

CITATION: Michael Houle (Movement Martial Arts) v. 2424375 Ontario Inc., 2024 ONSC 3664

COURT FILE NO.: CV-22-10683-00CP

DATE: 2024-06-25

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
Michael Houle o/a Movement Martial Arts) Michael Houle, Representative for the
) Plaintiff/Defendant by Counterclaim
Plaintiff/Applicant) Michael Houle o/a Movement Martial Arts
– and –)
)
2424375 Ontario Inc.) Richard An, for the Defendant/Plaintiff by
Defendant/Respondent) Counterclaim
AND BETWEEN:)
)
2424375 Ontario Inc.)
)
Plaintiff/Applicant by Counterclaim)
– and –)
)
Michael Houle o/a Movement Martial Arts) Michael Houle, Representative for the
and Northern Blood Kennels) Defendant by Counterclaim, Michael Houle
) o/a Movement Martial Arts and Northern
Defendants/Respondent by Counterclaim) Blood Kennels
)
) **HEARD:** May 29, 2024

2024 ONSC 3664 (CanLII)

DECISION ON APPLICATION

R.D. GORDON J.

Overview

[1] Michael Houle (the “Tenant”) operated two businesses known as Movement Martial Arts (MMA) and Northern Blood Kennels (NBK).

[2] 2424375 Ontario Inc. (the “Landlord”) is the owner of 31-33 Birch Street in Chapleau, a commercial building with seven discreet commercial units over two floors. Mr. Dong and Ms. Li are the directors and officers of the corporation.

[3] The Tenant leased four of the commercial units from the Landlord. The parties' relationship came to an unhappy end in early August of 2022 when the Landlord changed the locks and denied the Tenant further access to the units.

[4] The Tenant says the Landlord was not justified in its re-entry of the units and unlawfully distrained its chattels. He also claims that he was defamed by the Landlord, suffered business loss during the tenancy a result of disrepair of the units, overpaid rent and utilities, and suffered emotional distress as a result of the Landlord's actions.

[5] The Landlord claims rent arrears from the Tenant. It also claims damages relating to the disrepair of the units, which it says were left in a deplorable state by the Tenant.

Background

[6] In August of 2019 the Landlord and the Tenant entered into an agreement by which the Tenant would lease one of the commercial units in the property for use as a fitness facility or gym (known as the gym lease). Initially their agreement was oral, providing for monthly rent of \$1,600 and payment of hydro related to the unit. The lease terms were subsequently committed to writing. The Landlord has produced a written lease with an effective date of January 1, 2020 that provides for a three-year lease ending December 31, 2023 with monthly rent of \$1,800 per month, increasing by \$100 per month on each anniversary. It provides that the rent would include utilities. The lease was signed by the Tenant. The Tenant denies that this was the lease signed by him. He acknowledges signing a lease that provided for rent of \$1,700 per month, increasing by \$100 per month in each anniversary, with utility costs being his responsibility and an end date of July 31, 2023. He has been unable to produce a signed copy of a lease containing these provisions.

[7] In August of 2020 the Landlord and Tenant agreed orally that the Tenant would begin to occupy a second unit in the property, referred to as the side-room unit. This unit supplemented the gym unit and rent was to be \$400 per month. There was no written lease signed for this unit. Its use was eventually changed by the Tenant to accommodate a dog groomer and then for parties and petting zoo events.

[8] In November of 2020 the Landlord and Tenant entered into a written lease by which the Tenant would lease a unit known as the office unit. The lease provided for rent of "\$850.00 plus HST and hydro paid monthly", to increase by 2.5% on January 1 of each year. The unit was to be used as office space.

[9] In late 2021 the parties entered into a further agreement for the Tenant to occupy a ground floor unit of the property referred to as the retail unit. The Tenant began to occupy the unit in December of 2021 and eventually a five-year lease was signed with an effective start date of February 1, 2022 with rent payable of \$2,260 per month, increasing by \$50 per month for each calendar year, plus hydro. The lease was signed by Mr. Houle on May 19, 2022. The use of this unit was stipulated in the lease to be "for operation retail and/or other service".

