

Sullivan v Shortsville Meadows

2010 NY Slip Op 33361(U)

September 3, 2010

Canandaigua City Ct

Docket Number: 000043-10/CA

Judge: Elisabeth A. Toole

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STATE OF NEW YORK COUNTY OF ONTARIO
CITY OF CANANDAIGUA SMALL CLAIMS PART

RECEIVED

PRESENT: HON. ELISABETH A. TOOLE, PRESIDING

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TAI SULLIVAN,
Claimant,

STATE OF NEW YORK
CANANDAIGUA
CITY COURT

vs.

DECISION and ORDER

SHORTSVILLE MEADOWS

INDEX No.: 000043-10/CA

Defendant.

APPEARANCES: Tai Sullivan, Claimant/Cross Defendant
Carl J. Schwartz, Esq, for Tai Sullivan
Shortsville Meadows, Defendant/Counterclaimant, Peter
Rolph, Esq. Of Counsel for Hall and Karz, Attorneys for
Shortsville Meadows

WITNESSES: Tai Sullivan, Irene Brockman, Patrick Tripp and Janet
Adams

The claimant/Cross Defendant, Tai Sullivan (hereinafter referred to as the "Claimant") filed a claim against the Defendant/Counterclaimant, Shortsville Meadows, (hereinafter referred to as the "Defendant" seeking \$2,825 for "monies due for various items including attorney's fees of \$500.00." The Defendant then filed a counterclaim against Ms. Sullivan for \$637.57 alleging "damages to apartment #110 and back rent owed," and on February 1, 2010, amended the counterclaim to \$3,124.57 for "Rent and damages."

The claimant testified that she rented Apt #110, Shortsville Meadows from July of 2008 through May of 2009. She gave oral notice on April 13, 2009 that she was moving out. Her rent was paid up to May 5, 2009. She intended to move out before May 1, 2009, but was unable to do so. She purchased a house with cash on April 9, 2009, and

was living there. She did return to the apartment in early May several days, but did not pay rent for the month of May. She did not pay rent for May because she alleged that her personal property was stolen by Patrick Tripp, the maintenance man at Shortsville Meadows. On May 5, 2009, she returned to her apartment and the lock was off of the door. She found Mr. Tripp in her apartment cleaning. Most of her belongings were in the dumpster. She called the police to investigate. The claimant testified that she turned in her key to the office on May 8, 2009, and on that day, Irene Brockman wanted her to sign a document which stated she received her things. She never signed it. She again called Mr. Tripp and he told her he couldn't give her things back, and asked her what they were worth. She is suing for the value of the items allegedly taken from her apartment. She acknowledged that she had not kept receipts for the items missing and some of them were gifts to her son. Her only proof as to the items missing and their value was a hand written list made by her son, who did not testify.

Criminal charges were never filed against Patrick Tripp. There was a \$300.00 security deposit given to Shortsville Meadows on behalf of the Claimant by another agency. .

Irene Brockman testified that the Claimant rented the apartment on August 1, 2008 for one year; her rent was \$271.00 per month. The claimant came into the office and told Janet she was leaving on May 1, 2009. Janet told her she had to give 30 days notice.. Ms. Sullivan said she was leaving anyway. After everything was moved out of her apartment there was an inspection done on May 4, 2009. When Ms. Brockman did the inspection, the apartment was empty. She didn't see any of the claimant's property. She called the claimant on May 4th and told her items were taken out of the apartment.

Upon inspection, there was damage to the apartment as listed in Defendant's Exhibit A. The items were fixed by Shortsville Meadows.

Patrick Tripp, the maintenance man for Providence Housing, testified that the first time he entered apartment # 110 was on May 4, 2009. He was asked to determine the damages to the apartment, which is part of his usual duty at Shortsville Meadows when a tenant moves out. He retrieved the key out of the key box, the door was not open. He didn't see any furniture but there were things thrown all over the floor. There was garbage on the back porch. There was some food in the refrigerator. It never crossed his mind that someone still lived there. Although there was no clothing; he did see a fish tank, some pans and approximately 30 CDs and DVDs on the floor in the bedroom. He took the tapes and left them on the ground. He took the valuable items and put them in the storage room, which items were returned to the claimant. It took him one hour to clean out the apartment when he was stopped by the claimant. He told her that her things were in the dumpster and the storage room. He changed the locks on the door May 6, 2009.

