

IN THE SUMMARY COURT AT GEORGE TOWN



Cause No. 184 of 2019

BETWEEN: LADYGATE PROPERTIES LTD.

AND: KERRY WHITTAKER & KAREN MACKINNON

Plaintiff

Defendants



To the Defendants  
Kerry Whittaker & Karen MacKinnon  
PO Box 6, Bodden Town  
Grand Cayman KY1-1601

PLAINT

**THIS PLAINT** has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

**Within 14 days** after service of this **Plaint** 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 12<sup>th</sup> day of June 2019

**See overleaf for particulars of the Plaintiff's claim**

## PARTICULARS OF CLAIM

(Here set out in numbered paragraphs, the grounds upon which the Plaintiff claims that the Defendant is indebted to him or is liable to pay damages to him).

1. The Plaintiff is a Cayman Islands registered corporation operating as a real Estate Company.
2. The Defendants signed a Lease Agreement (the "Lease") with the Plaintiff to be the tenant of a privately-owned property at 560 Marina Drive, Prospect, Grand Cayman, Block 24B, Parcel 6 (the "Property") for a period of twelve (12) months commencing on the 1<sup>st</sup> day of September 2017. The Lease provided the terms under which the Defendants would be the tenant of the Property. In the Lease the Plaintiff is referred to as the "Landlords" and the Defendant is referred to as the "Tenants". A copy of the Lease signed by the Defendants as the tenant of the Property is attached as **Exhibit 1**.
3. Contained within the Lease the Defendants:
  - Para 1) were to pay " ... 12 equal instalments of C/\$2,250 payable monthly in advance on the first day of each month. The lease completion date is the 3<sup>rd</sup> August 2018."
  - Were also responsible for "Regular landscaping of the premises to a good standard", and to carry out "minor maintenance issues where necessary".
  - Para 2) 13. Were responsible for paying " ... the cost of water and power ...".
4. In the event of the rent payments were not made as per the Lease agreement, Para 2) 1, states " ...the Landlord shall be entitled to recover an additional charge of C/\$30.00 on account of administrative and recovery costs for each day that the rent shall remain outstanding after the due date".
5. In the event that any of the property or inventory items were damaged, refer to Para 2) 14. allows for recoveries. "Throughout the term to Premises and the fixtures and fittings therein in good and tenable repair and condition (fair wear and tear excepted) and to replace all damaged or lost items and effect repair to all dilapidations".
6. Para 2) 19. of the Lease states " .... Tenant agrees to a mandatory minimum unit cleaning charge to be deducted from the security deposit in the amount of \$250 unless the unit is left clean to the Landlord's satisfaction. The collection of this charge in no way restricts Landlord from making claim against deposits for damages in excess of these amounts".
7. The Defendants paid the rent initially but in December 2017 they failed to honour their obligation to pay rent. The Plaintiffs attempted to work with the Defendant but despite numerous promises to pay, the Defendants failed to do so and in March 2018 the Plaintiff asked the Defendants to vacate the Property. On receiving this request to vacate the Defendants paid \$1,000 into the Plaintiff's bank account [the funds cleared on 15<sup>th</sup> March 2018] with promises to pay more within days. Such payments did not materialise as promised and as a result the Plaintiff instructed the Defendants to leave voluntarily or be evicted.

8. After the Defendants vacated the Property the Plaintiff discovered damage to a door that had to be repaired, the Property required cleaning and the garden had not been maintained as per the agreement.
9. The Plaintiff claims penalties on the said sum owing.
  - a) The Plaintiff seeks to claim penalties in the sum of C\$30.00 per day from 1<sup>st</sup> December 2017. The penalties at 31<sup>st</sup> May 2019 total C\$16,410.00 (547 days or 1 year and 6 months), alternatively;
  - b) If the Court determines otherwise the Plaintiff would accept pre and post judgment interest in accordance with the provisions of the Judicature Law (2007 Revision) and Judgment Debt (Rates of Interest) Rules as amended from time to time.