[10] The Tenant's business operations were hampered by the COVID crisis. The Landlord was sympathetic to his difficulties and provided some rent relief from time to time. The Tenant acknowledges that he was not always able to pay his rent in a timely manner. Until early June of 2022 the Tenant would speak to Mr. Dong or Ms. Li by telephone to discuss issues that had arisen

and work out a resolution. However, things came to a head with a string of emails beginning on June 4, 2022. Those emails form the basis for the end of the relationship between the parties and are reproduced in their entirety as follows:

Landlord to Tenant, June 4, 2022 2:21 pm:

Subject: Re: Renting Unit

Hi, Mike

We have been calling you, messaging you and emailing you regarding rent not paid and issues with renting unit for couple of weeks. However, there is no response at all. You just ignored. This is not the way and manner to do business. We want to work out and deal with issues. If it is not working, then we have to take further action, even close the units.

We are looking forward to hearing from you.

Have a good day

David

Tenant to Landlord, June 4, 2022 2:33 pm:

Subject: Re: Renting Unit

I am trying David, as explained before I do not have a working phone at this time. I need to purchase a new phone but can't really afford too for another week of 2. I went to the bank and they said I need something with a bank stamp or signature. I sent a picture of the form I had to use in the past.

We have caught up in the passed and you know we will be able to again. I understand your frustrations and appreciate your patience. We all know that building a business can be more expensive then expected

The gym has also just started bringing in decent revenue after taking big losses every month for almost two years. We just put in place deals with 2 of the reserves that bring in multiple thousands monthly. Unfortunately one of the 2 has not yet paid their invoices but once everything is in place their recurring payments will come through.

I have some money available, but continue to await multiple large amounts of money. The puppies also just went to the vet and are new old enough to be sold and rehomed.

Landlord to Tenant, June 7, 2022 12:05 pm

Subject: Re: Renting Unit

Hi, Mike

Due to too many complaints about bad smelling, health concerns and damage of property and other issues caused by live animals you are selling and dogs, you must change the current situation.

If you like to continue renting the units. First you must make a place to pay the rent

Second, you must get rid of all live animals and dogs from all units.

Third, you must get professionals to fix the damages and deeply clean the units.

We understand your situation and tried to help you in many ways. However, we can not stand this continuing.

If we do not see changes, we lock the units. Let me know your solutions please.

Thanks

David

Tenant to Landlord, June 9, 2022 6:10 pm

Subject: Re: Renting unit

I will make a clear plan to pay the rent. As for the live animals I am already repairing the majority of the damage and bringing in air purifiers to help with the air flow. The rabbits have been gone for a long time and puppies have all been leaving. Their is no smell in the lobby or upstairs, in the newmount or in dons unit. The minnows are the ones who stink the most at this time and we are working on address that as well. I don't believe anyone in the building is getting a smell from us.

There however continue to be plumbing smell coming on and off from Mel's unit.

I can contain the smell in the pet store but I cannot clear out the live animals without shutting the store down. I also cannot keep the gym operational without the store and would need to shut everything down.

We are also working on clearing out the back area and will keep it clean to use for unloading skids and other things. Someone keeps adding boxes to the pile and filling up the garbage bin. I prefer they use out garbage bin then it get opened all over the laneway but it's hard for us to clean up if piles of boxes keep getting added.

Newmount also has opened their gym today. They leave lights on 24/7, as mentioned before windows were left open for awhile in winter. Their hydro is tied to a meter that is my name so I am paying for their hydro?

Everything is already a lot cleaner now then when you last visited. The minnow room is what we are working on sealing the most. Summer allows us to open doors and windows as well, along with the air purifiers that I will put in the smell will be controlled.

Thanks again.

Landlord to Tenant June 17, 2022 7:12 pm

Subject: Re: Renting unit

Hi, Mike

It's half month of June already. We haven't received any rent for downstairs since February. I don't know what your plan is. Because you are the business, we don't have to give you a notice. We can change the locks at any time as long as you don't pay rent. So for two units downstairs, you must move out by June 30, 2021.

We tried to make it works, however, it doesn't.

Landlord to Tenant June 17, 2022 8:35 pm

Subject: 31 Birch Street downstairs

Hi Mike

If you don't move out at end of this month, we will change the lock and call animal rescue to take the animals away, so when we come to Chapleau, you will not surprise what will happen, we have give you enough time.

