

PLAINT

IN THE SUMMARY COURT AT GEORGE TOWN

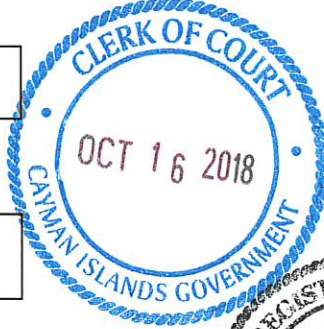
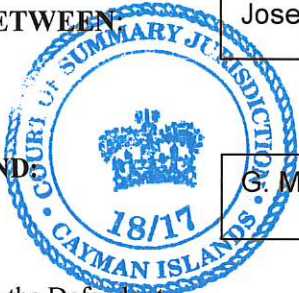
Cause No. SC 208 of 2018

BETWEEN

Joseph Lawrence Barthalomew

AND

G. Mayurie Perera



Plaintiff

Defendant

To the Defendant

222 Sunblaze Drive,
Spotts, Grand Cayman



THIS PLAINT has been issued against **YOU**, G. Mayurie Perera, by the above named Plaintiff in respect of the claim set out on the following page.

Within 14-days after service of this Plaintiff on you, counting the day of service you must either satisfy the claim or return to the Court Office, PO Box 495GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service form stating therein whether you intend to contest this action. If you intend to defend the action, in whole or in part, you must set out **full particulars of your defence** in the space provided in the Acknowledgement of Service form.

If you fail to satisfy the claim or fail to return the Acknowledgement of Service form containing full particulars of your defence, the Plaintiff may apply for a **default judgment** without any further notice to you.

Issued this 16 day of October 2018

PARTICULARS OF CLAIM

1. On 12th January, 2018 the Plaintiff and his wife moved into apartment #25, Phase II, Sunrise Apartments rented from the Defendant.
2. In breach of Clause 21 of the Rental Agreement dated 9th November 2017 (“the agreement”) attached herewith, and in contravention of acceptable health and safety standards, the Defendant failed-- despite frequent requests-- to reinstate hot running water at the premises for over two months, forcing the Plaintiff and his wife for health and hygiene reasons to vacate the property on 24 September 2018 after giving 2-weeks’ notice.
3. Despite the terms of the agreement being rent payable on a month-by-month basis after 3-months occupancy (Clause 1), and the rent having been paid up to the end of September, 2018; and in spite of Clause 5, which clearly states that the security deposit is held solely against damage to the property and cannot be applied against back or future rent; and despite the apartment being left without damage and in a perfectly clean and tenable condition, the Defendant has refused to refund the security deposit of \$1,600.00.
4. In an email dated 23rd September attached herewith, the Defendant stated unambiguously that the security deposit has been retained because it was impossible for her to find a tenant for October. However, a friendly neighbour in the apartment complex has confirmed that the apartment was rented during the first week of October.
5. The Defendant has no good reason to retain the Plaintiff's' security deposit, which should be refunded.
6. Furthermore, due a water leak in the closet of the apartment not repaired in a timely manner by the Defendant, in breach of Clause 21, it is evident from even the lowest of the water bills prior to the leak being fixed compared to the bill after the leak was fixed attached herewith that the Plaintiff unnecessarily suffered unreasonably high water bills for the duration of the occupancy.
7. It is equitable and fair that the Defendant refunds the Plaintiff's overpayment for water as per the attached calculation of overpayment.

8. The Defendant should also pay interest at the prescribed rate as at the date of this Plaint as well as the per diem rate until the sum owed has been paid.

AND the Plaintiff claims:

1 The sum of \$1950.00 being:

\$1600.00 security deposit.

\$350.00 for overpayment of the water as per the calculations attached herewith.

2 **INTEREST** in the sum of **\$43.34** as calculated at Scotia Bank prime rate of 3.70% as from 24 September, 2018 to the date of this Plaint. ($0.37 / 365 = 0.001013 \times 1950 = 1.97 \times 22$ days).

3 **INTEREST** charged at the per diem rate of **\$1.97** until the sum has been paid.

4 **FIXED COSTS** of **\$175.00 plus bailiffs fees**, or alternately costs to be assessed.