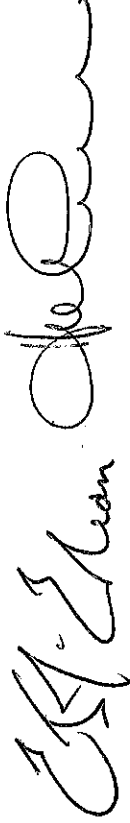
AND the Plaintiff claims:

- I. The sum of C\$10,695.95 as per the schedule attached as **Exhibit 2**.
- II. Penalties in the said sum of C\$16,410.00 in accordance with the Lease.
- III. Costs or alternatively fixed costs of C\$150.00 plus filing fees and bailiff's fees for service.

If within the time for returning Acknowledgement of Service the Defendant pays to the Plaintiff the total amount claimed of C\$27,105.95 (together with penalties and costs of C\$150.00) all further proceedings will be stayed.

Dated this 12<sup>th</sup> of June 2019

Plaintiff's Signature:



Plaintiff's address for service:

Ladygate Properties Ltd  
c/o Property Management Services  
P.O. Box 753, George Town, Grand Cayman, KY1-9006  
Cayman Islands

IN THE SUMMARY COURT AT GEORGE TOWN

Cause No. SC \_\_\_\_\_ of 2019

BETWEEN:

LADYGATE PROPERTIES LTD.

AND

KERRY WHITTAKER & KAREN MACKINNON

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EXHIBIT 1

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THIS LEASE is made the 8<sup>th</sup> day of August 2017.

**BETWEEN**

**LADYGATE PROPERTIES LTD**  
**PO BOX 10229 GRAND CAYMAN, KY1-1002**  
(Hereafter called 'the Landlords' which expression shall include their assignees and successors in title).

**AND**

**Kerry Whittaker & Karen Mackinnon**  
**PO BOX 6, KY1-1601, Bodden Town**  
**GRAND CAYMAN**  
**BWI (hereinafter called 'the Tenants')**  
**OF THE OTHER PART**

**WHEREBY:**

- 1) The Landlord agrees to let and the Tenants agree to take the House Number 560, Marina Drive, Prospect, Grand Cayman (hereinafter called 'the Premises') together with the furniture and fixtures set out in the annexed inventory and together with the right for the tenants, their servants and guests the right to pass and re-pass over the driveways and parking spaces and Common property appurtenant to the Premises to hold onto the tenants for the term of 12 months commencing on the 1<sup>st</sup> day of September 2017 payable in 12 equal installments of C\$2,250.00 payable monthly in advance on the first day of each month. The lease completion date is the 31<sup>st</sup> August 2018.

In addition the Tenants have paid to the Landlord the sum of C\$2,250.00 representing the security deposit, which sum shall be held by the Landlord as security for the due performance by the Tenants of their obligations hereunder and subject thereto shall be repaid to the Tenants at the end of the term hereby created.

A further \$150 water deposit shall also be paid.

Tenant responsibilities (along with following bills CUC, water & internet/cable) -

The above agreed monthly rate is on the basis that the tenants are responsible for following -

- \* Regular landscaping of the premises to a good standard
- \* Carrying out minor maintenance issues where necessary

2) The Tenants hereby agree with the Landlord as follows:

1. To pay the reserved rent on the days and in the manner aforesaid and that if the reserved rent shall remain unpaid for a period in excess of 5 days after it is due then the Landlord shall be entitled to recover an additional charge of C/\$30.00 on account of administrative and recovery costs for each day that the rent shall remain outstanding after the due date. If Tenant's check is dishonored, all future payments must be made by money order or cashier's check. Dishonored checks will be subject to \$50 charge as additional rent. Time is of the essence.
2. The security deposit shall be held to the end of the term of the lease to indemnify the Landlord for any lost items or damages to the premises (fair wear and tear accepted). After such damages are deducted, the remainder shall be returned to the tenant.
3. At no time during the said term of the lease shall the security deposit be used for the payment of monthly rent.
4. The security deposit shall become forfeit should the tenant voluntarily vacate the premises without the written consent of the Landlord prior to the expiration of the term of the lease.
5. If the Tenant wishes to vacate the premises during the term of the lease, it is the Tenant's responsibility to find a suitable replacement Tenant. Any new Tenant must be approved in writing by the Landlord and a new lease issued. A full inventory and inspection check will be conducted prior to any new Tenant taking occupancy and the security deposit reconciled with the existing Tenant. The new Tenant will be responsible for providing their own security and water deposits at the commencement of their lease. If no new Tenant is in place, the existing Tenant will be liable for the balance of the lease.
6. Lease renewals may be negotiated prior to lease termination date. Either party may terminate this agreement at the end of the term by giving the other party thirty (30) days written notice prior to the end of the term, but if no written notice is given by either party, then the agreement will be extended on a month-to-month basis with all terms remaining the same until terminated by either party upon thirty (30) days written notice. Failure of the Tenant to give written notice of intent to terminate by the first day of the last monthly rent period or any month to month rental periods will obligate the Tenant to a full month rent for the following fully monthly period. If Tenant fails to vacate after the initial term or any successive consensual periods after termination, Tenant shall additionally be held liable for holdover (double) rent.