Warmest regards,

David

Tenant to Landlord June 17, 2022 8:56 pm

Subject: 31 Birch Street downstairs

I understand your frustrations and everything will be corrected shortly. I have already fixed many things and I know you are not receiving new complaints about my dogs as they have been away most of the recent weeks, as have I.

Vacating a unit is not an option for me. If I lose one I will just shut down the businesses and move away. The upstairs units are what I would give up first and it would then allow me to be able to pay for everything without problem.

Altho I understand where you are coming from. Changing locks is not the legal way of proceeding with any evictions. Animal control also do not see the animals as being mistreated, neglected or in any kind of harm.

Landlord to Tenant June 19, 2022 7:49 pm

Subject: 31 Birch Street down stairs

Hi: Mike

Tomorrow is Monday, you better consult with legal experts regarding the process for eviction commercial tenants, before it's too late.

Warmest regards,

David

Tenant to Landlord June 19, 2022 8:03 pm

Subject: 31 Birch Street down stairs

I don't understand, is this a threat? I was clear that vacating one unit is not an option. This is the unit that allows me to have my son and all my other things with me while I operate the businesses all day.

If this is how you wish to proceed then I will have start emptying all units now. I have worked non stop for the last several years to catch up all that was owed and keep a business that was shut down alive. You should appreciate that I was able to pay that instead of vacating the building when covid started. My business still suffers from what the covid lockdown has done but seems everyone has forgotten this.

Let me know if I am to vacate all units.

Landlord to Tenant June 19, 2022 8:27 pm

Subject: 31 Birch Street down stairs

Hi Mike

We have good relationships for over two years, but since you opened the new business down stairs, it caused too much troubles.

We understand you tried very hard to build up the business, but we didn't receive any rent and too much complaints. For gym, since the Covid, you tried your best to pay rent, we see it, we didn't increase the rent for two years, that's over \$3600.

We do hope you not move out every unit, but if that's your decision, then we have no choice.

Warmest regards,

David

Tenant to Landlord June 19, 2022 8:40 pm

Subject: Re: 31 Birch Street down stairs

The animals are not causing problems and they have nothing to do with the office unit.

My partners and I understood we were being given time to build the business and "pay what we can afford" this is not the same as a few months free rent then full rent. Yet we still agree to go back and pay all of it.

There are no longer smell issues in the store or in the office and there is no need to do this. You say you did no increase rent, but you were not allowed to legally do so until a few months ago. Yet we have been paying all of the newmounts hydro, along with bathrooms and common areas which should not be our responsibility. The lobby is not heated/cooled and unites are forced to heat themselves. There's remains to be plumbing issues in the building. Yet we do not complain or make problems. We do only what we need to survive.

I do not want to relocate. But it would allow me to stop losing money on the gym, send all of my equipment to hanmer and sell what is not needed. Then the store could be relocated and most likely cost us less rent/hydro. It is inconvenient for us, but moving out starts to look like a better option everytime we have conversations of this nature.

The real issue here is money which you know you will get. Targeting after my live animals because a few nosy ppl made some false complaints is not right. We had a smell issue inside the store for about a week and corrected it quickly, the smell never left the unit and all surrounding units are unaffected by it.

Landlord to Tenant June 19, 2022 9:08

About the Goldcop hydro, let me make it clear. We probably messed up with the meters. There are two meters: one is for Goldcop and your small unit which you are paying now, and the other one is for you which I am paying now. There is not much difference. We can switch back. About the plumbing issue. Last time just blocked because there was socks inside the pipe. It must be your member throwing to the toilet. That should not happen.

Landlord to Tenant June 19, 2022 9:41 pm

Subject: Re: 31 Birch Street down stairs

Hi Mike

You better go back to the lease agreement regarding the gym and read, as I told you better consult with some legal advice. Covid rent freeze is only regarding residential rent and only for one year, anyway I believe it is best for you to move end of this month.

Best,

David

Tenant to Landlord June 19, 2022 9:59 pm

Subject: Re: 31 Birch Street down stairs

You prefer I vacate all units instead of working this out. I can be vacated all units for Aug 1st. Asking us to be out by the end of the month is non sense.

