



IN THE SUMMARY COURT AT GEORGE TOWN

Cause No. SC _____ of 20__

BETWEEN: (1) JONATHAN STUART MORRIS
(2) SHERRYL THEODORA

Plaintiffs

AND: (1) CATHERINE ANDERSON
(2) DANIEL BOND

Defendants

PLAINT

To the Defendants
Cayman Coves #6
748B South Church Street
George Town
Grand Cayman
Cayman Islands

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

Within 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 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 day of

See overleaf for particulars of the Plaintiffs' claim

PARTICULARS OF CLAIM

(Here set out in numbered paragraphs the grounds upon which the Plaintiffs claim that the Defendants are indebted to them or are liable to pay damages to them)

1. The Plaintiffs entered into a lease on 2 February 2021 with the Defendants in respect of Cayman Coves #6, Grand Cayman (the "Lease"). The Plaintiffs paid a security deposit of CI\$3,000 to the Defendants on 3 February 2021. The Lease commenced on 20 February 2021.
2. Due to a change of circumstances, and in accordance with Clause 4, the Plaintiffs gave written notice to terminate the Lease on 24 May 2021. The Plaintiffs provided the Defendants with two months' clear written notice of the termination and advised the Defendants that the final day of the Lease would be 25 July 2021.
3. After terminating the Lease on 24 May 2021, the Plaintiffs allowed the Defendants to access the property in order to show prospective tenants. The Plaintiffs arranged for professional cleaning at their cost upon departure. The Plaintiffs understand that the Defendants found a new tenant and the new lease commenced on 1 August 2021.
4. As the Lease was validly terminated in accordance with Clause 4, the Plaintiffs submit that, on a proper construction of the lease, they are entitled to the return of their security deposit. Clause 5 clearly provides that the security deposit shall be returned at the termination of the Lease.

Clause 4 provides:

Beyond 20-Feb-2021 the tenant agrees to give the landlord two months clear written notice of intention to vacate if tenant wishes to terminate this lease agreement sooner than the term of the lease, or if shorter notice is given, to continue to pay the rent for the period of two months from the date of given said notice. Departure shall be before noon on the last day of the final month.

Clause 5 provides:

The security deposit shall be returned at the termination of this lease (without interest), provided there are no outstanding breaches of this Agreement, including non-payment of debts or damage relating to the leased Premises and that the Premises is handed over with the fixture, fittings/furniture and contents and additions thereto in good and tenantable condition save normal wear and tear.

5. Alternatively, the Plaintiffs submit that the forfeiture of the security deposit is an unlawful and unenforceable penalty on the grounds that it does not constitute a genuine pre-estimate of loss. In this regard, the Plaintiffs note that the Defendants were in fact able to rent the property very shortly after the termination of the Lease, such that the Defendants were not in receipt of rental income for a mere five days.
6. Alternatively, the Plaintiffs submit that they are entitled to damages on the grounds of negligent or innocent misrepresentation.
7. Clause 25 provides:

If the Premises shall be sold during the term of the Agreement the Landlord may at any time after exchanging contracts for such a sale give to the Tenant not less than two (2) months written notice to terminate this agreement and on expiration thereof the Tenant shall yield up possession of the Premises to the Landlord.

8. On 3 February 2021, one of the Plaintiffs, Jonathan Stuart Morris, queried Clause 25 with Ms Livia Kwong (real estate agent who acted on behalf of the Defendants, and who signed the Lease on behalf of the Defendants acting as agent) by email.

Jonathan Stuart Morris, having overlooked Clause 4 at this point, asked the following:

Clause 25 – can we delete this? the landlord has the right to terminate the lease with two months' notice but we don't have the same right, so seems unfair.

9. On 3 February 2021, Ms Livia Kwong responded by email as follows (Ms Livia Kwong's text is underlined):

Clause 25 – can we delete this? the landlord has the right to terminate the lease with two months' notice but we don't have the same right, so seems unfair. Please see clause 4

10. The Plaintiffs submit that Ms Livia Kwong's reference to Clause 4 constitutes a representation that Clause 4 provided an equivalent right to the right held by the Defendants under Clause 25 (i.e., a right to terminate the Lease without penalty). Ms Livia Kwong did not suggest that the Plaintiffs' right under Clause 4 was an inferior right to the right held by the Defendants under Clause 25. There was no suggestion that the Plaintiffs would be subject to any penalty if they exercised their right under Clause 4 to terminate the Lease upon giving two months' clear written notice.

11. Jonathan Morris responded to Ms Livia Kwong on 3 February 2021 by email:

Thanks Liv. I should have spotted Clause 4. That's all fine then.

12. The Plaintiffs relied on Ms Livia Kwong's misrepresentation (it would constitute a misrepresentation if the court rejects the Plaintiffs' argument regarding the proper construction of the Lease) as to the meaning of the Lease. The Plaintiffs would not have signed the lease if they had been told that, under the terms of the Lease, they did not have an equivalent right to the Landlord under Clause 25 (e.g. if the Plaintiffs' security deposit was to be forfeited upon them exercising their termination right under Clause 4).

13. If the court rejects the Plaintiffs' argument regarding the proper construction of the Lease or, alternatively, that the forfeiture of the security deposit is an unlawful and unenforceable penalty, the Plaintiffs submit that they are entitled to damages to compensate them for the loss suffered arising from the misrepresentation (i.e. the inability to recover the security deposit).

AND the Plaintiffs claim:

1. The sum of CI\$3,000
2. Interest in the sum of CI\$22.23 calculated at the prescribed rate from 22 August 2021
3. Interest to continue at the per diem rate of CI\$0.19 until this matter is settled
4. Fixed costs of CI\$175
5. Bailiff's fee of CI\$30



Plaintiffs' Signatures

Plaintiffs' Address for Service:

PO Box 510
Grand Cayman KY1-1106
Cayman Islands

Phone number: +1 345 929 5760

Email addresses: Jonathan-morris@hotmail.co.uk and sherryl.theodora@gmail.com

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Defendants

ACKNOWLEDGMENT OF SERVICE

State Defendants' names and address -

Cayman Coves #6
748B South Church Street
George Town
Grand Cayman
Cayman Islands

State whether the Defendants intend to contest the action.

Yes

No

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

Yes No

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.

Defendants' Signatures

DATED this day of

See overleaf

PARTICULARS OF DEFENCE

(Here set out in numbered paragraphs the grounds upon which the Defendants say that they are not liable to the Plaintiffs, or are not liable for the full amount claimed)

PARTICULARS OF COUNTERCLAIM

AND the Defendants claim:

Defendants' Signatures

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.