7. Not to assign, underlet, share of part with the possession of the premises or any part thereof or take in lodgers without the prior written consent of the Landlord. Maximum occupancy of the unit is 2 people. Guests remaining for a period of more than 21 days must have prior written consent from the Landlord.
8. Not to use the premises for any purpose other than for residential purposes as a sharing (2) private dwelling.
9. At any time during the said term upon reasonable notice and at reasonable times of the day to permit the Landlord or the Landlord's agents to enter the Premises for the purpose of showing the property to prospective purchasers or examine the condition thereof or doing any necessary repairs and for any other purposes deemed expedient by the Landlord. In case of emergency, Landlord and its agent if any at their discretion may enter at any time, without notice to Tenant, to protect life and/or prevent damage to Premises. Landlord may enter the Premises to show Premises at any time, Landlord or its agent if any will attempt to notify Tenant, but have no obligation to do so.
10. Not to store or bring upon the Premises any articles of a noxious, combustible or dangerous nature.
11. Not to do or permit or suffer to be done anything by reasons whereof the present or any future policy of insurance against fire on the buildings of which the Premises form part may be rendered void or voidable or whereby the rate of premium thereon may be increased and to repay to the Landlord all sums paid by way of increased premium occasioned by any breach of the provision of this clause and to indemnify the Landlord with respect to any breach of this covenant.
12. Not to do or permit or suffer to be done on the Premises anything which in the opinion of the Landlord may be a nuisance or annoyance to or in any way interfere with the quiet comfort of the Landlord or any occupant of any neighboring apartment.
13. To repay the cost of water and power as invoiced by the relevant provider on or before the due date.
14. Throughout the term to keep the Premises and the fixtures and fittings therein in good and tenable repair and condition (fair wear and tear excepted) and to replace all damaged or lost items and effect repair to all dilapidations.
15. Tenant shall make or cause to be made at Tenant's expense all other minor repairs such as locks and keys, screen damage, broken windows, smoke alarm batteries, loose screws, bulb/fuse replacement.

Tenant is responsible for all minor repairs of \$50 or less after accepting the property. Any repair over \$50.00 is the total responsibility of the Landlord, unless caused by Tenant's negligence, in which case would become the Tenant's sole responsibility. Tenant shall be fully responsible for Smoke Alarms and agrees to test maintain and repair at Tenant's expense.

16. Not without the previous written consent of the Landlord to make or permit any alteration to the exterior or interior of the Premises.
17. To be responsible for and indemnify the Landlord against all damages occasioned to the premises or to any other part of the building caused by any act, default or negligence of the Tenants or the servants, agents, invitees, licensees or visitors of the Tenants.
18. Not to keep or permit to be kept or allow entering onto the Premises or any part thereof any animal or creature whatsoever. A minimum amount of \$300 will be kept from the security deposit if the Tenant has pets on the Premises without the Landlord's written permission and Tenant will be in breach of this agreement.
19. To yield up the Premises with the fixtures, fittings, furniture and contents and additions thereto at the determination of the tenancy in tenable repair and condition in accordance with the covenants hereinbefore contained. In addition to any other charges due under the terms of this lease, Tenant agrees to a mandatory minimum unit cleaning charge to be deducted from the security deposit in the amount of \$250 unless the unit is left clean to the Landlord's satisfaction. The collection of this charge in no way restricts Landlord from making claim against any deposits for damages in excess of these amounts.
20. At no time during the tenancy to incur expenditure on behalf of the Landlords without written prior agreement.
21. The Tenant accepts that absolutely no scuba diving equipment/pets/any other apparatus not designed for pool use must be placed in the pool for any use. The Tenant agrees to hold the Landlord harmless against any claims resulting from the use of the pool, including but not limited to loss of life, medical emergencies etc. The Tenant accepts the use of the pool at their own personal risk together with all visitors and guests and all occupants of the premises and accepts that there is no Lifeguard on duty at any time.