[11] Thereafter, the Tenant made no further payments to the Landlord for any of the units. There were no further communications between the parties until the Landlord attended the property on August 3, 2022. By that time the Tenant had begun to vacate the units but had not moved everything or completed their cleanup of the property. Intervention by the Ontario Provincial Police resulted in the Landlord allowing the Tenant an additional 36 hours to vacate the units. The Landlord returned on August 5 and changed the locks. The Tenant had not been able to move a good deal of the equipment from the gym. They were not allowed further access to the property for that purpose. The equipment remaining in the gym unit was never returned to him.

Issues

[12] The parties raise several issues for determination by the court:

1. Was the Landlord's re-entry to the units lawful?
2. Was the Landlord's retention of the Tenant's goods lawful? If not, what are the Tenant's damages?
3. Is there rent owing by the Tenant, and if so, how much?
4. Is the Tenant owed for hydro? If so, in what amount?
5. Did plumbing issues cause loss to the Tenant? If so, in what amount?
6. Did the Landlord defame the Tenant? If so, what damages are appropriate?
7. Is the Tenant entitled to damages for emotional distress?
8. Is the Landlord entitled to damages for loss of future rent? If so, in what amount?
9. Is the Landlord entitled to damages for non-repair of the units? If so, in what amount?

Analysis

The Landlord's Re-entry

[13] The Landlord's position is that it was entitled to re-enter the retail unit and the office unit without notice due to non-payment of rent. With respect to the gym unit and side-room unit, its position is that it was entitled to re-enter based upon the Tenant's repudiation of those leases.

[14] The Tenant's position is that the Landlord had no right to re-enter any of the units without first giving notice of its intention to do so and that no such notice was given. It was also his position that he never surrendered the units, never intended to surrender the units, and only gave up possession of them when he was locked out.

[15] Section 18(1) of the *Commercial Tenancies Act*, R.S.O. 1990, c. L.7 provides that unless agreed otherwise, every lease shall be deemed to include an agreement that if rent remains unpaid for fifteen days after any of the days on which it ought to have been paid, it is lawful for the landlord to re-enter into the premises without formal demand for payment.

[16] The lease of the office unit has no provision dealing with re-entry on non-payment of rent and is therefore deemed to include the agreement contained in s. 18(1). The Tenant admits there were rental arrears for the office unit when possession of it was taken and that those arrears had remain unpaid for more than 15 days. Accordingly, the Landlord had the right to re-enter the office unit.

[17] The lease of the retail unit includes a provision that in the event of any failure of the Tenant to pay any rent within 10 days after it is due, the Landlord shall have the immediate right of re-entry.

[18] The Tenant signed a lease for the retail unit on May 16, 2022 with an effective lease date of February 1, 2022. The Tenant says the lease was signed under duress, that the Landlord had represented to him that he could simply pay what he could afford for an undefined period, and that because he could not afford to pay rent for the months of February through August of 2022, he was not in breach of his rent obligations. I note, however, that in the e-mail exchange leading to the end of their relationship, the Tenant makes no allegation that the lease was coerced or signed under duress, and there are admissions that rent is owing: June 9 – “I will make a clear plan to pay the rent”; June 19 – “Yet we still agreed to go back and pay for all of it” and “The real issue here is money which you know you will get.

[19] The Tenant’s position that the Landlord agreed he would be entitled to occupy a large retail space without the payment of any rent for six months is belied by his own emails and what could reasonably be expected in an arm’s length commercial relationship.

[20] There were arrears owing when the Landlord’s re-entered the retail unit and those arrears were owing for more than 10 days. The re-entry was lawful.

[21] The Tenant also made it clear in his emails that if the Landlord insisted he vacate the retail unit he would vacate all units: June 17 – “Vacating a unit is not an option for me. If I lose one I will just shut down the businesses and move away”; June 19 – “I was clear that vacating one unit is not an option...if this is how you wish to proceed then I will have start emptying all units now...” and “...I can be vacated all units for Aug. 1”. He thereafter made no payment of rent for any unit. I agree with the Landlord that in these circumstances the Tenant effectively repudiated the leases effective August 1 and that re-entry of the gym unit and side-room unit was lawful. In addition, as determined below, the Tenant was in arrears of rent for both units, entitling the Landlord to take possession without notice.

