

COMMONWEALTH OF THE BAHAMAS

**IN THE SUPREME COURT
COMMON LAW AND EQUITY SIDE**

2004/CLE/gen/FP227

BETWEEN

**DUMOR LIMITED
Plaintiff**

AND

**STAR GENERAL INSURANCE AGENCY
(GRAND BAHAMA) LIMITED
Defendant**

BEFORE: The Honourable Mrs Justice Estelle Gray Evans

APPEARANCES: Mr Norwood Rolle for the plaintiff

Mr R. Rawle Maynard for the defendant

2010: 13 September; 16 December

2011: 24 March; 5 May

JUDGMENT

Evans, J.

Introduction

1. This is an action brought by the plaintiff, Dumor Limited, against the defendant Star General Insurance Agency (Grand Bahama) Limited, for rent with respect to a lease of premises called and known as Shops Nos. 6 through 10 Regent Centre, Explorers Way, Freeport, Grand Bahama, The Bahamas ("the said premises").

2. The plaintiff at all material times was the owner and landlord of the said premises and the defendant was at all material times an insurance company carrying on business in Freeport aforesaid and tenant of the said premises.

3. The following facts have either been agreed or are not disputed:

(1) By a lease agreement between the plaintiff and the defendant dated 1 May 1999 ("the said lease") the plaintiff agreed to let the said premises to the defendant for a term of three years, with an option to renew in the terms of clause 3(4) of the said lease.

(2) Clause 3(4) of the said lease provides as follows:

"That the Landlord will on the written request of the Tenant made not less than Three (3) calendar months before the expiration of the third year of the term hereby...grant to the Tenant a lease of the demised premises upon the same terms and conditions as herein contained for a further term of three (3) years from the expiration of the said term save and except for the present covenant for an option to renew contained herein AND save and except for the annual rental which shall be adjusted as specified in the Second Schedule hereto."

(3) The lease expired on 30 April 2002 without the defendant exercising its option to renew in accordance with clause 3(4) aforesaid.

(4) The defendant did not vacate the said premises at the expiration of the said lease, but remained in occupation thereof until September 2004.

(5) The said lease also contained the following "Holding Over" clause 2(44):

"Should the tenant remain in possession of the demised premises after the expiration of the lease without the execution of a new lease, then in the absence of a written agreement to the contrary such holding over shall be deemed to have created and be construed to be a tenancy from month to month terminable upon thirty (30) days' notice by the Landlord to the Tenant at a monthly rental equal to twice the sum of the monthly installment payable during the last month of this Lease...and subject otherwise to all the other terms, covenants, conditions, provisions

and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy.”

- (6) The plaintiff never billed the defendant for double the rent pursuant to clause 2(44) nor did the defendant pay double rent for the period post-30 April 2002.
- (7) The second schedule to the said lease provided, inter alia, that:
 - (b) If at the end of the third year the Tenant shall exercise the option contained in clause 3(4) hereof for a further consecutive term of three (3) years then the fixed minimum rent for the fourth (4th) fifth (5th) and sixth (6th) years shall be calculated by adjusting the fixed minimum rent on the first day of this demise to reflect an increase or decrease in the cost of living ...
 - (c) In no event, however, and notwithstanding anything contained herein to the contrary, shall the annual fixed minimum rent for the fourth year be less than the annual fixed minimum rent for the third year.
- (8) During the period 1 May 1999 to 30 April 2002 the defendant paid the sum of \$7,410.00 per month with respect to the said lease, which sum represented \$6,231.00 as the fixed monthly rent and the sum of \$1,179.00 being the “additional” rent provided for in the third schedule to the said lease.
- (9) During the period 1 May 2002 to September 2004, the defendant was billed by the plaintiff the sum of \$7,943.00 per month for rent, which sum was paid by the defendant and accepted by the plaintiff.
- (10) The said sum of \$7,943.00 represented the fixed minimum rent of \$7,410.00 per month and an additional rent of \$533.00 per month.
- (11) On 7 November 2003, the defendant wrote to the plaintiff giving notice of its intention to vacate the said premises on 30 June 2004.
- (12) On 5 December 2003, the plaintiff, in response to the defendant's aforesaid notice, advised the defendant that its lease was in effect until 30, April 2005, and drew to the defendant's attention the aforesaid option to renew clause.
- (13) The defendant did not respond to that letter.
- (14) The defendant did not vacate the said premises on 30 June 2004.
- (15) On 9 August 2004, the plaintiff gave notice of its intention to vacate the said premises “the week of September 6, 2004.”

