

IN THE SUMMARY COURT AT GEORGE TOWN

Cause No. SC 73 of 2020

BETWEEN:

KEITH MAHAN

Plaintiff

-and-

ERNESTO EBANKS

Defendant



PLAINT

TO THE DEFENDANT:

ERNESTO EBANKS of PO Box 11349, Grand Cayman KY1-1008, Cayman Islands.

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

Within fourteen (14) days after service of this Complaint on you, counting the day of service, you must either satisfy the claim or return to the Court Office, PO Box 495, George Town, Grand Cayman, the accompanying Acknowledgement 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 on you.

Issued this 8th

day of July 2020.

IMPORTANT

Directions for Acknowledgement of Service are given with the accompanying form.

PARTICULARS OF CLAIM

1. The Plaintiff is an individual who is resident in the Cayman Islands.
2. The Defendant is an individual who is resident in the Cayman Islands.
3. The Plaintiff and the Defendant entered into a written agreement dated 23 July 2019 (the "Agreement") for the Plaintiff to lease a property known as 26A Griffin Street, Griffin Manor, Apartment 6, Block 43A, Parcel 288H (the "**Premises**") from the Defendant.
4. The Plaintiff paid cash in the sum of CI\$1,600 to Ms. Sharon Hurlston on behalf of the Defendant as a security deposit (the "**Security Deposit**"), acknowledged at clause 1 of the Agreement. The Security Deposit was held on trust by the Defendant on behalf of the Plaintiff and the only deductions permitted from the Security Deposit were those in accordance with the Agreement.
5. The Agreement provided *inter alia* that:
 - a. That the tenancy would be for a period of 36 months, commencing on the 1st day of September 2019;
 - b. In the event that the rental term is not completely fulfilled the Security Deposit would be returned only after 6 months of occupancy or in proven cases of revoked or refused GOL's, pending receipt of a written 30-day (1 calendar month) notice, provided that no deductions are necessary in accordance with the Agreement.
 - c. The Defendant had the right to terminate the Agreement with 14 days' notice and take possession of the premises if the Plaintiff was in any breach of the Agreement.
 - d. The rent payable was CI\$1,600 per calendar month payable in advance on or before the 1st day of each month.

- e. The Security Deposit would be returned at the termination of the Agreement, provided that 30 days (1 calendar month) notice in writing was given to the Defendant and there were no outstanding debts or damages (that were the responsibility of the Plaintiff) relating to the Premises, without interest thereon.
6. The Plaintiff was subsequently offered alternative accommodation (the “**Alternative Accommodation**”) at a rate which he wished to accept. Prior to entering into any binding agreement for the Alternative Accommodation, the Plaintiff contacted Ms. Sharon Hurlston (“**Ms. Hurlston**”) to enquire whether he could terminate the Agreement and recover the Security Deposit in full. Ms. Hurlston was, at all material times, the Defendant’s authorised agent, or held out to be the Defendant’s authorised agent, for all dealings to do with the Premises. The Plaintiff contacted Ms. Hurlston by telephone on or around 6 August 2019.
7. The Defendant was present with Ms. Hurlston when the Plaintiff made this call. Ms. Hurlston, on the Defendant’s instructions, during the course of that call, informed the Plaintiff that he could terminate the Agreement and that he would be fully refunded his Security Deposit.
8. In reliance on the representation that the Security Deposit would be returned in full to the Plaintiff, the Plaintiff, during the same call, agreed with the Defendant, through Ms. Hurlston, to terminate the Agreement (the “**Termination Agreement**”).
9. At the point of the Termination Agreement the Security Deposit should still have been held on trust by the Defendant for the Plaintiff. However, after the Termination Agreement the Plaintiff was informed by Ms. Hurlston that the Security Deposit was no longer available and that the Plaintiff could not be repaid the Security Deposit until the Premises were re-let. The Defendant therefore spent or dissipated the Security Deposit in breach of trust and the Plaintiff is entitled to damages from the Defendant. In the alternative the Defendant continued to hold the Security Deposit on trust for the Plaintiff.

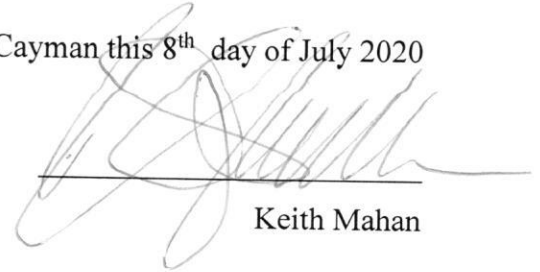
10. The Plaintiff was told by Ms. Hurlston that if he paid CI\$1,600 to the Defendant for repairs and maintenance of the Premises, it would help it to be leased quicker and he would be paid damages in the sum of CI\$1,600 in lieu of the Security Deposit (the “**Damages**”) or, in the alternative, the Security Deposit. Although it was not a part of the Termination Agreement that the payment of the Damages or, in the alternative the Security Deposit, was dependent on the Premises being leased, to expedite the payment to him of the Damages or Security Deposit he agreed to loan the Defendant CI\$1,000. This was given to Ms. Hurlston in cash on or around 12 August 2019.
11. The CI\$1,000 loaned by the Plaintiff to the Defendant was fully repaid to the Plaintiff on or around 21 January 2020. On or before 31 January 2020 the Defendant agreed with Plaintiff, by phone and/or email, that the Defendant would pay to the Plaintiff CI\$500 towards the Damages, or in the alternative the Security Deposit, which was to be paid on Friday 31 January 2020. The Defendant never paid this, or any sum, and the Damages, or in the alternative the Security Deposit, remain outstanding.
12. The Defendant therefore owes the Plaintiff the sum of CI\$1,600, plus interest in accordance with section 34 of the Judicature Law (2017 Revision) at a rate of 2 3/8% in the sum of CI\$35.38 continuing at a daily rate of CI\$0.10, and costs.

AND THE PLAINTIFF THEREFORE CLAIMS

- (i) The payment by the Defendant to the Plaintiff of the Security Deposit in the sum of CI\$1,600;
- (ii) Or in the alternative, the payment by the Defendant to the Plaintiff of Damages in the sum of CI\$1,600;
- (iii) Interest at the rate of 2 3/8% per annum or such other rate then prevailing and/or determined by the Court in accordance with section 34 of the Judicature Law (2017 Revision) and the Judgment Debt (Rates of Interest) Rules 2012 as amended from time to time;
- (iv) Costs;

- (v) Such further and applicable other relief as this Honourable Court deems necessary.

DATED at Grand Cayman this 8th day of July 2020



Keith Mahan

To: The Clerk of the Court

And to: The Defendant

IN THE SUMMARY COURT AT GEORGE TOWN

Cause No. SC of 2020

BETWEEN:

KETIH MAHAN

Plaintiff

-and-

ERNESTO EBANKS

Defendant

ACKNOWLEDGEMENT OF SERVICE

1. State Defendant's name and Address:

2. State whether the Defendant intends to contest the action (tick box)

YES

NO

3. If you do not intend to contest the action, do you want time in which to pay the claim? (tick box)

YES

NO

4. If you 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** _____, **2020**

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 delivered or sent to the Courts Office, P.O. Box 495GT, George Town, Grand Cayman, within fourteen (14) days of receipt, otherwise a default judgment may be entered against you.