The Landlord’s Retention of the Tenant’s Chattels

[22] The Tenant was unable to move all of his chattels from the gym unit by August 5 when the Landlord took possession and denied him further entry. The Landlord retained the chattels left behind by the Tenant. The Landlord takes the position that its retention of the goods was not distress but rather an act authorized under Section 16.03 of the gym lease, which provides as follows:

Upon the expiration or earlier termination of this Lease, the Tenant shall surrender the Leased Premises to the Landlord, and save as otherwise provided herein, shall remove all of its trade fixtures from the Leased Premises and shall leave the Leased Premises in a condition which is neat, clean and in compliance with all of the Tenant’s obligations under this Lease. All items not removed upon the expiration or earlier termination of this Lease shall become the property of the Landlord and the Landlord may dispose of same as it seems fit, without recourse by the Tenant, and the Tenant shall reimburse the Landlord for any costs incurred by the Landlord in doing so.

[23] The Landlord accepts that it was not entitled to distraint these goods as the lease had been terminated on its re-entry. Accordingly, its lawful retention of the goods can only be based section 16.03 set out above. It is my view that the Landlord's retention of the goods is not authorized under this provision.

[24] The intent of the provision was to relieve the Landlord of the legal obligation to store and maintain goods as an involuntary bailee. It was not intended to authorize what would otherwise be an unlawful distress and allow the Landlord to retain valuable goods that has not been abandoned by the Tenant and which the Tenant wished to recover. Its use by the Landlord was to be as a shield, not as a sword.

[25] The Landlord's retention of the goods was improper. It is not necessary that I determine whether the Landlord in fact intended to distraint the goods or whether it was relying on this provision in the contract. In either event it improperly retained the Tenant's chattels and is liable for damages, calculated as the value of the property when taken by the Landlord, and possibly for losses caused to the Tenant's business as a result of the improper conversion of the goods.

[26] There is dispute both as to the items retained by the Landlord and the value of those items at that date. The Landlord has provided a list of items it says were in the gym and retained by it. It has provided photographs of the equipment as found, created a list of 15 items, priced each item by referencing the sale of similar items on amazon.ca or similar retail internet sites, and discounting those prices by 60% to reflect their used condition. It arrives at a net estimated fair market value of \$4,752. The Tenant has provided a list of 25 items from those same photographs and has provided an estimate of their replacement value. He has also listed a number of assets not seen in the photographs that were left behind and were of significant value. He has used his acquisition cost for most of the assets and his estimate of value for others, to come to a total valuation of \$34,500. He has also claimed for items that were kept by the Landlord but owned by persons other than himself, however, any such claims for those belong to the rightful owners and not him.

[27] The photographs seem, on their face, to contain more than the 15 items listed by the Landlord. In addition, the Tenant would have a greater ability to identify each item as they were owned by him and were used actively in his business. Accordingly, I prefer the evidence of the Tenant as to what was left behind and kept by the Landlord.

[28] As to values, the evidence is woefully inadequate. I accept that most all of what was left behind was used equipment. I accept the evidence of the Tenant that there is a ready market for used equipment, given that is how he acquired much of what was left behind. However, the evidence is not sufficient to establish what an appropriate rate of depreciation, if any, might be. In addition, aside from the Tenant's "reasonable estimate" of the value of items not shown in the photographs, there is no evidence from which to discern their value.

[29] In the circumstances, having reviewed the evidence provided by both parties, I find that the value of the assets improperly kept by the Landlord to be \$20,000. This is a reasonable valuation of the goods given their used condition and their cost when acquired.

[30] The Tenant has also claimed damages for loss of business income because it was reasonably foreseeable by the Landlord that the conversion of these items would cause a significant interruption in the Tenant's gym business. This claim by the Tenant cannot succeed because it is based on gross business income without regard to the expenses that would have been incurred had the business been in operation. The 2021 tax information filed by the Tenant shows that before adjustment for harmonized sales tax rebate, the gym business had an operating loss of \$2,706.29. In addition, the Tenant acknowledged in the e-mails leading to the end of the tenancy that the gym was losing money. Given that the business was not profitable, the claim for loss of business income cannot succeed.