Plaintiff's Signature

Plaintiff's address for service

PO Box 2177, KY1-1105

RENTAL AGREEMENT

THIS AGREEMENT made this 30th Day of November, 2017, by and between **G. Mayurie Perera**, herein called "Landlord," and **Joseph Lawrence Barthalomew**, herein called "Tenant." Landlord hereby agrees to rent to Tenant the dwelling located at **Sunrise Phase II, Apt #25, 79, Sunrise Blvd. Prospect. (Block/Parcel 23B/67H25)** under the following terms and conditions.

1. FIXED-TERM AGREEMENT (LEASE):

Tenants agree to lease this dwelling for a fixed term of 3 months, beginning Jan 1st, 2018 and ending March 31st, 2018. Upon expiration, this Agreement shall become a month-to-month agreement **AUTOMATICALLY, UNLESS** either Tenants or Owners notify the other party in writing at least **60 days** prior to expiration that they do not wish this Agreement to continue on any basis.

2. RENT:

Tenant agrees to pay Landlord as base rent the sum of **CI\$1600** per month, due and payable monthly in advance on the **1st day of each month** during the term of this agreement. The first month's rent is required to be submitted on or before move-in.

3. FORM OF PAYMENT:

Tenants agree to pay their rent in the form of depositing to the **Butterfield Bank Account # 1361604110014 / Name: G. Mayurie Perera**

4. RENT DUE DATE:

Tenant hereby acknowledges that late payment will cause Landlord to incur costs not contemplated by this Rental Agreement. We allow for a 3 day grace period. In the event rent is not received prior to the 4th of the month, Tenant agrees to pay a \$25 late fee, plus an additional \$5 per day for every day thereafter until the rent is paid. Neither ill health, loss of job, financial emergency, or other excuses will be accepted for late payment.

5. SECURITY DEPOSIT:

Tenants hereby agree to pay a security deposit of **CI\$1600** to be refunded upon vacating, returning the keys to the Landlord and termination of this contract according to other terms herein agreed. This deposit will be held to cover any possible damage to the property. No interest will be paid on this money and in no case will it be applied to back or future rent.

6. CLEANING FEE

Tenant hereby agrees to accept property in its present state of cleanliness. They agree to return the property in the same condition or pay a \$350.00 minimum cleaning fee if the Landlord has to have the property professionally cleaned.

- 7. REMOVAL OF LANDLORD'S PROPERTY:** If anyone removes any property belonging to Landlord without the express written consent of the Landlord, this will constitute abandonment and surrender of the premises by Tenant and termination by them of this Rental Agreement. Landlord may also take further legal action.

8. CHANGES IN TERMS OF TENANCY:

(This paragraph applies only when this Agreement is or has become a month-to-month agreement). Owners shall advise Tenants of any changes in terms of tenancy with advance notice of at least thirty (30) days. Changes may include notices of termination, rent adjustments, or other reasonable changes in the terms of this Agreement.

9. TENANT COOPERATION:

Tenant agrees to cooperate with the Landlord is showing property to prospective tenants, prior to termination of occupancy.

10. TENANT INSURANCE:

Landlord will not be liable for any loss of Tenant's property. Tenant hereby acknowledges this and agrees to make no such claims for any losses or damages against Landlord, his agents, or employees. Tenants agree to purchase insurance – at their own expense – sufficient to protect themselves and their property from fire, theft, burglary, breakage, electrical connections. They acknowledge that if they fail to procure such insurance, it is their responsibility and they alone shall bear the consequences.

11. ABANDONMENT:

If Tenants leave the premises unoccupied for 15 days without paying rent in advance for that month, or while owing any back rent from previous months, which has remained unpaid, the Landlord and/or his representatives have the right to take immediate possession of the property and to bar the Resident from returning. Landlord will also have the right to remove any property that the Residents have left behind and store it at the Tenant's expense.

12. OCCUPANTS:

The number of occupants is limited to two (2) primary tenants & two (2) children. Only the Tenants may live in this condo.

