

Citation: *Krause v. Krause*, 2008 YKSM 2

Date: 20080924
Docket: 07-S0123
Registry: Whitehorse

IN THE SMALL CLAIMS COURT OF THE YUKON
Before: His Honour Judge Cozens

Estate of V.R.E. Krause

Plaintiff

v.

Jason Krause, et al

Defendants

Appearances:

Bryan Krause and Loretta Shore
Kimberley Sova
Jason Krause and Valerie Neufeld

Appearing for the Plaintiff
Appearing as counsel for the Plaintiff
Appearing on their own behalf

REASONS FOR DECISION

Overview

[1] The Plaintiff seeks recovery from the Defendants for arrears of rent, certain costs associated with restoring the residence of Vera Krause at 83 Northland Park 986 Range Rd., Whitehorse, Yukon (the Premises), to a saleable condition, and the cost of items removed from the Premises by the Defendants.

[2] The Executors of the Estate of Vera Krause, and the representatives of the Plaintiff in these proceedings, are the brother and sister of the Defendant, Jason Krause. The co-Defendant, Valerie Neufeld, is the partner of Jason Krause. Vera Krause was the mother of the Executors and Jason Krause.

[3] The Plaintiff's Statement of Claim seeks damages as follows:

- i) \$4,180.00 for rental arrears;
- ii) \$117.13 for key replacement;
- iii) \$996.78 for a shed removed from the premises;
- iv) \$121.81 for the purchase of 46 knobs for cupboard doors and drawers;
- v) \$117.75 for the purchase of two drawer fronts and hinges;
- vi) \$50.39 for the purchase of a dryer lint collector;
- vii) \$17.00 for landfill costs; and
- viii) \$900.00 for labour and materials for general cleaning and repairs (\$800.00 for cleaning and \$100.00 for completing renovations).

[4] At the commencement of the trial, it was agreed between the parties that the Defendant owed the Plaintiff \$3,730.00 for rental arrears.

[5] During the trial, the Plaintiff clarified item viii) by testifying that the \$900.00 represented labour costs only and not materials (as initially included in the Claim). The labour claimed was \$800.00, representing 40 hours of labour for cleaning, and \$100.00 representing five hours of labour. The labour is claimed at an hourly rate of \$20.00 per hour.

[6] The Plaintiff also seeks pre and post-judgment interest and costs.

[7] This was the second time that this matter was set for trial. The Defendants requested an adjournment of the trial from its initial date due to their wish to retain counsel. That adjournment was granted on consent. At the commencement of trial before me, the Defendants indicated that they have been unable to retain counsel. While a Petition has been filed in Supreme Court by the Plaintiff naming Jason Krause as a Respondent, for which he has retained counsel, apparently counsel's retainer does not extend to these proceedings.

[8] The Defendants indicated that they would like to have a further adjournment in order to continue their attempts to retain counsel, or otherwise have the trial adjourned until after the hearing of the Petition. The Plaintiff was

opposed to a further adjournment. Upon further discussion, the Defendants indicated that they were prepared to proceed with the trial, as they wished to bring this matter to a conclusion. As such the adjournment request was abandoned.

History

[9] The Defendants moved into the Premises in August, 1998. The Defendants believed that they had an agreement with Vera Krause that the Premises would become theirs. In 2005, they began to make renovations to the Premises. They continued with these renovations until near to the end of 2005, after which they assisted Vera Krause with renovations to her residence, intending to complete the renovations to the Premises afterwards.

[10] Vera Krause died in the fall of 2006. On October 30, 2006, the Defendants entered into a letter Agreement with the Plaintiff, through the Plaintiff's solicitors, to pay rent for occupation of the Premises in the amount of \$450.00 bi-weekly commencing October 11, 2006 (the "Letter Agreement"). Upon entering into the Letter Agreement, the Defendants did not continue with any efforts to complete the unfinished renovation work in the Premises. As such, these renovations remained unfinished at the time the Defendants vacated the Premises, having given prior notice, at the end of November, 2007.

[11] The Plaintiff entered the Premises on November 26, 2007 and again on December 1, 2007. After assuming control of the Premises, the Plaintiff completed the unfinished renovation work, conducted repairs and did some cleaning. The intent of the Plaintiff was to make the Premises saleable. The Plaintiff incurred costs associated with this work, some, but not all of which, are claimed in this proceeding.

Position of the Parties

[12] The Defendants' position is that they had an oral agreement with Vera Krause that Jason Krause would become the owner of the Premises at some point. There appears to be some inconsistency between the evidence of the Defendants at trial and the Reply filed as to whether this was on a rent-to-own basis or not, although nothing turns on this apparent inconsistency for the purposes of this trial.