[31] The Tenant has also claimed damages for the loss of the value of the gym business, calculated by applying a multiplier of 1.5 or 2 to its gross revenues. However, that is not a proper basis for valuation. The materials supplied in relation to this claim are clear that the multiplier is to be applied to net earnings before interest, taxes, depreciation and amortization, not to gross revenue. Given that the gym had no or minimal net earnings, the better valuation is the value of the assets. That value has already been accounted for, as above.

[32] In summary, the loss suffered by the Tenant due to the improper conversion of his assets is found to be \$20,000.

Rents Owning by the Tenant

Re the Gym Unit

[33] The Landlord claims that the Tenant owes rent arrears of \$40,625.33 for the gym unit.

[34] \$30,839.33 of this amount is for "additional rent" as provided in section 5.01 of the lease. The Landlord does not contest that at no time during the lease did it request or require compliance with this provision. In my view it would be wholly inequitable to allow this claim, raised for the first time in this litigation.

[35] The Tenant was to pay \$1600 per month for August through December of 2019. The lease agreement signed by the Tenant for the term beginning on January 1, 2020 provided for rent at the rate of \$1800 per month, increasing by \$100 per month on each anniversary. The Tenant paid \$4000 on August 7, 2019 and paid \$1700 per month from January 1, 2020 through June 30, 2022.

[36] The Tenant says the lease was meant to be for \$1700 per month for 2020, and that subsequent increases in rent were waived by the Landlord due to the COVID crisis and the consequent struggles faced by him and his businesses.

[37] Regardless of what the correct rental amount was to be at the start of 2020, the Landlord accepted rent of \$1700 per month without complaint and without demand for any other payment until this litigation began. I accept that the Tenant believed this was all of the rent required of him and that he operated his business accordingly. It would not be equitable to now allow the Landlord to impose those additional obligations retroactively.

[38] Accordingly, the tenancy lasted from August 1, 2019 to July 31, 2022, a total of 36 months. For 31 of those months the rent was \$1,700 per month for a total of \$35,700 and he paid for all but July of 2022 leaving a balance of \$1,700. For 5 of those months the rent was \$1,600 for a total of \$8000 and he paid the initial amount of \$4,000 and a further payment of \$1,600 in November leaving a balance of \$2,400.

[39] Rent arrears for the gym property are therefore \$4,100.

Re the Office Unit

[40] The lease for the office unit provided for rent payment of \$850 per month, to increase by 2.5% on January 1st of each year beginning in 2021. Again, the Landlord accepted rent at the rate of \$850 per month throughout and at no time requested the increase or alleged arrears of rent. In the circumstances it would be inequitable to allow him to assess those increases retroactively.

[41] The Tenant did not pay rent for June or July of 2022. Arrears for the office unit are \$1,700.

Re the Retail Unit

[42] The lease for the retail unit provided for rent of \$2,260 per month beginning February 1, 2022. As noted above, I am not satisfied that the Tenant was coerced into signing the lease or was subject to duress. He contracted to pay. He acknowledged that he would pay in his emails to the Landlord. He failed to pay. Arrears are \$2,260 for each of February through July for a total of \$13,560.

Re Side-room Unit

[43] Rent for the side-room unit was payable at the rate of \$400 per month. No rent was paid for July of 2022. Arrears are \$400.

[44] The total arrears of rent owing by the Tenant are \$19,760.

Hydro Owed to Tenant

The Side-Unit

[45] The Landlord acknowledges that the hydro bill for the side-room unit, which was paid by the Tenant, included the hydro used for another unit in the building occupied by Goldcorp/Newmount. The Tenant has produced the hydro bills in question which he paid in the total amount of \$2,322.46. There was no evidence before the court dealing with the square footage of the units and no way to accurately calculate what amount was overpaid by the Tenant.

[46] In the circumstances, it is appropriate to allocate half of the hydro charges to the unit not occupied by the Tenant. He is entitled to repayment of \$1,161.23.

The Office

[47] The Tenant paid hydro related to the office unit in the total amount of \$4,259.21. He says the lease provided for payment of the utilities by the Landlord and claims reimbursement of this full amount.