LOCK POLICY:

No additional locks will be installed on any door without the written permission of Landlord. Landlord will be given duplicate keys for all locks so installed at tenants' expense, before they are installed.

13. LOCKOUTS:

Should tenants lock themselves out of their dwelling and be unable to gain access through their own resources, they may call upon professional locksmith or the Owners to let them in. In either case, they are responsible for payment of the charges and/or damages involved. Owners charge a fee of \$15 for providing this service between the hours of 8 a.m. and 6 p.m., Monday through Friday, excepting holidays, and a fee of \$25 for all other times. This fee is due and payable when the service is provided.

14. CONDITION OF PREMISES:

The Tenants hereby acknowledge that the said property is in good condition. If there is anything about the condition of the property that is not good, they agree to report it to the Landlord within 3 days of taking possession of the property. They agree that failure to file any written notice of defects will be legally binding proof that the property is in good condition at the time of occupancy.

15. INVENTORY AND INSPECTION RECORD:

An inventory and inspection Record has been provided for the Tenants' use. Only after this has been filled out (within the 3-day time limit) will the Landlord take any action to complete necessary repairs. Landlord warrants that all major systems will be functional and in good repair at the time of possession. Light switches, wall plugs, doors, windows, faucets, drains, locks, toilets, sinks, etc. will either be in working order or will be repaired once the Tenants have completed the Inspection and Inventory Record. Tenants are encouraged to report any necessary repairs, no matter how slight, in writing, but they are advised that Landlord does not normally repair or replace nonfunctional items such as paint, carpets, etc., every time a property changes possession. Those items are scheduled for repair/replacement at regular intervals regardless of tenant turnover.

16. TENANT RESPONSIBILITY:

Good housekeeping is expected of everyone. Tenant agrees to keep quarters clean and in a sanitary condition. The Tenants agree not to permit any deterioration or destruction to occur while they are occupying the property.

17. ALTERATIONS:

Tenant shall make no alterations, decorations, additions, or improvements in or to the premises without Landlords' prior written consent, and then only by contractors or mechanics, or other approved by Landlord. All alterations, additions, or improvements upon the premises, made by either party, shall become the property of the Landlord and shall remain upon, and be surrendered with said premises, as a part thereof, at the end of the term hereof.

They acknowledge that they will be responsible for and pay any damage done by rain, wind, hail, tornadoes, etc., if this damage is caused by leaving windows open, allowing stoppage and/or overflow or water and/or sewage pipes, broken windows or doors, torn screens, broken door and window locks, etc. or any damage caused while Tenant has occupancy.

18. VEHICLES & GARAGE USE:

Tenants agree to keep a maximum of 1 vehicle on premises or in the garage. These vehicles must be both operable and currently licensed. Tenants agree to park their vehicles in assigned spaces and to keep those spaces clean of oil drippings. Tenants agree not to park boats, recreational trailers, utility trailers, and the like on the premises without first obtaining Landlords' written permission.

19. UTILITIES:

Resident will be responsible for payment of all utilities, water, telephone, or other bills incurred during their residency. They specifically authorize Landlord to deduct amounts of unpaid bills from their Security Deposits in the event they remain unpaid after termination of this agreement. The Landlord/Owner agrees to only pay garbage, and sewer bills.

SERVICES. Landlord shall be responsible for the following utilities and services in connection with

- the premises
- sewer
- Garbage and trash disposal

Tenant shall be responsible for the following utilities and services in connection with the Premises:

- Electricity
- Water
- All other utilities and services not listed under the Landlords responsibility

Tenant acknowledges that Landlord has fully explained to the Tenant the utility rates, charges and services for which Tenant will be required to pay (if any), other than those to be paid directly to the utility company furnishing the service.

20. NOTIFICATION OF SERIOUS BUILDING PROBLEMS:

Tenant agrees to notify Landlord immediately if roof leaks, water spots appear on ceiling, or at the first sign of termite activity. Tenants also agree to notify the Owners immediately upon first discovering any signs of serious building problems such as foundation cracks, a tilting porch, a crack in plaster, buckling drywall or siding, a spongy floor, a leaky water heater, etc. If the tenant does not notify landlord in a prompt matter the tenant may be held financially responsible.