[13] Based upon their belief in the existence of this ownership agreement, the Defendants began renovation work to the Premises. Vera Krause paid for the purchase of the materials required, and the Defendants reimbursed her with cash. Once Vera Krause died and it became apparent that the Plaintiff would not recognize the existence of any oral agreement between Vera Krause and the Defendants, they decided not to invest any more time and money into the completion of the renovations of the Premises. The Defendants signed the Letter Agreement that set out their obligation to pay rent and to assume responsibility for the day-to-day care and maintenance of the Premises.

[14] The Defendants assert that the Premises were left in a better condition than when they first moved in. The improvements to the Premises were a direct result of the Defendants' financial contribution and labour. The Defendants filed photographs of the Premises, taken for reasons unrelated to these proceedings, that showed the state of portions of the Premises prior to the renovations being commenced. They installed a dishwasher at their own expense which they left in the Premises. A document prepared by Ms. Neufeld's father, a contractor operating under the name Par Finishing of Sycamous, British Columbia, estimates the Defendants supplied labour and materials worth \$14,780.00 for the renovation work to the Premises.

[15] After the death of Vera Krause, the Defendants continued with the day-to-day care and maintenance of the Premises, but did not complete the renovations,

as the incentive to expend more of their own money and labour no longer existed. At no time did they damage the Premises. There was no agreement in place requiring them to complete the renovations and, had the Plaintiff wished that to be the case, the Plaintiff should have conducted a walk-through of the Premises at the time the Letter Agreement was entered into.

[16] The Plaintiff's position is that the Defendants left the Premises in a state of uncleanliness and disrepair. The Plaintiff was required to take steps to rectify the situation. The actions of the Defendants caused the Plaintiff to incur the costs which have been claimed, and, as such, the Plaintiff should be reimbursed.

Analysis

[17] The Plaintiff bears the burden of establishing on a balance of probabilities that the Defendants are liable to the Plaintiff for the costs claimed.

[18] There is no agreement stipulating the Defendants' obligations and responsibilities to the Plaintiff with respect to any unfinished renovation work. The Letter Agreement is the only agreement between the parties and, as noted earlier, deals with rent obligations and the day-to-day care and maintenance of the Premises.

[19] The only witness for the Plaintiff was Bryan Krause. I find his evidence to be credible and supported by the documents filed.

[20] Both Defendants testified. I find the evidence of Ms. Neufeld to be credible. I find the evidence of Jason Krause to be of little, albeit some, assistance, in that he was clearly frustrated with these proceedings and the underlying dispute between the Plaintiff and the Defendants.

Re-keying the Premises

[21] There is no dispute on the evidence that the Plaintiff asked Jason Krause for the keys to the Premises and he refused to provide them. This directly contributed to the Plaintiff expending \$117.13 for the Premises to be re-keyed. The actions of the Defendant, Jason Krause, were unreasonable in this regard and I find in favour of the Plaintiff for the total amount claimed.

Removal of the Shed

[22] There is no dispute on the evidence that the Defendants removed the shed from the Premises or that Vera Krause had purchased it for the price of \$996.78. It was also agreed that the shed was not a fixture on the property.

[23] The Defendants claim that Vera Krause had given them the shed as a gift. Ms. Neufeld testified that she had been told this by Jason Krause but that she had no direct knowledge of this herself. Jason Krause testified that it had been a gift from Vera Krause but could not say when or for what reason it had been gifted to him. In cross-examination, he stated that the gift amount to him was \$600.00 of the total amount. He had no paperwork to establish his claim.

[24] The Plaintiff filed an excerpt of Vera Krause's 2004 Income Tax Return in which there is a claim for a shed in the amount of \$1,444.48 as an equipment or property addition made in 2004 under the Capital Cost Allowance. The Plaintiff claims that the only shed this could be is the one removed by the Defendants, as the other shed on the property was quite old and certainly on the property before 2004. The Defendants did not offer any evidence in this regard.

[25] Notwithstanding that the purchase price of the shed differed from the amount claimed in the Income Tax Return, I am satisfied on a consideration of all the evidence that the shed in question belonged to Vera Krause. I also find that the Defendants have not satisfied me that she gifted any portion of it to the Defendants. Therefore I find the Defendants liable to the Plaintiff for the \$996.78 claimed.

Knobs for Cupboard Doors and Drawers

[26] I accept the evidence of Ms. Neufeld that the Defendants had paid Vera Krause for the knobs. Ms. Neufeld was candid in her admission that she retained the knobs that were provided with the doors and drawers and substituted new but different ones in their place, at the Defendants' expense. Exhibit 3, photograph 2 shows three knobs of the same type that Ms. Neufeld removed. These were left behind in the Premises and had been properly installed. I infer from the evidence that all of the knobs retained by Ms. Neufeld had been installed at one time.

[27] I also accept the evidence of Bryan Krause that there were insufficient knobs to install them on all the doors and drawers, the shortage being five in total (41 out of 46 required), and that he was not certain where to purchase matching ones. I accept his evidence that the cost of replacement knobs was \$121.81.