[48] The lease signed by parties provided that the rent for this unit would be “\$850.00 plus HST and hydro paid monthly, on the first day of each month”.

[49] In addition to this provision, the lease includes the following:

3. Beginning on the Commencement Date, Tenant shall pay Rent for the Leased Premises. The Landlord shall be responsible for the direct payment of all utilities specified in section 12.

...

12. Landlord will be responsible for providing Tenant with all utilities reasonably required for the size and purpose of the Leased Premises. Such utilities provided shall include electricity, water and heat.

[50] The lease does seem to contain conflicting provisions with respect to hydro. In one place it is included as part of the rent to be paid by the Tenant. In another, it is to be paid directly by the Landlord.

[51] I note that the Tenant did in fact pay the hydro for this unit without complaint until the litigation began. I also note that each of the other lease agreements made between the parties required that hydro be paid by the Tenant. In these circumstances, it seems more likely than not that the agreement was that the Tenant be responsible for the payment of hydro. The Tenant’s claim for the costs of hydro paid for this unit is therefore denied.

Plumbing Issues

[52] The Tenant claims damages for a three-week period of time during which he says plumbing issues on the property resulted in the closure of the gym and a loss of revenue.

[53] Although there does seem to have been some plumbing issues with respect to the premises, there is no evidence to corroborate that the gym was shut down and, if it was, what revenues were lost.

[54] In the circumstances, the Tenant’s claim is not made out.

The Tenant’s Defamation Claim

[55] The Tenant has failed to particularize his claim for defamation and has not established that he has been defamed. Accordingly, this claim is dismissed.

The Tenant's Claim of Emotional Distress

[56] I have little doubt the final weeks of the relationship between the Tenant and the Landlord were tense and emotional. However, even if I was satisfied that the Landlord acted wrongfully and caused the Tenant emotional distress, I have no evidence of what such distress entailed, what physical or emotional reactions the Tenant had, and what, if any, medical treatment was sought as a result.

[57] The evidence does not establish damages for emotional distress.

The Landlord's Claim for Loss of Future Rent

[58] To the extent the Landlord claims damages for future unpaid rents under the terms of the leases, such damages are denied.

[59] In *Highway Properties Ltd. v. Kelly, Douglas & Co.*, [1971] S.C.R. 563, the Supreme Court of Canada determined that where a tenant is in fundamental breach of a lease or has repudiated it entirely, a Landlord has four options:

1. He may do nothing and insist on performance of the lease, and sue for rent or damages on the basis that the lease continues in force;
2. He may elect to terminate the lease while retaining the right to sue for accrued rents and other damages to the date of termination;
3. He may advise the tenant of his intention to re-let the property on the tenant's account and re-enter the property for that purpose.
4. He may terminate the lease but with notice to the tenant that damages will be claimed for the present value of rents due over its unexpired term.

[60] There is no suggestion that the Landlord in this case gave notice to the Tenant that it was retaking possession of the property with an intention to claim damages for the benefit of the lease over its unexpired term.

Tenant's Liability for Non-Repair of the Units

[61] It is apparent that all units occupied by the Tenant were left in a state of considerable disrepair in breach of the Tenant's obligation to keep the premises in good repair, reasonable wear and tear excepted. Much of the damage was the result of animals having been kept on the premises. The photographs provided by the Landlord indicate many instances of animal excretion, hair and dirt, causing contamination of flooring and flooring materials. There was apparent damage to walls and considerable garbage and other rubbish left strewn throughout. There was unauthorized construction of dog kennels and cages. I have little doubt there was objectionable odour throughout most of the units, primarily of animal urine.

[62] The Landlord claims various heads of damages as a result of the state of the units, including the cost of cleaning supplies and repair materials, labour, travel and accommodation costs and loss of rental income.

Cleaning Supplies and Repair Materials

[63] The Landlord has provided receipts totaling approximately \$15,800 for cleaning supplies and repair materials. Unfortunately, the receipts are shown in such a way that a critical examination is not possible to determine what specifically was purchased and whether those purchases were specifically related to the damages caused by the Tenant.

[64] I have little doubt that there was considerable cost for paint, flooring, and various cleaning supplies. Without the ability to scrutinize each invoice, it is appropriate to allow this head of damages for one half of the amount claimed, or \$7,900.00.

