


FILED
SUPERIOR COURT
OF GUAM

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IN THE SUPERIOR COURT OF GUAM
SMALL CLAIMS DIVISION

CLERK OF COURT
BY: 

PATSY ROSE D. TAITINGFONG,)
)
 Plaintiff)
)
 vs.)
)
 ROSE RICHARD)
)
 Defendant)
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SMALL CLAIMS CASE NO: SD6115-20

DECISION AND ORDER

INTRODUCTION

The matter came on for trial via Zoom Videoconference on November 3, 2020 (and continued to December 2, 2020) before the Honorable Benjamin C. Sison, Jr. who took the matter under advisement. The parties appeared Pro Se. Having reviewed the evidence presented and the applicable law, the Court now issues its Decision and Order.

FACTS

Defendant Rose Richards, as Landlord entered into a lease agreement with Plaintiff, Patsy Rose D. Taitingfong, as tenant, for the lease of Defendant's home (the "Lease"). Plaintiff filed this instant lawsuit for the recovery of her One Thousand Five Hundred Dollar (\$1,500.00) security deposit under the Lease.

Defendant however claims that after the surrender of the leased premises, Plaintiff was responsible for certain damage to the leased premises caused by Plaintiff's negligence or in the alternative, Plaintiff failed to timely notify Defendant of the damages during the lease term as

ORIGINAL

1 required under the Lease. Defendant further claims that Plaintiff failed to return the leased
2 premises in a clean condition as required under the Lease. Consequently, Defendant claims that
3 the costs of repairs chargeable to Plaintiff totaled One Thousand Seven Hundred Fifty Dollars
4 (\$1,750.00), and that said amounts were properly deducted from Plaintiff's security deposit as
5 authorized under the Lease, resulting in no sum remaining under the security deposit due back to
6 Plaintiff. Furthermore, Defendant claims to have cleaned the leased premises to a condition which
7 Plaintiff was obligated to restore under the Lease.
8

9
10 Plaintiff counters that she would not be liable for any such damages claimed by Defendant
11 because she returned the leased premises in a clean condition required under the Lease and that
12 any damages to the leased premises were either pre-existing at the time she took possession of the
13 premises, or in the alternative that said damages were a result of ordinary wear and tear.
14

15 At trial, evidence was presented: 1) in the form of photographs of the premises after
16 Plaintiff's tenancy, 2) testimony from the parties, 3) testimony from Defendant's daughter, 3)
17 testimony from the Defendant's realtor who she retained to facilitate Plaintiff's move out and
18 reletting the leased premises, 4) testimony from the contractor who Defendant retained to make
19 repairs to the leased premises and 5) other relevant documents.
20

21 22 **LAW AND ARGUMENT**

23 Defendants' liability for the damages claimed by Plaintiff may be found in the parties'
24 written lease agreement. Paragraph 4A of the lease provides that "All or any portion of the security
25 deposit may be used, as reasonably necessary to...(ii) repair damage, excluding ordinary wear and
26 tear, caused by Tenant..., (iii) clean premises, if necessary, upon termination of the tenancy..."
27 Paragraph 11(A) in pertinent part provides that Tenant shall be charged for all damage to the leased
28

1 premises as a result of Tenant's failure to report a problem in a timely manner. Paragraph 26(A)
2 of the lease provision entitled "Tenant's Obligation upon Vacating Premises", further provides
3 that Tenant(s) are obligated to remove all debris and deliver the leased premises in a restored clean
4 condition.
5

6
7
8 **A. RESTORATION TO A CLEAN CONDITION**

9 The court finds after reviewing the evidence presented, that Plaintiff had failed to clean the
10 leased premises to a condition as required under the lease. Defendant's realtor and contractor
11 testified that the cost of cleaning the leased premise to a condition required under the Lease, would
12 have been between Two Hundred and Five Hundred Dollars (\$200.00-\$500.00) if a cleaning
13 company were retained. The court finds the amount of three hundred dollars (\$300.00) properly
14 chargeable to Plaintiff in this regard and deductible from Plaintiff's security deposit.
15

16
17 **B. COSTS OF REPAIRS**

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19 Turning to the issues of repairs, Defendant's contractor (the "Contractor") testified during
20 trial to have undertaken the following work with respect to the leased premises and the estimated
21 cost of materials and labor time he expended for each item of work.¹
22

23

<u>Work</u>	<u>Materials Cost</u>	<u>Labor Hours</u>
24 1. Sealed Holes in Wall	25 \$25	26 1

27
28 ¹ Certain work undertaken by Contractor such as repairs to a Boiler and the entrance door, Defendant agrees were not charged to Plaintiff.