- (16) Hurricane Frances hit Grand Bahama during the first week of September 2004.
- (17) The plaintiff vacated the premises in September 2004.
- (18) The last payment made by the defendant to the plaintiff was the August 2004 rent.

4. The issue of law that arises for consideration on those facts is: What was the status of the defendant's occupation of the said premises after 30 April 2002 – that is, whether there was a lease for a further term of three years as contended by the plaintiff or a new month-to-month tenancy as contended by the defendant?

The pleadings

5. The plaintiff commenced this action on 30 December 2004 by a specially indorsed writ of summons in which it alleges, inter alia, that in or about the third week of September 2004 the defendant, in breach of the said lease, vacated the said premises and has wrongfully refused and failed to pay to the plaintiff rent for the period September 2004 to April 2005, payment of which rent the plaintiff claims, with interest at the rate of 18% per annum, pursuant to Clause 2(2) of the said lease.

6. The defendant, in addition to denying that it has breached the terms of any lease or lease agreement with the plaintiff or that it is obliged to pay further rent to the plaintiff, in its defence filed on 11 February 2005, alleges, inter alia, that it continued in possession of the premises after expiration of the said lease under a new agreement upon terms agreed expressly and or by conduct as a tenant from month to month. The plaintiff admits that it vacated the premises in September 2004, and alleges that it intended to pay rent for the month of September 2004 but the damage done to the premises by hurricanes rendered them uninhabitable, effective 3 September 2004, causing it to vacate the premises when it did.

7. In its counterclaim filed 23 May 2007 the defendant seeks an order for an accounting by the plaintiff of the security deposit paid to the plaintiff by the defendant at the commencement of the said lease, payment of such deposit together with interest and costs.

The Trial/Evidence

8. Evidence at the trial was given by Mr Mario Donato, the plaintiff's President, and Mrs Dirlene Martinborough, the plaintiff's Property Manager, on behalf of the plaintiff; and by Mrs Veronica Grant, the defendant's Assistant Secretary and Counsel and Mr Kendrick Campbell, the defendant's Group Financial Controller, on behalf of the defendant.

The plaintiff's witnesses

9. In his witness statement dated 1 December 2008, Mr Donato states:
- (1) On a date that I do not recall, a meeting was held with James Pinder, Linda Gibson, Kendrick Campbell, another gentleman, Karen Brown and myself.
 - (2) I told Mr Pinder I would like to come to some settlement with him in order to put this matter behind us. Mr Pinder went on about how the premises was full of water and they have to vacate the space because of the amount of water in the premises.

- (3) I told Mr Pinder that he is a respected man in the community and I do not want this matter to go on any further so let's come to some agreement and put this matter behind us. At which point Mr Pinder said he does not want to speak with me any further and walked out the meeting.

10. Under cross examination Mr Donato admitted that he was aware that the defendant was constructing a building for its offices. However, he denied being aware that the defendant was not interested in a further three year lease. His evidence is that "we never had any meeting or any talking or anything". However, he said he recalled speaking to Mrs Grant, as the defendant's attorney, on a "couple occasions" and, his evidence is that she said she would "try to let them come to some arrangement."

11. Although he was one of the persons who executed the said lease on behalf of the plaintiff, Mr Donato says he was not familiar with its terms; that he was not aware of the need for the defendant to apply in writing to renew the same although he was aware that if the lease was not renewed the defendant was required to pay double rent. In the end, Mr Donato says his manager, Mrs Martinborough, "runs the show" and "would have more details on what has happened."

12. Mrs Martinborough admits that she was familiar with the said lease and its provisions, including the option to renew clause. She admits that the defendant did not exercise its option to renew in accordance with clause 3(4) aforesaid. She also admits that she did not, nor did anyone else on the plaintiff's behalf, inquire of the defendant prior to, or after, the expiration of the said lease, whether the defendant intended to extend the same for a further period of three years. This, she said, was because it was the tenant's responsibility to write to inform the landlord of its decision, and since the defendant failed to do so, the plaintiff assumed that the defendant was "continuing under the same terms and conditions as the lease."

13. Mrs Martinborough admits receiving Mr Campbell's letter of 7 November 2003 and says that when, in her letter of 5 December 2003, she advised the defendant that its "lease will remain in effect until April 30, 2005" she was merely pointing out that the plaintiff considered the said lease to have been renewed for a further period of three years with effect from 1 May 2002.