21. REASONABLE TIME FOR REPAIRS:

Upon being notified by Tenants that there is some building defect in which is hazardous to health, life, or safety, Owners shall undertake repairs as soon as possible. Should there be a delay of more than seventy-two (72) hours in making repairs, due to difficulty in scheduling the work or obtaining parts or for any other reason beyond the Owners' control, Owners agree to keep Tenants informed about the progress of work.

22. DRAIN STOPPAGES:

As of the date of this Agreement, Owners warrant that the dwelling's sewage drains are in good working order and that they will accept the normal household waste for which they were designed. They will not accept things such as diapers, sanitary napkins, tampons, children's toys, wads of toilet paper, balls of hair, grease, oil, table scraps, clothing, rags, sand, dirt, rocks, or newspapers. Tenants agree to pay for clearing the drains of any and all stoppages except those which the plumber who is called to clear the stoppage will attest in writing were caused by defective plumbing, tree roots, or acts of God. Please use a drain filter to save unnecessary time & money with repairs.

23. BACKYARD & GARDENS:

The Tenants agree to never use any form of pesticides (including rat poison, roach sprays, etc), or fertilizers unless written permission is granted from the Landlord.

24. NON-LIABILITY:

The Tenants hereby state that work or repairs that need to be done will be handled by competent professionals, unless Tenants are qualified and capable of doing the work themselves and doing it properly, in a safe manner that meets all federal, state, and local regulations and have written approval from the landlord. Tenants further state that they will be legally responsible for any mishap they either do themselves or hire others to do. Landlord will be held free from harm and liability along with his agents and representatives. In the event that needed repairs are beyond the Tenants' capacity, they are urged to arrange for professional help.

25. ACCESS TO PREMISES:

The Owner reserves the right to enter the residence at reasonable times to inspect, make necessary repairs, supply services, or show it to prospective residents, purchasers, workmen, or contractors. Whenever practicable, a two-day notice of the Owner's intent to enter shall be given to the Resident.

26. SUBLETTING & ASSIGNMENT:

Tenants shall not sublet the entire premises or any part of the premises, nor shall they assign this Agreement to anyone else without first obtaining Landlords' written permission. Prospective sub lessees or assignees must submit an application to the Landlord and must agree to credit, background, reference, and employment verification as well as the obligation to pay a non-refundable \$25 application fee. Permission to sublease will be determined by the sole discretion of the Landlord.

From: Mayurie Perera <mayurie.perera07@gmail.com>

Date: 23 September 2018 at 08:51:19 GMT-5

To: "Bishop P.J.Lawrence" <lawrencejoba@gmail.com>, Komal <komal_lawrence@hotmail.com>, Shanthi Lawrence <shanthilaw72@gmail.com>

Subject: Re: Vacating

Dear Rev. Lawrence,

I am glad that you enjoyed living in my apartment.

Once you get your CUC bill for September we can prorate and I will pay for 6 days.

Our lease agreement was to give 2 months notice but you gave me less than 2 weeks notice. **It is impossible for me to find a tenant from October.** I have to pay mortgage and strata fees for October. Therefore, I am sorry to inform you that your deposit has been forfeited according to the lease agreement.

All the Very Best to you and Mrs. Lawrence.

Kind regards,

Mayurie

Calculation of Water Overpayment

To be fair and equitable to the Defendant, the value of the overpayment has been calculated by subtracting the value of the water bill after the leak was fixed -- \$35.45 from the lowest of the monthly water bills during the leak (ignoring the month the Plaintiff was absent from the property for almost the whole month) -- \$106.51, and multiplying it by the number of months the Plaintiff was at the property with the leak left unfixed.

Lowest water bill during the leak = \$106.51

Water bill after the leak was fixed = \$35.45

Fair estimation of the monthly overpayment = \$71.06

7-months of water payments with leak @ \$71.06 =

\$497.42 refundable to the Plaintiff due to breach of Clause 21 of the Rental Agreement.

N.B. In order that there be no accusation of unfairness in the calculations, the Plaintiff is willing to reduce the sum due to \$350.00, which is the refund being sought in this Plaintiff.