1	2. Touch Up Paint- Kitchen Cabinets	\$4-6	2
2	3. Repaired Doors and Cabinet Hinges	\$25	4
3	4. Sealed Kitchen Sink leak.	\$80	1
4			
5	5. Replaced Switch and 2 lightbulbs,	\$33.50	4
6	and glued Conduit moulding back		
	to ceiling.		
7	6. Repaired Bathroom Door	\$45.00	2
8	7. Repaired Sliding door	\$48.00	2
9			

10 The court finds that only repair item 1 above is properly chargeable to Plaintiff. The court
11 finds that the holes that were sealed by the Contractor were initially created as a result of Plaintiff's
12 request for the installation of an air condition unit and that Plaintiff had a duty to restore the leased
13 premises to its original condition under the lease.
14

15 With respect to item 2, the Contractor testified that scratches on the kitchen cabinets
16 necessitating their repainting were caused by fingernails when closing and opening doors and
17 because the original paint did not not have any protective coating. The court therefore finds the
18 damage to the kitchen cabinets to be due to original wear and tear and not chargeable to Plaintiff.
19

20 As to item 4, the Contractor indicated that there was a leak around the kitchen sink which
21 caused water to seep through. However the Contractor also testified that "it was a very very old
22 sink." The court therefore finds that damage to the seal around the sink was due to ordinary wear
23 and tear.

24 As to the glueing of the conduit molding back to the ceiling under item 5, the Contractor
25 testified that "Guam weather caused the molding to fall". Accordingly the court finds that the
26 damage to the conduit molding was not due to Plaintiff's negligence but also due to ordinary wear
27 and tear.
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2 With respect to the bathroom door repair under Item 6, the Contractor testified that the door
3 was wet in the bottom necessitating that he remove the door and cut off the wet portion in its repair.
4 He further stated that “when someone steps out of shower it (the door) got wet and warped.” The
5 court finds that the door became wet and warped based on ordinary and reasonable usage of the
6 shower next to the door, and not due to any negligence on the part of Plaintiff. Defendant’s
7 argument that Plaintiff should have timely notified Defendant in advance to minimize damage to
8 the door is not supported by any evidence and therefore rejected by the court.
9

10 With respect to Item 7 and the repair of a sliding door, the Contractor testified that rusted
11 rolls and a metal hinge broke caused by forceful opening and closing of the door. The court finds
12 that even if the Plaintiff exercised greater than ordinary force in the opening and closing of the
13 doors, the court finds that the fact that the door rolls and metal hinges were rusted contributed
14 greatly to why these items broke. There is no evidence to show that the rust was due to any
15 negligence on the part of the Plaintiff and the rust was likely caused naturally through age and
16 time, in other words, due to ordinary wear and tear.
17

18 With respect to Item 4 repair/replacement of door hinges and the repair of an electrical
19 switch under Item 5, Defendant failed to show that such damage was due to the any negligence of
20 the Plaintiff.
21

22 In summary, the court finds that only Item 1 repairs are chargeable to Plaintiff. In
23 calculating the amount to be the charged to Plaintiff, the court looks to the contractual agreement
24 executed by Defendant and the Contractor. Under the agreement, the Contractor was paid One
25 Thousand Eighty Dollars (\$1080.00) for labor costs associated with all the repair work Defendant
26 claims to be chargeable to Plaintiff. At trial the Contractor estimated that all the work undertaken
27 amounted to sixteen (16) hours of work. This translates to Sixty Seven Dollars and Fifty Cents
28

1 (\$67.50) per labor hour.² Moreover, the Contractor testified specifically that as to Item 1 repairs,
2 the cost of materials for the repair amounted to Twenty Five Dollars (\$25.00) and took One (1)
3 labor hour to complete. The court therefore finds the amount of Ninety Two Dollars and Fifty
4 Cents (\$92.50) to be properly chargeable to Plaintiff and deductible from Plaintiff's security
5 deposit.³
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10 **CONCLUSION**

11
12 For the foregoing reasons, JUDGMENT shall be rendered on behalf of the Plaintiff and
13 against the Defendant in the amount of One Thousand One Hundred Seven Dollars and Fifty Cents
14 (\$1,107.50).⁴
15

16 **SO ORDERED this 8TH day of JANUARY, 2021.**
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22 **BENJAMIN C. SISON, JR., Magistrate Judge**
23 **Superior Court of Guam**
24
25

26 _____
27 ² \$1080.00/16

28 ³ \$25.00 + \$67.50

⁴ \$1500.00 - \$300.00 - \$92.50