14. In her witness statement Mrs Grant states:

- (1) I am the Assistant Secretary of the defendant company and in that capacity I communicated with the plaintiff concerning the lease of premises at Regent Centre, Freeport, and the continuation from month to month after the three year lease had expired.
- (2) Star General Insurance Agency (GB) Ltd. chose not to renew or exercise the option to take another three year lease after the lease in writing dated 1 May 1999 between Dumor Limited and themselves expired. They informed the landlord that since they were constructing a building which would upon completion house their offices, they were desirous of continuing on a month-to-month basis.
- (3) Eventually Mr Kendrick Campbell, Group Financial Controller wrote to the Landlord informing them that it was the intention of Star General (the defendant) to vacate by June 30, 2004. Dirlene Martinborough of the plaintiff

responded by advising that the lease would remain in effect until April 30, 2005.

- (4) I participated in a meeting with Mr Kendrick Campbell, Ms Martinborough and the plaintiff's counsel, Mrs Karen Brown, in an attempt to resolve a claim by the plaintiff that the defendant was holding over at twice the monthly rent or alternatively is obliged to continue for the duration of a second three year term. No resolution could be reached.

15. Under cross examination, Mrs Grant said that she could not say whether a letter had been sent to the plaintiff advising them of the defendant's intention not to renew the lease for a further three years but to remain in occupation on a month-to-month basis. In response to counsel for the plaintiff's request for the name of the person with whom she spoke Mrs Grant said that the "only individual" that she was aware of whom "Star had been dealing with was, in fact, Mrs Martinborough" and when pressed by counsel for the plaintiff as to who made the agreement for a month-to-month tenancy on behalf of the parties, Mrs Grant responded: "the communication was between Mr Campbell of Star and Ms Martinborough of Dumor."

16. Mr Campbell's evidence is that he joined the defendant company in or about June 2002 at which date the said lease had already expired. He confirms having written the letter dated 7 November 2003 to the plaintiff's manager notifying her of the defendant's intention to vacate the premises on 30 June 2004.

17. Mr Campbell says that Mrs Martinborough called him shortly after receiving his aforesaid letter and informed him that the said lease was still in force and she later confirmed that in her letter of 5 December 2003. He admits that neither he, nor anyone else on the defendant's behalf, responded to that letter.

18. Mr Campbell also confirmed having, on 9 August 2004, written another letter to the plaintiff with which he forwarded the lease payment for the month of August 2004 and advised the plaintiff that the tentative date for the defendant's relocation was 6 September 2004.

19. There was no reply to that letter, but Mr. Campbell confirmed that the defendant vacated the premises sometime in September 2004. He said that the hurricanes in September 2004 "escalated" their departure.

20. Under cross examination Mr Campbell could not point to a specific "agreement" between the parties as to their post-April 2002 relationship but said that he assumed that "because the lease expired it would go to month-to-month."

21. The plaintiff's case as pleaded, and on the evidence of its witnesses, is that when the said lease expired on 30 April 2002, the defendant, not having given up possession of the demised premises, remained in possession thereof as a tenant of the plaintiff for a further period of three years upon the same terms and conditions as the said lease.

22. However, notwithstanding its pleadings and the evidence of its witnesses as aforesaid, counsel for the plaintiff puts forth, as I understand him, the alternative argument that in the absence of an agreement for a further three-year lease, the defendant remained in possession of the said premises, by operation of law, on an annual lease. In support of that argument, counsel relies on the cases of *Knight v Benett* (1826) 3 Bing 361 and *Mann v Lovejoy* (1826) Ry & M 355 and *Halsbury Laws of England 3rd Ed Vol. 23, para 1162*.

23. In any event, counsel for the plaintiff submits, whether on the basis of a three year lease agreement or an annual lease by operation of law, the plaintiff is entitled to be paid rent for the period September 2004 to April 2005.

24. The defendant's case is that, not having exercised its option to renew the said lease pursuant to the provisions of clause 3(4) thereof, it remained in occupation of the said premises as a tenant from month to month.

25. In that regard, Mr Maynard on behalf of the defendant submits that the defendant became a tenant from month to month by implication, having regard to the payment of rent on a monthly basis, and was therefore entitled to terminate the same by one month's notice. See *Cardiothoracic Institute v Shrewdcrest Ltd* (1986) 3 All ER 633.

