care to safeguard it. Where this service is being provided gratuitously, as it was here, the duty is at a lower level than where someone is paid to look after property, but it is a duty of care nonetheless. If the property is lost or damaged because of the lack of care of the bailee, the "bailor" has a right to be compensated. I find that the Defendant's failure to contact the Claimant was a breach of her legal duty as a bailee of the goods.

[20] I will return to the issue of compensation later.

### **The counterclaim**

[21] The counterclaim appears to have several components. The Defendant claims two months of unpaid rent for October and November of 2013, in the amount of \$840.00. She claims the cost of debris removal of \$240.00. And she claims a shortfall on the sale of the trailer of \$3,500.00, on the basis that she sold it for \$15,000.00 after having listed it for \$18,500.00.

[22] On the question of unpaid rent, there is a difference of opinion as to whether the October payment of \$420.00 had been made. All payments were made in cash, so there are no records. It does not appear that receipts were provided. So it comes down to credibility.

[23] I found both of the parties to be reasonably credible. There was nothing in the evidence of either of them that would cause me to say that I give no credence to what they said. In the absence of any basis to decide between the two, it comes down to burden of proof. The Defendant has the burden to establish that money is owing for the October payment. She has not proved that it is.

[24] As for the further month she claims, the evidence seems clear that she had already terminated the agreement and, as such, cannot claim any further moneys under the agreement.

[25] The claim for \$240.00 for hauling away debris appears to be based on the obligation, stated in paragraph 12 of the Agreement, to keep the property "clean and free from any unnecessary and/or unsightly debris." It does appear that

there was considerable debris left behind, and I find that the Claimant is responsible for this charge, which was quite reasonable for 6 truck loads of debris.

[26] The largest item in the counterclaim is the difference between the \$18,500.00 sale price and the eventual sale price of \$15,000.00. There are several problems with this claim.

[27] First of all, the contract between the Claimant and Defendant was terminated by the Defendant. All of the work that the Claimant had done on the trailer was done with the full knowledge of the Defendant. Much of it was demolition to remove rotten and otherwise unusable material. In theory, the property should have been worth more rather than less after the Claimant put in her work. One can never know what it might have sold for with all of the mould and rot still there.

[28] Also, the Defendant was the one who decided to ask \$18,500.00 rather than some lower amount, and she decided to accept \$15,000.00. She must have anticipated that someone might have wanted to negotiate the price down from what was asked. The Claimant bears no responsibility for those decisions.

[29] In the result, the only part of the counterclaim that has any validity is the claim for \$240.00.

### **The value of the Claimant's property**

[30] The Claim lists the following items:

- a. 6 windows which she values at \$400.00 each for a total of \$2,400.00.
- b. A glass top stove valued at \$400.00.
- c. A dehumidifier valued at \$300.00.
- d. Lumber worth \$100.00.
- e. Exterior light fixtures valued at \$60.00.
- f. A pedestal fan valued at \$60.00.
- g. A list of garden tools which she values at \$125.00.
- h. A detailed list of tools with a value totalling \$1,360.00.

[31] The Defendant stated in general terms, without giving specifics, that not everything that the Claimant claims was there. She testified that she continues to have everything except for the stove and the windows, which she left with the trailer. As for the value of those items, she says that they are vastly overstated.

[32] On the windows alone, the Defendant points out that the Claimant was prepared to let them go for \$50.00 each in the kijiji ad that she created (before the contract was terminated). The Claimant says that she was prepared to throw them in as a bargain because she would have benefited from an increased sale price.

[33] Had the Defendant returned some or all of the Defendant's belongings prior to the court hearing, it might have satisfied much of the claim. It is too late for that. The Claimant seeks monetary compensation, and that is what the court is prepared to provide.

[34] The biggest value item is the six windows. The Claimant testified that they were brand new, and that she had obtained them at some unspecified bargain price. The fact that she was willing to include them in a sale of the trailer for a total of \$300.00 carries some weight, but I find that they were worth more. I do not believe the Claimant has proved that they were worth anything close to \$400.00 each. I value them at \$150.00 each for a total of \$900.00.

[35] The stove is pictured in one of the photos in evidence. It looks to have been a small model, in reasonable condition. I allow \$300.00 as its value.

[36] The claimed value for the dehumidifier of \$300.00 seems high. I allow \$150.00.

[37] I accept the value of lumber at \$100.00, exterior light fixtures valued at \$60.00, pedestal fan valued at \$60.00, and garden tools valued at \$125.00.

[38] I have reviewed the list of tools (which the Claimant values at \$1,360.00) and find them to be slightly over-valued. I allow \$900.00.

[39] In summary, the Claimant has established the following values of items improperly taken or retained:

|                |          |
|----------------|----------|
| Windows        | \$900.00 |
| stove          | \$300.00 |
| dehumidifier   | \$150.00 |
| lumber         | \$100.00 |
| light fixtures | \$60.00  |

|              |            |
|--------------|------------|
| pedestal fan | \$60.00    |
| garden tools | \$150.00   |
| tools        | \$900.00   |
|              | \$2,620.00 |

[40] The Claimant will have judgment against the Defendant for \$2,620.00, minus the counterclaimed amount of \$240.00 which I have allowed earlier, for a total of \$2,380.00. The Claimant is also entitled to her costs of \$96.80.

[41] I will add this. Nothing in this order prevents the Claimant and Defendant from arranging to satisfy part of this order by returning items to the Claimant which the Defendant may still have. For example, if both parties agreed, the dehumidifier could be returned to the Claimant for a credit of \$150.00 against this order. I emphasize: this can only occur if both parties agree. The Defendant cannot simply take it upon herself to return some items and claim credit. It is too late for that.

**Eric K. Slone, Adjudicator**