[28] There is no any oral or verbal agreement that contemplates the Defendants' responsibilities in this regard. The responsibilities of a Tenant as set out in s. 76(2) of the *Landlord and Tenant Act* R.S.Y. 2002, c. 131 (the *Act*), create a responsibility on the Tenant for "damage" to premises caused by willful or negligent conduct. "Damage" is defined in *The Canadian Oxford Dictionary*, 1998, as "1. harm or injury impairing the value or usefulness of something."

[29] The actions of Ms. Neufeld in removing the knobs and leaving an insufficient number behind to allow for installation on all the doors and drawers may well be "damage" as contemplated by the *Act*. It also may be a "removal" of the knobs by the Defendant for which the Plaintiff should be compensated.

[30] I limit, however, the extent of this "damage" or "removal" to the individual value of the five additional knobs purchased by the Plaintiff, in an amount of \$13.24, a figure arrived at by calculating the actual purchase per knob for the replacement knobs. I would have expected there to have been some attempt by the Plaintiff to communicate with the Defendants to attempt to determine where

the other 41 knobs had been purchased in order to obtain the five which were missing in order to complete the installation. I have no evidence any such attempt was made.

[31] The Plaintiff's position that the knobs were unsuitable and required replacement in their entirety is not a position I accept on the evidence I have. These knobs were obviously meant to be placed on doors and drawers and, while not necessarily satisfactory to the Plaintiff, would most likely have been useable.

[32] That said, in the circumstances of this case, in particular the evidence of the Defendants that they provided materials and labour that improved the value of the Premises, and the value of the Plaintiff's claim as I have determined it to be, I am not prepared to award any damages to the Plaintiff for this aspect of the claim.

[33] I also find, in the circumstances of this case, that the renovation work commenced prior to the entering into of the Letter Agreement, left unfinished, does not constitute damage as contemplated by the *Act*.

Drawer Fronts and Hinges

[34] I accept the evidence of Ms. Neufeld that the two drawer fronts and four hinges were left in the Premises in a closet. I also accept the evidence of Bryan Krause that the drawer fronts and hinges were missing, in that they were not installed and he did not locate them anywhere. As there were several individuals cleaning the Premises over a short period of time, it may well be that these items were inadvertently removed from the Premises by one of these individuals. Although I recognize that this is speculation and cannot be the basis for a finding that this occurred, it leaves the Plaintiff in the position of not having satisfied me on a balance of probabilities that the Defendants are liable to the Plaintiff for these items.

Lint Collector on the Dryer

[35] While I accept the evidence of Bryan Krause that the lint collector on the dryer was broken and was replaced at a cost of \$50.39, I also accept the evidence of Ms. Neufeld that the Defendants had purchased the dryer to replace the previous non-functioning one. I also accept her evidence that the lint collector was broken at the time the Defendants purchased the dryer. As such, I find that the Defendants are not liable to the Plaintiff for this item.

Cleaning of the Yard and Landfill Costs

[36] I have no difficulty accepting the Plaintiff's evidence that the yard was cleaned and materials taken to the Landfill as a result. I also accept the Defendants' evidence that they made several trips to the Landfill on their own accord to clean up the yard. There is evidence from the Defendants that some of the items disposed of by the Plaintiff, garden ties in particular, were of some value and would have been kept by the Defendants had they known that the Plaintiff was going to dispose of them. The Defendants also admitted inadvertently leaving a small pile of wood in the yard.

[37] Section 76(2)(f) of the *Act* obliges a tenant to "maintain the premises and any property rented with it in a reasonably clean condition". The Letter Agreement adds nothing further to this obligation. Perfection is not required; simply reasonableness. On a consideration of all the evidence, I do not find the Defendants liable to the Plaintiff for either the labour involved or the landfill cost.

General Labour

[38] I have some concerns in respect of this claim. The Plaintiff has not been invoiced for any of this expense, nor has it paid out any monies. The hourly rate of \$20.00 appears to be chosen randomly, other than perhaps being approximate to an amount charged as an hourly rate by professional cleaners, although there was no specific evidence in this regard. The work was done by the Executors and their families. The photographs of the Premises filed by the Plaintiff primarily show unfinished renovation work, not evidence of damage requiring repair or extensive cleaning to be done.

[39] That said, some of the photographs do show areas of the Premises that would require cleaning more in line with day-to-day care and maintenance, particularly behind and underneath the washer/dryer and stove, as well as some cupboards. I find that the Defendants are responsible for the costs incurred for some of the cleaning required in respect of this day-to-day care and maintenance of the premises. I award the Plaintiff compensation in the amount of \$100.00 for this claim.

Conclusion

[40] I find the Defendants liable to the Plaintiff for a total amount of \$4,943.91. The Plaintiff shall have its costs in the amount of \$100.00 for preparation and filing of pleadings and \$150.00 for counsel fee. The Plaintiff is awarded pre-judgment interest on the amount of \$3,730.00 from February 5, 2008, as well as post-judgment interest on the \$4,943.91. All interest is awarded pursuant to the *Judicature Act*.

Cozens T.C.J.