26. According to the learned authors of Halsbury's Laws of England 4th edition, volume 28 at paragraph 205

"A tenancy for a term of years arises by express contract or by statute and it is essential to the contract that the commencement and duration of the term should be so defined as either to be certain in the first instance or to be capable of being afterwards ascertained with certainty."

27. Then at paragraph 171 the learned authors state:

"A tenant who, with the Landlord's consent, remains in possession after his lease has expired is a tenant at will until some other interest is created, either by express grant or by implication by payment and acceptance of rent (*Cardiothoracic Institute v Shrewdcrest Ltd* (1986) 3 All ER 633)...The terms of a tenancy at will which arises in this way will be those of the expired lease unless inconsistent with the nature of a tenancy at will and unless there is evidence of a contrary intention. (*Morgan v William Harrison Ltd* [1907] 2 Ch 137, CA)."

28. And, in a case out of Jamaica, *Charles Braxton Moncure v Basil Kenneth Cahusac* (as Executor of the Estate of Doris Cahusa-Delisser), Privy Council Appeal No. 54 of 2005, their Lordships observed that:

"It is well established law that a tenant for a term of years who holds over after the expiry of the term and continues to pay to the landlord the monthly rent that had been payable during the term becomes, if the landlord accepts the payments, a tenant from month to month on the terms of the lease in so far as they are applicable to a periodic tenancy."

29. In that case, their Lordships concluded that whether this result was attributable to an estoppel by representation whereby the landlord's acceptance of the rent tendered by the tenant is taken to be a representation by the landlord that he has accepted the tenant as a monthly tenant and the landlord is estoppel from denying that that is so, or is attributable to a contract by conduct, with the landlord's acceptance of the rent, objectively viewed, being taken to be an acceptance of the offer impliedly made by the tenant in tendering the rent, is immaterial. In their Lordship's view, both depend upon an "objective assessment of the conduct of the landlord".

30. It is not disputed that although the defendant did not exercise its option to renew the said lease as required by section 3(4) thereof, it remained in occupation of the said premises for a further period of 28 months.

31. Nevertheless, the plaintiff says, by not vacating the said premises and not paying double rent, the defendant by its conduct was presumed to have “renewed” the said lease for a further period of three years.

32. In support of that position Mr Rolle points out that the defendant took no exception to the position taken by the plaintiff as set out in Mrs Martinborough’s letter of 5 December 2003 that the lease was in effect until April 2005. In his submission, the defendant’s failure to respond in writing amounted to its acquiescence to the position put by the plaintiff.

33. However, I note here that Mr Campbell’s letter of 7 November 2003 and Mrs Martinborough’s said letter were written approximately eighteen (18) months after the said lease expired. Further, Mr Campbell’s comment “*We also wish to confirm with you that no penalties will result from the aforementioned action as our lease has assumed a month-to-month basis*”, suggests to me not only that the defendant did not consider the said lease to have been renewed or extended for a further three years, but also that that letter was not the first communication between the parties regarding the post-30 April 2002 period of the defendant’s occupation of the said premises. Additionally, all of the witnesses spoke about meetings between the parties’ respective principals and/or agents, although it is unclear when those meetings occurred.

34. On the other hand, the defendant says that by not exercising its option to renew the said lease, it remained in occupation either by the express agreement, or by the conduct of, the plaintiff. In support of that contention the defendant relies on the fact that the plaintiff billed and the defendant paid monthly rental at an increased rate during the period of such occupancy.

35. The evidence is that the defendant notified the plaintiff that it was constructing a building to house its headquarters and alerted the plaintiff that it wished to remain in the said premises on a month-to-month tenancy. It is unclear when and with whom those discussions were had.

36. In the further and better particulars of its defence filed on 21 August 2005 the defendant says that the agreement for a month-to-month tenancy was made orally in a meeting between Mr Mario Donato, on behalf of the plaintiff, and Messrs James Pinder and Herbert Thompson on behalf of the defendant. Neither Mr Pinder nor Mr Thompson gave evidence and Mr Donato denied such an agreement.