Water Authority - Cayman
Suppliers of the World's Most Popular Drink

Water Authority-Cayman
Box 1104
Grand Cayman KY1-1102
Cayman Islands

ACCOUNT NUMBER: 71050-546526

TOTAL DUE: \$106.51

AMOUNT ENCLOSED:

001358788

GODAKANKANAMGE M PERERA
P.O.BOX 2892
GRAND CAYMAN KY1-1112

Please return this portion with your payment to ensure proper credit to your account.



Water Authority - Cayman
Suppliers of the World's Most Popular Drink

GODAKANKANAMGE M PERERA
Service Address:
79 SUNRISE BLVD 25

Page 1
Account Number 71050-546526
Billing Date 31/Mar/18

Previous Statement Balance	Payments	Past Due Charges (=)	Additional Activity (+ or -)	New Charges (+)	New Charges Due	Total Due (=)
\$211.58	\$211.58	\$0.00	\$0.00	\$106.51	23/Apr/18	\$106.51

If you have an amount in 'Past Due Charges' that is not a credit, your account is delinquent. Pay 'Past Due Charges' immediately to avoid disconnection.

Previous Statement Balance

\$211.58

Payments

21/Mar/18

Payment - THANK YOU

\$211.58 CR

Total Payments

-\$211.58 CR

Past Due Charges

Additional Activity

Total Additional Activity

\$0.00

New Charges

Water Charges (See detail on back)
Energy Charge
Meter Rental (Monthly)

90.44
11.07
5.00

Total New Charges

\$106.51

Total Due

\$106.51

Be kind to your meter reader! Please ensure your meter box is unobstructed by vehicles or rubbish, and nearby plants are kept trimmed.

Customer Service Monday - Friday, 8:30AM to 5:00PM

Cashiers Monday - Friday, 8:30AM to 4:00PM

GRAND CAYMAN PO Box 1104, Grand Cayman KY1-1102, Cayman Islands . Tel: (345) 949-2837 Fax: (345) 949-0094 Email: info@waterauthority.ky . www.waterauthority.ky

CAYMAN BRAC PO Box 240, Cayman Brac KY2-2002, Cayman Islands Tel: (345) 948-1403 Fax: (345) 948-1404

WATER AUTHORITY - CAYMAN

Incorporated by Law No 18 of 1982 in the
Legislative Assembly of the Cayman Islands

Suppliers of the worlds famous drink
P.O.Box 1104GT
Grand Cayman

09/11/18

10:37AM

Receipt #: 006180911000059
Customer #: 546526
Location #: 71050
For: GODAKANKANAMGE M PERERA

Previous Balance on Acct: 35.45

Currency: CI\$

Payment Received: 35.45

Amount Tendered - Cash: 50.00

71050 BILL00001886708 35.45

CI\$ Change: 14.55

New Balance on Acct: 0.00

Payment will be posted: 09-11-2018

Register: REGISTER 2

Received By: KH1990

Water or sewerage bill queries?
Please call us at 94-WATER
Press 3 for Bill Query

Acknowledgment of Service

IN THE SUMMARY COURT AT GEORGE TOWN

Cause No. SC _____ of 2018

Between: Rev. Dr.. P.J. Lawrence

Plaintiff

AND: G. Mayurie Perera

Defendant

ACKNOWLEDGMENT OF SERVICE

1 State Defendant's name and address -

2 State whether the Defendant intends to contest the action.

Yes

...No

3 If you do not intend to contest the action, do you want time in which to pay the claim?

Yes

No

4 If you do not intend to contest the action in whole or in part, you must set out full particulars of your defence overleaf.

Service of the Plaintiff is acknowledged accordingly.

Defendant's Signature

Dated this _____ day of _____, 20____

See Overleaf

PARTICULARS OF DEFENCE

(Here set out in numbered paragraphs, the grounds upon which the Defendant says that he is not liable to the Plaintiff, or is not liable for the full amount claimed).

Defendant's Signature

REMINDER: This form must be taken or sent to the Court Office, PO Box 495GT, George Town, Grand Cayman within 14 days of receipt. Otherwise, a default judgment may be entered against you.