He testified as to the expenses incurred for the cleanup and repair of the Apartment, set forth in Defendant's Exhibit A (Move In/Move Out Report) and Exhibit B (Home Depot and Lowes receipts). He purchased the items at Home Depot and Lowes to clean the apartment and to repair the damages to the apartment. He spent \$665.55 at Home Depot and \$89.85 at Lowes. He gets paid \$12.00 per hour and works 20 hours a week. He removed the bags of garbage and put them in the dumpster.

Irene Brockman was recalled by the defense to testify to pictures taken in the apartment on June 12, 2009.

Janet Adams testified that she is the Regional Property Manager for Providence Housing and supervises Shortsville Meadows. She knew the claimant, approved her Application, and gave her a one year lease on August 1, 2008.

In mid-April she was on site and the claimant came into the office and told her she was moving. Ms. Adams told the claimant that she had not given notice, and the claimant replied that she didn't care; that she was moving. Ms. Adams testified that she made efforts to rent the property, but could not rent it until September 9, 2009. She testified that when tenants apply for housing they certify that they fall under a certain income level, and they also certify that they are to notify the complex if their financial circumstances change for example, if they purchase a house.

The Court reviewed the following documents: Lowes receipt dated June 21, 2009 for \$89.85; Home Depot receipt dated May 11, 2009 for \$375.36, Home Depot receipt dated May 20, 2009 for \$290.14; written lease agreement dated July 16, 2008, pictures of the apartment when claimant moved out and the list of items missing from the apartment submitted by Ms. Sullivan. The Court has also assessed the credibility of the witnesses in rendering its decision. The standard in a Small Claims action is substantial justice.

Based upon the proof adduced at trial, the claimant, Tae Sullivan failed to prove that her personal property was stolen and further failed to prove the value of the items, if any, that were taken, and therefore the Court rules in favor of Shortsville Meadows and dismisses her claim. As to the counterclaim filed by Shortsville Meadows, the Court finds that the claimant breached her contract with Shortsville Meadows by moving out before the lease term had expired without giving a 30 day notice of termination.

Further, Shortsville Meadows was not able to re-let the premises until September 9, 2009. The claimant owes rent of \$271.00 for the months of May, June, July and August of 2009, totaling \$1,084.00.

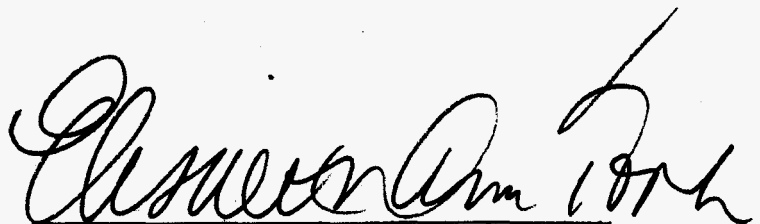
The court finds that the claimant caused damage to the apartment while she was a tenant at Shortsville Meadows, and finds in favor of Shortsville Meadows for materials of \$89.85, (Lowes). In the Move Out Report it is stated that six mini blinds were damaged; the Home Depot receipts shows that 24 blinds were purchased, but there was no proof provided that 24 blinds were damaged. The court awards the counterclaimant \$131.82 for the cost of six mini blinds. The balance of the items listed in the Home Depot receipts relate to painting and cleaning supplies, which is normal wear and tear, and that portion of the counterclaim is therefore denied.

Accordingly, the Court finds in favor of the Counterclaimant, Shortsville Meadows in the amount of \$1,305.67 plus Court costs.

This Decision constitutes and Order of this Court.

ENTER

Dated: September 3, 2010



HON. ELISABETH ANN TOOLE
Acting Canandaigua City Court Judge