

**Mateikis v Rebmann**

2010 NY Slip Op 32375(U)

July 15, 2010

City Court, Ontario County

Docket Number: SC-000687-10/CA

Judge: Stephen D. Aronson

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**State of New York  
County of Ontario  
Canandaigua City Court**

Index Number: SC-000687-10/CA

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Charles T Mateikis

Claimant(s)

-against-

Albert Rebmann

Defendant(s)

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**DECISION**

Present: Hon. Stephen D. Aronson

Appearances: Claimant: Anthony Danielle, Esq.

Defendant: Pro se

In this small claims case, the claimant ("tenant") sought \$425 from the defendant ("landlord") for return of his security deposit. The landlord filed a counterclaim seeking \$2594.81 for repairs and damages to the leased premises. The tenant contends that he moved into the leased apartment about three years and ten months ago. He contends that he paid a \$425 security deposit. He contends that he had a written lease but when the lease expired, the tenancy was converted to a month-to-month tenancy. He contends that he moved out of the leased premises on April 30, 2010. He concedes to owing \$150 in back rent. He now claims he is owed \$275 from the landlord.

The landlord contends that the tenant signed renewals after the lease expired and that the terms of the lease are controlling. The landlord contends that the tenant is bound by the liquidated damage clauses in the written lease for cleaning, late fees and other charges. He also contends that he is entitled to recover replacement costs for cigarette burns to the carpeting and linoleum, painting expenses, repair costs to the walls, and other charges.

The tenant replies that he agrees to be responsible for \$31.62 to replace the light fixture. The tenant contends that he should not be responsible for other damages because the condition of the apartment and appliances was not substantially different from the condition when he moved in. The tenant contends he should be entitled to recoup late fees and some repairs that were offset with free labor. The tenant also contends that the late fees were unreasonable.

In every small claims case, the court is bound to perform substantial justice in accordance with principles of substantive law. The facts presented here raise several legal principles. Under New York law, in the absence of a covenant in the lease providing for a renewal, the tenant generally has no right to a renewal of the lease. *See, Rasch's Landlord and Tenant, 4th edition, § 11:1.* When the term of a written lease expires, the tenant becomes a holdover tenant and if the landlord accepts rent, a month-to-month tenancy is created. *See, Real Property Law § 232-c.* Decisional law provides "that where a tenant holds over without any other or new agreement with his landlord, the law will imply a continuance of the tenancy on the same terms, and subject to the same covenants as those contained in the original lease. *See, Rasch's Landlord and Tenant, 4th Edition, § 10:2.*

Here, the written evidence presented shows: that the original lease term was from August 1, 2006 - July 31, 2007; and, that the lease was renewed for 6 months from August 1, 2008 - January 31, 2009. No other written evidence was presented. Therefore, at the time he moved out of the leased premises, the tenant was a month-to-month tenant subject to the same covenants as those contained in the original lease.

Another substantive law issue raised in this small claims case is the enforceability of the fixed damages and late fees clauses of the lease. Under New York law, a contractual provision fixing damages in the event of breach will be sustained if the amount fixed bears a reasonable proportion to the probable loss and the amount of actual loss is incapable or difficult of precise estimation. *Truck Rent-A-Center v Parathion Farms 2nd, Inc.,*

41 NY 2d 420 (1977). There is no law specifying permissible late fees for private tenancies outside of mobile home parks. Therefore, the propriety of awarding late fees and fixed damage clauses will depend upon the reasonableness of the amounts.

Another substantive law issue raised in this small claims case is the distinction between conditions in the leased premises which are damaged by the tenant and conditions in the leased premises which are consistent with reasonable use and wear. Conditions which are damaged are subject to being set off from the security deposit and are the tenant's responsibility. Conditions attributable to reasonable use and wear are generally the responsibility of the landlord. Reasonable use and wear includes natural deterioration and decay resulting from time and normal use and does not include injuries or damages caused by neglect or misuse of the leased premises by the tenant. *See, Rasch's Landlord and Tenant, 4th Edition, § 19:35.* The burden of proof is on the landlord to establish that the want of repair at the expiration of the term was not caused by reasonable use and wear of the leased premises. *Id.*

The items of damage claimed by the landlord can be examined in light of these legal substantive law principles:

1. The landlord seeks \$90 in late fees for a \$150 rental delinquency for 30 days. This is the equivalent of a 60% late fee charge and is not only unreasonable but is unconscionable and not enforceable. Therefore, the landlord's request for \$90 in late fees must be denied.
2. The landlord seeks a \$200 cleaning fee fixed in the lease. The credible evidence presented by the landlord was insufficient to show that any condition requiring cleaning was beyond reasonable use and wear.
3. The landlord seeks \$1200 labor and materials expense for repairing the walls/ceiling due to a claim of heavy tobacco smoke discoloration and for painting. The landlord failed to sustain his burden of proof

for this expense. The landlord knew that the tenant was a smoker and nothing was mentioned in the lease about cigarette smoke damage. The landlord cites the Watertown City Court case of *McCormick v. Moran*, 182 M2d 568 (1999) in support of an award for having to paint the walls to eradicate cigarette smoke residue. In the *McCormick* case, the lease contained a provision obligating the tenant "to keep the premises in such condition as to prevent health ... problems from arising." The court reasoned that the tenant violated this lease provision. In this case, there was no such lease provision. Moreover, in this case, the tenant was in occupation for about 4 years - - a cleaning and painting of the walls and ceiling would surely have had to take place due to normal deterioration over time from reasonable use, in any event. Therefore, the request for these damages is denied.

4. The landlord seeks \$89.76 to repair a wall hole. The credible evidence showed that the landlord charged this item of damage to the tenant's billing statement (albeit at a different figure) and that the tenant worked off the value. Therefore, this item of damage is denied.
5. The landlord seeks \$31.62 for a light fixture repair. The tenant acknowledges responsibility for this item of damage.
6. The landlord seeks \$30.86 to repair a toilet paper holder. The credible evidence shows that this item is reasonable use and wear and not recoverable.
7. The landlord seeks \$37.00 to repair nail holes. The lease provides that the tenant will be responsible for nail holes @ \$1.00 per hole. The credible evidence does not support an award for these amounts because the landlord did not prove to the court's satisfaction that the nail holes were caused by the tenant. The landlord claimed that these nail holes were attributable to the tenant. The tenant claimed that the nail holes were present when he moved into the apartment. There was no pre-occupation inspection. In the absence of some evidence tipping the scales of justice, it would not be appropriate to make an award.
8. The landlord seeks a fixed damage amount of \$25 to clean the stove and \$25 to clean the refrigerator. Like the nail holes, the landlord did not prove that these conditions were caused by the tenant. There

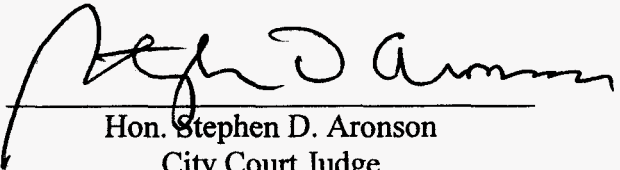
was no pre-occupation inspection; and, where the tenant testifies in credible fashion that the condition was the same as when he moved into the leased premises, no award is justified unless some other credible evidence can be presented by the landlord.

9. The landlord seeks \$493.95 to repair carpet burns from cigarettes and the landlord seeks \$217.50 to fix cigarette burn holes in the linoleum bathroom floor. These damages are clearly compensable. The tenant admitted to causing these damages.
10. The landlord seeks \$4.12 for a missing kitchen sink strainer. The credible evidence showed that the strainer had to be replaced at the tenant's expense. The loss is considered reasonable use and wear. Therefore, the landlord's request for reimbursement for a missing kitchen sink strainer is denied.

In summary, the landlord is entitled to damages for a broken light fixture for \$31.62, damages to repair carpet burns of \$493.95 and damage to repair linoleum burns of \$217.50. The total damages are \$743.07. The tenant is entitled to a credit of \$275 (\$425 security deposit less \$150 rent owed).

Judgment for the defendant for \$468.07 plus counterclaim fee of \$5.44.

ENTERED: Canandaigua, New York  
DATED: July 15, 2010

  
Hon. Stephen D. Aronson  
City Court Judge

"An appeal from this judgment must be taken no later than the earliest of the following dates: (I) thirty days after receipt in court of a copy of the judgment by the appealing party, (ii) thirty days after personal delivery of a copy of the judgment by another party to the action to the appealing party (or by the appealing party to another party), or (iii) thirty-five days after the mailing of a copy of the judgment to the appealing party by the clerk of the court or by another party to the action."