3) The Landlord hereby agrees with the Tenants that the Tenants paying the rent hereby reserved and observing and performing the stipulations on their part herein contained shall quietly enjoy the Premises without any interruption by the Landlord or by any person lawfully claiming through, under or in trust for him.

4) PROVIDED ALWAYS and it is hereby agreed as follows:

1. If the Tenants shall fail to observe or perform any of the stipulations on their part herein contained, it shall be lawful for the Landlord to determine this agreement by giving to the Tenants two weeks' notice in writing.
2. Should the Premises be destroyed or damaged through fire, act of God, nature or accident so as to render the same or any part thereof unfit for use and occupation the rent for the same shall cease in proportion to such damage until the Premises shall have been restored to its former condition. In the event of total destruction of the Premises either party shall be at liberty to determine the term hereby created giving the other party one month's notice in writing to that effect. The Tenant hereby waives all claims against the Landlord for any damages suffered by same.
3. The Landlord may determine this tenancy and re-enter upon the Premises in the event of any portion of the rent hereby reserved being in arrears for five (5) days (whether formally demanded or not) or in the event of the Tenants becoming insolvent.
4. Notwithstanding any other provision of this Lease the Landlord shall be entitled to terminate this tenancy by giving 31 days notice in writing to the Tenants whereupon the Tenants shall give vacant possession of the Premises to the Landlord prior to the expiry of the said notice.
5. To give 60 days' written notice of any rent reviews.
6. Words importing the masculine gender shall include the feminine gender and vice versa and words importing the singular number shall include the plural number and vice versa and words importing persons shall include corporations and firms.
7. Any stamp duties and registration fees consequent upon the execution hereof shall be borne by the Tenants.
8. All covenants and agreements on the part of the Tenants shall be deemed to be joint and several.

### **Payment of Rent**

Rent payments should be lodged at Fidelity Bank. The bank has 2 locations, at Dr Roys Drive in central George Town and 'The Fidelity Financial Centre' located at the mini roundabout on West Bay Road. When making your lodgement, please deposit to Ladygate Properties Ltd (A/C # 10001050) and explain that you are making a bill payment.

It is helpful to know that the sub-branch at 'The Fidelity Financial Centre' is open to 6.00pm Mondays to Fridays.

We in turn receive this as confirmation of your rent having been paid. Please also retain the receipt slip given to you by the bank teller for your future reference.

### **Utilities & Logic**

In order to set up any of the above, you will need to take a copy of this lease to the relevant provider and give them the following address details of the property: #560, Marina Drive, Prospect, Grand Cayman, Block 24B, Parcel 6.

9. Any notice or communication under or in connection with this lease shall be in writing and shall be delivered personally, or by post or fax:

**To the Landlord at:**

Ladygate Properties Ltd  
PO Box 10229, Grand Cayman, KY1-1002

Phone: Eamon McErlan - 916 5446

Email: jordhugo@candw.ky

**To the Tenant:**

Kerry Whittaker & Karen Mackinnon  
PO BOX 6, KY1-1601 BT

Phone: 525-5772

Email: Kerry@lrg.ky

Or at such other address as the recipient may have notified to the other party in writing. Proof of posting or dispatch shall be deemed to be proof of receipt:

(a) in the case of a letter, on the seventh day of posting.

(b) in the case of a fax on the day immediately following the date of dispatch.

Signed by:

\_\_\_\_\_

*Ladygate Properties Ltd*

*The Tenant*

*Kerry e whittaker*  
*KAREN MACKINNON*

Witness

\_\_\_\_\_ *Robert Waller*

Date:

\_\_\_\_\_ *AUG 10 2017*



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

# CUSTOMER SERVICE REQUEST FORM

Account No.

### Customer Information

Surname/Company Name

First Name

Middle Initial

Physical Address (House No. & Street Name)

Apartment/Suite

Block & Parcel No.

Home Telephone No.

Work Telephone No.

Mobile No.