37. Moreover, although all of the witnesses spoke about a meeting(s) with representatives of each party, it is unclear firstly, whether they were all speaking about the same meeting(s) and secondly, on which date(s) the meeting(s) occurred. For example, Mrs Martinborough’s evidence is that she was aware of a meeting attended by Mrs Linda Gibson, Mr Campbell and Mrs Brown, but which she did not attend; while Mrs. Grant’s evidence is that she participated in a meeting with Mr Campbell, Mrs Gibson and Mrs Martinborough. Then Mr Donato gives evidence of a meeting, which he had with Mr Pinder, Mrs Gibson, Mr Campbell, another gentleman (perhaps Mr Thompson?) and Karen Brown, on a date which he did not recall. It is also unclear as to what was discussed at those meetings and whether any resolutions were arrived thereat.

38. Neither Mrs Grant nor Mr Campbell was clear as to with whom the month-to-month agreement was made. When pressed by counsel for the plaintiff as to the names of the persons who made such agreement on behalf of the parties, Mrs Grant responded: “the communication was between Mr Campbell of Star and Mrs Martinborough of Dumor”; while Mr Campbell’s evidence is that he assumed that

because the said lease had expired, the defendant remained in occupation of the said premises on a month-to-month tenancy.

39. As indicated, by the time Mr Campbell joined the defendant company, the said lease had already expired and his first letter to the plaintiff is the letter dated 7 November 2003, more than 18 months after the said lease had expired.

40. Both Mrs Martinborough and Mr Donato admit to knowing that the defendant was constructing a new office building, but they deny having agreed to a month-to-month tenancy on behalf of the plaintiff. They maintain that the plaintiff's position was that the defendant had "renewed" the said lease for a further three years. Each expressed the view that since the defendant did not pay double rent as called for in clause 2(44) of the said lease, they assumed that it renewed the lease for a further term of three years on the same terms of the said lease.

41. As further evidence that the lease had been renewed for a further three years Mrs Martinborough says that the rent of \$7,943.00 payable by the defendant during the post-30 April 2002 period was calculated in accordance with the method stipulated in the second schedule to the said lease; and Mr Rolle submitted that the tendering and acceptance of the fixed minimum rents in accordance with the second schedule to the said lease by the defendant instead of insisting on double rent as it was entitled to under clause 2(44) is further evidence that the lease had been extended for a further three years as advised in the letter of 5 December 2003.

42. The second schedule to the said lease provided, inter alia, that: "If at the end of the third year the Tenant shall exercise the option contained in clause 3(4) hereof for a further consecutive term of three (3) years then the fixed minimum rent for the fourth (4th) fifth (5th) and sixth (6th) years shall be calculated by adjusting the fixed minimum rent on the first day of this demised to reflect an increase or decrease in the cost of living..."

43. Clearly, in my view, that provision would only have taken effect had the defendant exercised its option to renew in accordance with clause 3(4) aforesaid; which the plaintiff concedes it did not. That, of course, does not mean that the landlord could not, again in my view, use that formula to determine the rent for any period whether or not the lease had been renewed for a further period of three years.

44. The way I see it, clause 2(44) of the said lease is clear. If the defendant failed to exercise its option to renew in accordance with clause 3(4) aforesaid but remained in possession after the expiration of the lease without executing a new lease then in the absence of some written agreement the parties entered a tenancy from month to month, terminable upon 30 days' notice. The plaintiff was also entitled to claim double the rent payable during the last year of the said lease for any such period.

45. If, again in my view, the plaintiff had called for that double rent, and the defendant refused to pay it the plaintiff would have been at liberty to serve the defendant with 30 days' notice to vacate the said premises, failing which to treat the defendant as a trespasser. However, Mrs Martinborough admitted that the plaintiff never billed the defendant double rent; nor considered the defendant a trespasser. Nor did the plaintiff at any time during the post-April 2002 period serve the defendant with notice to vacate the said premises.

46. The plaintiff could, of course, also have insisted that the defendant execute a new lease agreement for a further 3-year term, or otherwise.

47. Instead, the plaintiff, even after the defendant's letter of 7 November 2003 expressing the view that its tenancy was one of month-to-month, continued to bill the

defendant, who continued to pay, rent at an increased, but not double, rent, on a monthly basis, and to accept such monthly payments when rendered.

48. According to the learned authors of Halsbury's Laws of England supra at paragraph 205 "*a tenancy for a term of years arises by express contract or by statute*". Clearly, there was no express agreement for a lease for a further term of three years. There was an offer in the said lease for the defendant to renew for a further three years. However, unlike the case of Moncure, the defendant in this case did not seek to renew the said lease. Therefore, as submitted by Mr Maynard, by not exercising the option to renew in accordance with clause 2(44) aforesaid, the defendant did not accept the plaintiff's "offer" for a further 3-year term and therefore there was no agreement, express or otherwise, between the parties for such further term.