Labour

[65] The Landlord includes a generalized claim of \$20,000 for labour supplied by Ms. Li and Mr. Dong to complete the cleaning and repairs. No specifics were provided of the actual hours spent or the rates applied. Ms. Li, in her affidavit of October 1, 2023, indicated that repairs to the gym, office and side-room were largely complete by the end of December of 2022 and that they had spent two weeks per month over a four-month period completing the work. In the absence of a particularized claim to scrutinize, it is appropriate to assess this head of damages at \$10,000.

Travel and Accommodation

[66] The Landlord has provided receipts totaling \$5,519.50 for gas purchased to travel from their home to Chapleau to complete the repairs and to travel to pick up the cleaning supplies and repair materials. Unfortunately, many of the receipts do not allow me to confirm when the expense was actually incurred. Certainly, there would have been some costs for fuel to travel to the site and to travel for supplies and materials. In the absence of the ability to properly scrutinize the receipts, damages are allowed in the amount of approximately one half that claimed, or \$2,750.00.

[67] With respect to accommodation, Ms. Li states in her affidavit that they incurred costs of \$6,102 from September 2022 to April 2023, to allow them to remain in Chapleau to conduct the required cleaning and repairs. There are no receipts provided and no breakdown of how that amount was arrived at. In the circumstances, no claim for accommodations is allowed.

Loss of Rental Income

[68] In Ms. Li's affidavit she states that the gym, office and side-room units were cleaned and repaired over a period of four months, with them working on the units for about two weeks per month.

[69] Based on this information, had the Landlord worked on the premises weekly after possession, there would have been two months when the premises could not be occupied due to the state in which they had been left by the Tenant. I accept this as a reasonable estimate of

damages for the gym unit (2 x 1,700), side-room unit (2 x \$400) and office unit (2 x 850). The total for these units would therefore be \$5,900.00.

[70] The size of the retail unit results in a longer period of repair. In the absence of particulars from the Landlord about the hours worked, the work done, and the work left to be completed, it is difficult to determine an appropriate loss period with any confidence. However, given the size of the unit relative to the other three, it is apparent to me that it would take at least as long to effect those repairs. Accordingly, two months is a reasonable estimate, beginning after completion of the other units, resulting in a total of four months during which the unit could not be rented due to the condition in which it was left by the Tenant. The loss of rent damages for this unit amount to \$9,040.00.

Other

[71] The Tenant defended these claims by indicating that the units were in some disrepair when he took possession of them, requiring cleaning and repair. His argument is essentially that not all cost of cleaning and repair was the result of his actions, and that the Landlord is being left in a better position than when the leases actually began. I suspect he is right and have factored that into my determination restricting the Landlord's recovery to one half of the repair and cleaning costs claimed.

Conclusion

[72] The Tenant is owed \$20,000 for the goods improperly retained by the Landlord and \$1,161.23 for hydro he was wrongly charged. In all, he is owed \$21,161.23.

[73] The Landlord is owed rent arrears of \$19,760 and damages due to the disrepair of the units of \$35,590. In all, it is owed \$55,350.00.

[74] When these amounts are offset, the balance due to the Landlord is \$34,188.77 and judgment shall issue accordingly. If the parties are unable to agree on costs they may make written submissions to me, not to exceed three pages plus attachments each. The Landlord's submissions shall be made within 30 days. The Tenant's submissions shall be made within 45 days.

The Honourable Mr. Justice R.D. Gordon

Released: June 25, 2024

CITATION: Michael Houle (Movement Martial Arts) v. 2424375 Ontario Inc., 2024 ONSC 3664

COURT FILE NO.: CV-22-10683-00CP

DATE: 2024-06-25

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Michael Houle o/a/ Movement Martial Arts

Plaintiff/Applicant

– and –

2424375 Ontario Inc.

Defendant/Respondent

AND BETWEEN:

2424375 Ontario Inc.

Plaintiff/Applicant by Counterclaim

– and –

Michael Houle o/a Movement Martial Arts and
Northern Blood Kennels

Defendant/Respondent by Counterclaim

DECISION ON APPLICATION

R.D. Gordon J.

Released: June 25, 2024