E-mail

Please select the service you require:

- Reconnection     Disconnection     Off Reading     Change Billing Address     Change E-mail  
 Meter Relocation     Service Removal     Add a Tenant     Customer Comment/Complaint

Reconnection/Disconnection/Off Reading/Removal

Change Billing Address

Requested Service Date *Sep 01 10 9117*

P.O.Box

Postal Code

Notes

City

Country

Add a Tenant

Change E-mail

New

Tenant Name (Surname, First Name, Middle Initial)

*Kerry E Whitaker*

I would like to arrange for a meter relocation.  
 Please note there is a standard fee for meter relocation which covers the cost of labour and materials.

Tenant Mailing Address

*P.O. Box 6 Boddan Town*

Customer Comment/Complaint

Tenant Telephone No.

Mobile No.

*1-345-525-5772*

Tenant E-mail

*Kerryewhitaker@yahoo.com*

Tenant Signature

Date

*[Signature]*    *08/09/17*

Account Holder Signature

Date

IN THE SUMMARY COURT AT GEORGE TOWN

Cause No. SC \_\_\_\_\_ of 2019

BETWEEN:

LADYGATE PROPERTIES LTD.

AND

KERRY WHITTAKER & KAREN MACKINNON

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EXHIBIT 2

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**Kerry Whittaker & Karen McKinnon - Rent Arrears and Fees Summary**

<b>Unpaid Rent</b>	
December 2017	2,250.00
January 2018	2,250.00
February 2018	2,250.00
March 2018	2,250.00
April 1st to 22nd, 2018 (22/30 days @ CI\$2250)	<u>1,650.00</u>
	10,650.00

<b>Deduct</b>	
Security Deposit	2,250.00
Deposit on 15th March 2018	<u>1,000.00</u>
Rent Arrears Balance	<u>3,250.00</u>
	7,400.00

<b>Add: Reletting costs</b>	
Gemma's re-letting fee	2,400.00
Eamon & Helen mid lease admin & time fee	<u>0.00</u>
	2,400.00
	<u>9,800.00</u>

<b>Add: Other direct costs</b>	
Cost of 4 x man days gardening & dumpster hire	450.00
Cleaning - 10 hours @ CI\$13/hour	130.00
Water usage paid by us	205.95
Less deposit	<u>150.00</u>
Repair to hole in wall and repainting	120.00
Replacement door, fitting and painting	<u>140.00</u>
	895.95
	<u>10,695.95</u>

<b>Add: Late Penalties</b>	
December 2017 (31 days @ CI\$30/day)	930.00
January 2018 (31 days @ CI\$30/day)	930.00
February 2018 (28 days @ CI\$30/day)	840.00
March 2018 (31 days @ CI\$30/day)	930.00
April 2018 (30 days @CI\$30/day)	900.00
May 2018 (31 days @CI\$30/day)	930.00
June 2018 (30 days @CI\$30/day)	900.00
July 2018 (31 days @CI\$30/day)	930.00
August 2018 (31 days @CI\$30/day)	930.00
September 2018 (30 days @CI\$30/day)	900.00
October 2018 (31 days @CI\$30/day)	930.00
November 2018 (30 days @CI\$30/day))	900.00
December 2018 (31 days @CI\$30/day)	930.00
January 2019 (31 days @CI\$30/day)	930.00
February 2019 (28 days @ CI\$30/day)	840.00
March 2019 (31 days @ CI\$30/day)	930.00
April 2019 (30 days @CI\$30/day)	900.00
May 2019 (31 days @CI\$30/day)	930.00
	<u>16,410.00</u>

<b>Total due</b>	<u>\$27,105.95</u>
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**IN THE SUMMARY COURT AT GEORGE TOWN**

Cause No. SC \_\_\_\_\_ of 2019

**BETWEEN:** LADYGATE PROPERTIES LTD.

Plaintiff

**AND:** KERRY WHITTAKER & KAREN MACKINNON

Defendant

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**ACKNOWLEDGEMENT OF SERVICE**

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1. State Defendant's name and address -

Kerry Whittaker & Karen MacKinnon  
PO Box 6, Bodden Town  
Grand Cayman KY1-1601

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 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 \_\_\_\_\_ 2019

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 495, Grand Cayman KY1-1106 Cayman Islands within 14 days of receipt otherwise a default Judgment may be entered against you.