49. In those circumstances, the plaintiff's claim that the defendant remained in possession of the said premises under a new lease for a further term of three years to end April 2005 must, in my judgment, fail.

50. On the other hand, I accept counsel for the plaintiff's submission that the defendant has also failed to prove that there was an express agreement for a month-to-month tenancy.

51. However, it occurs to me that the plaintiff, by including clause 3(4) aforesaid in the said lease, determined that in the absence of a new lease or some written agreement to the contrary, the basis on which the defendant was to remain in occupancy was on a month-to-month tenancy, terminable upon 30 days' notice, albeit at double the rent called for in the said lease. Of course, it was, as conceded by Mr Rolle, open to the plaintiff to waive that double rent, as, in my view, it did. Mrs Martinborough's evidence is the plaintiff never billed double rent and by the evidence of the defendant's witnesses, the defendant never agreed to pay, or paid double, rent.

52. For my part I find it difficult to believe that the plaintiff would have permitted the defendant to remain in occupation of its premises and billed and collected rent from the defendant, and the defendant would have paid rent at the increased rent, without the parties having communicated with each other as to the defendant's continued possession/occupation of the said premises. Nevertheless, the defendant, in my view, has failed to prove that there was an express agreement for a month-to-month tenancy.

53. So, although I have come to the conclusion that there was no express agreement either for a further three year term or a month-to-month tenancy, I have concluded that the inference to be drawn from the circumstances of this case is that there was at the very least an implied agreement for the defendant to remain in occupation of the said premises on a month-to-month tenancy.

54. Therefore, having heard the parties and considered the evidence, authorities and submissions of counsel, I find that on a balance of probabilities the parties had agreed, if not expressly, certainly, in my judgment, impliedly, by conduct, that the defendant could continue in occupation of the said premises as a tenant from month-to-month, at the increased monthly rent of \$7,943.00, and on such terms of the said lease as are applicable to a periodic tenancy.

55. As a general rule, a monthly tenancy is terminable on one month's notice. The defendant gave notice on 9 August 2004 of its intention to vacate the said premises on 6 September 2004. The defendant says it intended to pay the September rent, but the damage done to the premises by hurricanes rendered them uninhabitable effective 3 September 2004, so it did not.

56. It is not disputed that the said premises were damaged by hurricane during the first week of September 2004, although the plaintiff says that the damage was not so extensive that the premises were uninhabitable. It is, however, unclear when, exactly, the defendant vacated the said premises.

57. In any event, it is not disputed that the defendant intended to vacate the premises on 6 September 2004. The rent was due and payable on the first day of each month and by the defendant's own admission, but for the hurricane, it intended to pay the September rent. However, the hurricane hit a day or two before the defendant was scheduled to vacate although the defendant says that that "escalated" its departure. Perhaps. But, to my mind, that could only be the case if the defendant was not, in fact, ready to vacate on Monday, 6 September 2004, since the hurricane occurred the previous weekend.

58. Further, Mrs Grant in a letter dated 11 November 2004 to the plaintiff wrote that the defendant "endeavoured to operate from their premises by serving their clients from a temporary set-up on the outside of the building." That must have been after 6 September 2004, which leads me to believe that the plaintiff's contention that the defendant vacated the said premises during the third week of September may be more accurate than the defendant's claim that it vacated the premises earlier than 6 September 2004, which means that even if the defendant left as a result of the damage done by hurricane Frances, it left after the expiration date of its own notice to vacate.

59. So, in light of the defendant's letter of 9 August 2004 giving notice of its intention to vacate on or before 6 September 2004 and my finding that the defendant vacated after 6 September 2004, coupled with the defendant's statement in the counterclaim filed 23 May 2007, that "a subsequent month-to-month lease has been terminated by Notice given by the defendant", in my judgment the plaintiff is entitled to be paid rent for the month of September 2004.

60. I would therefore give judgment to the plaintiff for \$7,943.00, being the rent due and payable to the plaintiff for the month of September 2004.

61. I would also give judgment to the defendant on its counterclaim for an accounting of the security deposit held by the plaintiff with respect to the said lease and order that the plaintiff pay such sum to the defendant less the aforesaid sum of \$7,943.00, representing one month's rent.

62. I will hear the parties as to interest and costs.

DATED the 5th day of May 2011

Estelle G. Gray-Evans

Justice